

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 346

(Delegate Shewell, *et al.*)

Judiciary

Family Law - Child Custody and Visitation - Military Deployment

This bill specifies that in a child custody or visitation proceeding involving a parent on active duty as a member of the armed forces deployed outside the United States or as a member of a state National Guard or Reserve Force on federal active duty, any order or modification of an existing child custody or visitation order during the deployment or federal active duty is temporary and must specifically reference the parent's deployment or federal active duty. When the deployment or federal active duty ends, the order must terminate or, if an existing order was modified, revert to the previous order. At the end of the parent's deployment or federal active duty, either parent may petition the court to issue a new child custody or visitation order.

Fiscal Summary

State Effect: The bill is not expected to directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Maryland courts resolve custody disputes based on a determination of "what is in the child's best interests." *Taylor v. Taylor*, 306 Md. 290, 500 A.2d 964 (1986). In a custody dispute between the child's parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments.

The criteria for judicial determination includes, but is not limited to (1) the fitness of the parents; (2) the character and reputation of the parties; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) the residences of the parents and the opportunity for visitation; (9) the length of the separation of the parents; and (10) whether there was a prior voluntary abandonment or surrender of custody of the child. *See: Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

If there is a dispute as to visitation or custody, the court must also determine whether mediation of the dispute is appropriate and would be beneficial to the parties and any minor children and if there is a properly qualified mediator available to mediate the dispute. The court must not order mediation if there is a good faith representation of genuine physical or sexual abuse of a party or a child subject to the proceeding.

Background: The federal Soldiers and Sailors Relief Act protects the interests of active duty military personnel. The law was first enacted in 1940 and substantially revised in 2003. Under this law, federal court hearings may be stayed to protect the interests of active military personnel. The law requires at least a 90-day stay in a federal court or administrative hearing if requested by the service member. Additional stays may be granted at the discretion of the federal judge or hearing official.

State and Local Fiscal Effect: The bill is not expected to substantially impact the operations of the Judiciary. If an active military parent consents to an order of custody or visitation, the court would have one hearing in which a temporary order was issued and a subsequent hearing to make a final custody or visitation determination following the parent's redeployment or discharge from active military duty. The Administrative Office of the Courts advises that service of process is required for any party in a custody or other family law action and cannot proceed without service. Also, the Soldiers and Sailors Act provides additional protections for those in active military duty.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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