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## **OLR Bill Analysis**

**sHB 5395 (as amended by House "A" and "B")\***

### ***AN ACT CONCERNING CUSTODY ORDERS FOR DEPLOYED MEMBERS OF THE ARMED FORCES.***

#### **SUMMARY:**

This bill prohibits a court from entering a final custody or visitation order modifying a final custody or visitation order until 90 days after a deploying parent's deployment or mobilization ends, unless he or she agrees to a modification.

The bill specifies that it does not stop the court from hearing a motion at least 90 days after a deploying parent returns for permanent modification of final orders of custody and visitation. The nondeploying parent bears the burden of showing that re-entry of final order of custody or visitation that was in effect before the deployment is no longer in the child's best interest.

It also sets the requirements for temporary modification of orders because of a deployment or mobilization.

The bill adds armed forces members who have been trained and certified as victim advocates or sexual assault prevention coordinators under the military's sexual assault prevention and response program to the definition of "sexual assault counselor" for purposes of laws requiring:

1. communications between victim and counselor to generally be considered confidential and
2. mandated reporting for individuals who, in the ordinary course of their employment or profession, have reasonable cause to suspect or believe that any child under age 18 has been abused or neglected or that an intellectually disabled person has (CGS §§ 17a-101 and 46a-11b).

In expanding the definition, it also allows such trained armed forces members to act as professional counselors without a license (CGS § 20-195bb).

\*House Amendment "A" (1) eliminates provisions requiring a transition plan for modifications and on a court hearing an emergency motion to modify final orders and (2) makes other minor and technical changes.

\*House Amendment "B" adds armed forces members with certain training to the definition of sexual assault counselor for the purposes of victim and counselor confidentiality.

EFFECTIVE DATE: July 1, 2012, except the provision expanding the definition of sexual assault counselor is effective upon passage.

#### **PROHIBITION ON FINAL ORDER MODIFICATION**

When a deploying parent must be separated from his or her child during a deployment or mobilization, the bill prohibits a court from entering a final order of custody or visitation modifying a final order of custody or visitation until 90 days after the deployment or mobilization ends, unless the deploying parent agrees to the modification. It applies to final orders of custody or visitation related to custody, joint custody, or orders when parents live separately.

The bill defines a "deploying parent" as an armed forces member notified by military leadership that he or she will be deployed or mobilized with the armed forces. "Nondeploying parent" means a parent who has not been so notified.

It defines:

1. "deploy" as military service in compliance with military orders that an armed forces member receives to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, or other active duty service, including a period during which the member remains subject to deployment orders and deployed on account of sickness,

wounds, or other lawful cause;

2. “mobilize” as the call-up of National Guard or Reserve service members to extended active duty, but, “mobilization” does not include National Guard or Reserve annual training, inactive duty days, drill weekends, temporary duty or state active duty; and
3. “armed forces” as the U.S. Army, Navy, Marine Corps, Coast Guard, Air Force, their reserve components, and the state’s National Guard under federal service.

### ***Post-Deployment or -Mobilization***

The bill specifies that it does not stop the court from hearing a motion for permanent modification of final orders of custody and visitation at least 90 days after a deploying parent returns. The nondeploying parent bears the burden of showing that reentry of final order of custody or visitation that was in effect before the deployment is no longer in the child’s best interest. The bill further specifies that absence due to deployment or mobilization cannot be the sole basis for modifying orders.

## **TEMPORARY MODIFICATION ORDERS**

### ***Modification Request***

Under the bill, when an armed forces member receives notice of deployment or mobilization requiring separation from his or her child for whom he or she has sole or joint custody or court ordered visitation, parental access, or parenting time, the member or the nondeploying parent may ask the court to modify any existing custody or visitation order. And the court may enter a temporary order of custody or visitation modifying a final order of custody or visitation for the period of deployment or mobilization when certain conditions are met.

First, the court must find that the deployment or mobilization would have a material effect upon the deploying parent’s ability to exercise parental rights, responsibilities, or parent-child contact as set

in the existing final orders of custody or visitation. Second, it must find modification is in the child's best interests.

The bill (1) specifies that when issuing temporary modification orders in this situation, existing custody and visitation law must guide the court, and (2) requires the court to hear motions for temporary modification of final orders of custody or visitation due to deployment as quickly as possible and give them priority.

***Modification Requirements***

A temporary court order modifying final orders of custody or visitation must specify that deployment or mobilization is the basis for the order, and the court must enter it as a temporary order. The order must also require the nondeploying parent to provide the court and the deploying parent with 30 days' advance written notice of any change of address and telephone number, unless a court has ordered that the deploying party is not entitled to this information.

Under the bill, temporary modification orders issued under the bill must designate the parent's (1) parental rights; (2) responsibilities; and (3) parent-child contact during a period of leave granted to the deploying parent, in the best interests of the child.

The bill specifies that changes in actual leave dates cannot be used by the nondeploying parent to limit parent-child contact.

A temporary court order modifying final orders of custody or visitation issued under the bill must require that the:

1. nondeploying parent make the child available to the deploying parent, to the extent he or she requests it, when the deploying parent has leave, provided (a) the request for visitation is not inconsistent with the final orders of custody or visitation being modified by the temporary court order and (b) the child cannot be absent from school unless the court orders it and both parents agree in writing;
2. nondeploying parent facilitate opportunities for telephone,

electronic mail, and other contact between the deploying parent and the child during deployment or mobilization; and

3. deploying parent provide timely information about his or her leave schedule to the nondeploying parent.

### **PENDING AND NONEXISTENT ORDERS**

If pendente lite orders of custody or visitation are in place (i.e., orders while litigation is pending) or if there are no existing orders of custody or visitation establishing the terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization is imminent, then on either parent's motion the court must expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact. This is to (1) ensure the deploying parent has access to the child, provided it is in the child's best interest; (2) ensure disclosure of information; (3) grant other rights and duties; and (4) provide other appropriate relief.

Any initial pleading filed to establish parental rights and responsibilities or parent-child contact with a child of a deploying parent must be identified at the time of filing by stating in the text of the pleading the specific facts related to deployment.

### **COMMITTEE ACTION**

Select Committee on Veterans' Affairs

Joint Favorable Substitute Change of Reference  
Yea 10 Nay 0 (03/13/2012)

Judiciary Committee

Joint Favorable  
Yea 45 Nay 0 (04/02/2012)