

# Legislative Analysis

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## **CUSTODY/PARENTING TIME: ACTIVE DUTY MILITARY DEPLOYMENTS**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4071 Substitute H-1 as reported**  
**Sponsor: Rep. Tom Barrett**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4482 reported without amendment**  
**Sponsor: Rep. Klint Kesto**

**Senate Bill 9 Substitute H-1 as reported**  
**Sponsor: Sen. Rick Jones**

*(Enacted as Public Acts 50-52 of 2015)*

**House Committee: Judiciary**  
**Senate Committee: Judiciary (SB 9)**  
**Complete to 5-4-15**

### **SUMMARY:**

Taken together, the bills modify the requirements to file a motion for change of custody or a parenting time order when a parent is called to deployment.

Under the Child Custody Act, when a child custody dispute is before the circuit court, the court may take certain actions for the best interests of the child. These include awarding custody of the child to one or more of the parties involved or to others, and providing for the payment of child support; providing for reasonable parenting time; and modifying or amending the court's previous judgments or orders for proper cause shown or because of a change of circumstances. The court may not modify or amend its previous judgments or orders, or issue a new order changing the child's established custodial environment, unless there is clear and convincing evidence that it is in the best interest of the child.

In addition, if a motion for change of custody is filed during the time a parent is in active military duty, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty. The court, however, may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. The bills would delete and re-enact these provisions, as described below.

Senate Bill 9 amends Section 7 (custody orders) and House Bill 4071 amends Section 7a (parenting time orders) of the Child Custody Act to do the following, as provided in the Servicemembers Civil Relief Act (a federal law described below), if a motion for change of custody or change of parenting time were filed during the time a parent was on active duty military deployment.

- ❖ Allow a parent to file an application for a stay of the proceedings, and require the court to entertain the application; and allow a parent to apply for an extension of a stay.
- ❖ Prohibit the court from modifying a previous judgment or order, or issuing a new order, that changed the child's placement or the parenting time that existed when the parent was called to deployment.
- ❖ Allow the court to enter a temporary custody or parenting time order if there were clear and convincing evidence that it was in the best interest of the child.
- ❖ Require a parent to inform the court of the deployment end date before or within 30 days after that date. Require the deploying parent to notify the other parent of an upcoming deployment within a reasonable period if custody were shared.

Upon notification of a parent's deployment end date, the court would have to reinstate the custody order or parenting time order in effect immediately before the deployment. If a subsequent motion for change of custody or parenting time were filed, the court could not consider a parent's absence due to that deployment, nor could future deployments be considered in making a best-interest-of-the-child determination.

House Bill 4482 amends Section 2 of the act to define "deployment" as the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days under temporary or permanent official orders that are designated as unaccompanied, for which dependent travel is not authorized, that otherwise do not permit the movement of family members to that location, and for which the servicemember is restricted from travel.

[The federal Servicemembers Civil Relief Act (50 USC 501 to 597b) provides protections for military members as they enter active duty. Section 522 of that act provides for a stay of proceedings and applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant, at the time of filing an application for a stay, is in military service or is within 90 days after termination of or release from military service, and has received notice of the action or proceeding.

At any stage before final judgment in a civil action or proceeding in which such a servicemember is a party, if certain conditions are met, the court must grant a stay of at least 90 days upon application by the servicemember, and may do so on its own motion. A servicemember may apply for an additional stay based on military duty continuing to affect his or her ability to appear.]

The bills are tie-barred to each other and would take effect 90 days after enactment.

MCL 722.22 (HB 4482)  
MCL 722.27 (SB 9)  
MCL 722.27a (HB 4071)

## **FISCAL IMPACT:**

The bills would have no fiscal impact on state or local government.

## **BRIEF DISCUSSION OF THE ISSUES:**

The legislation addresses a recent situation in which a father, who was serving in the Navy, took custody of his young daughter after the child's mother and her boyfriend were both convicted of abuse. The father moved to modify the existing custody order. However, when the father failed to appear at a hearing, the judge found him in contempt, ordered his arrest, and removed the child from his custody even though he missed the hearing because the submarine he served on had been deployed and he was at sea.

The bills are consistent with the federal Servicemembers Civil Relief Act and provide additional protections to parents when on active duty by codifying in state law provisions in the federal act and also by providing "decompression" time after a deployment ends to enable the parent time to adjust to the end of the deployment, consult with an attorney, and so on. The legislation also clarifies that a court can grant temporary custody during a stay if there is clear and convincing evidence that it is in the best interest of the child.

Some, however, would like the burden of proof required for temporary changes in custody or parenting time orders when one parent is deployed to be by *preponderance of the evidence* rather than by *clear and convincing evidence*, as the bills currently require.

## **POSITIONS:**

A representative of the Department of Military and Veteran Affairs testified in support of the bills. (4-23-15)

The Family Law Section of the State Bar indicated support for the bills (4-23-15 and 4-28-15)

The State Court Administrative Office is neutral on the bills. (4-23-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.