

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 813

(Senator Hough)

Judicial Proceedings

Child Custody and Visitation - Deployed Parents

This bill establishes special provisions for custody and visitation proceedings involving a parent subject to military deployment. The bill also prohibits a court, in a custody or visitation proceeding, from considering in and of itself, a parent's past deployment or possible future deployment in determining the best interest of the child unless the deployment has had or will have a significant impact on the child's best interest.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: A party or witness who is subject to deployment and is not reasonably available to appear in person before the court in a child custody or visitation proceeding may provide testimony and present evidence by electronic means or by telephone.

On motion of a deploying parent, the court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if the court finds (1) that exceptional circumstances exist and (2) the grant of caretaking authority is in the best interest of the child.

Unless the grant of caretaking authority to a nonparent is agreed to by the other parent, it is limited to specified amounts of time. The court may add any unusual travel time necessary to transport the child to the amount of time granted to a nonparent.

On motion of a deploying parent, the court may grant decision-making authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if the court finds (1) that exceptional circumstances exist; (2) that the deploying parent is unable to exercise that parent's decision-making authority with regard to the child; and (3) the grant of decision-making authority is in the best interest of the child. If the court grants decision-making authority to a nonparent, the court must specify the decision-making authority granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

The bill establishes that the parents may enter into a temporary custody agreement during deployment, which must be in writing and signed by the parties. If feasible, an agreement must include specified items, including provisions regarding (1) contact between the child and the deploying parent; (2) the allocation of caretaking authority among relevant parties; (3) any decision-making authority that accompanies a grant of caretaking authority; and (4) an acknowledgement that any party's child support obligation cannot be modified by the agreement, as specified. The omission of any of the items specified does not invalidate an agreement.

Unless terminated earlier by court order or by modification, an agreement made pursuant to the bill is temporary and terminates after the deploying parent returns from deployment. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact for an individual to whom custodial responsibility is given. A nonparent who has caretaking authority, decision-making authority, or limited contact under such an agreement has standing to enforce the agreement until it has been terminated by court order or by modification.

By mutual consent, the parents of a child may modify an agreement under the bill's provisions. If an agreement is modified before the deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement. If an agreement is modified during the deployment of a deploying parent, the modification must be agreed on in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

An agreement must be filed within a reasonable time with any court that has issued a child custody or child support order currently in effect concerning the child who is the subject of the agreement. Specified information regarding any pending cases concerning custody or child support must be provided to the court with the agreement.

A court may issue a custody order under the bill's provisions only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). If a court has issued a temporary custody order, the residence of the deploying parent is not changed by reason of the deployment for purposes of UCCJEA. If a court has issued a permanent custody order before notice of deployment and the parents modify that order temporarily by agreement, the residence of the deploying parent is not changed by reason of the deployment for purposes of UCCJEA. If a court in another state has issued a temporary custody order as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for purposes of UCCJEA. These provisions do not prevent a court from exercising temporary emergency jurisdiction under UCCJEA.

The bill also alters the definition of deployment by specifying that the individual must be reporting for combat operations or other active service, under current law provisions, for more than 90 days but less than 18 months.

Current Law: 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 U.S. 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.

Background: UCCJEA has been enacted in 49 states (all but Massachusetts) to govern interstate child custody cases. It provides interstate enforcement provisions for child custody orders and sets forth provisions for one state to establish jurisdiction in order to eliminate competing custody orders between states.

Additional Information

Prior Introductions: HB 350 of 2015, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 1379 (Delegate Valentino-Smith, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Human Resources, Military Department, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

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