

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 422

(Delegate Shewell, *et al.*)

Judiciary

Judicial Proceedings

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Family Law - Child Custody and Visitation - Military Duty

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This bill establishes special provisions for custody proceedings involving a parent subject to military deployment.

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Fiscal Summary

**State Effect:** The Judiciary can handle the bill's requirements with existing budgeted resources.

**Local Effect:** The circuit courts can handle the bill's requirements with existing budgeted resources.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill specifies that any order or modification of an existing child custody or visitation order issued by a court during a term of a deployment of a parent must specifically reference the deployment of the parent. "Deployment" means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other Reserve component to report for combat operations or other active service for which the member is required to report unaccompanied by any family member or that is classified by the member's branch as remote. "Deployment" does not include National Guard or Reserve annual training, inactive duty days, or drill weekends.

A parent who petitions the court for an order or modification of an existing order after returning from deployment must specifically reference the date of the end of the deployment in the petition. If the petition is filed within 30 days after the end of the deployment, the court must set a hearing on the petition on an expedited basis. On a finding that extenuating circumstances prohibited the filing of the petition within 30 days, the court may set a hearing on the petition on an expedited basis whenever the petition is filed.

Any custody or visitation order issued based on the deployment of a parent must require that (1) the other parent reasonably accommodate the leave schedule of the parent who is subject to the deployment; (2) the other parent facilitate opportunities for telephone and electronic mail contact between the parent who is subject to the deployment and the child during the time of deployment; and (3) the parent who is subject to the deployment provide timely information regarding the parent's leave schedule to the other parent.

**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.

The Court of Appeals has recognized the importance of maintaining stability in the life of a child, and acknowledged that a change in custody may disturb that stability. See *McCready v. McCready*, 323 Md. 476 (1991). In custody modification cases, a change of custody is generally a two-step process. First, the moving party must demonstrate that there has been a material change in circumstances. If a material change in circumstances is found to exist, then the court considers the best interest of the child as

if it was an original custody proceeding. See, *e.g.*, *Wagner v. Wagner*, 109 Md. App.1 (1996).

**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 (now the Servicemembers Civil Relief Act), 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. However, the federal law does not protect deployed military personnel regarding child custody and visitation proceedings in State courts.

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### **Additional Information**

**Prior Introductions:** HB 346 of 2008, a similar bill, received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), U.S. Department of Housing and Urban Development, Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2009  
mlm/kdm Revised - House Third Reader - March 27, 2009

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