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BILL ANALYSIS



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Senate Bill 9 (as enacted)
House Bills 4071 and 4482 (as enacted)
Sponsor: Senator Rick Jones (S.B. 9)
Representative Tom Barrett (H.B. 4071)
Representative Klint Kesto (H.B. 4482)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 52 of 2015
PUBLIC ACTS 50 & 51 of 2015

Date Completed: 7-22-15

CONTENT

Senate Bill 9 and House Bill 4071 amend the Child Custody Act to do the following, if a motion for change of custody or change of parenting time is filed during the time a parent is on deployment:

- Allow a parent to file an application for a stay of the proceedings, and require the court to entertain the application.
- Prohibit the court from entering an order modifying a previous judgment or order, or issuing a new order, that changes the child's placement or the parenting time that existed when the parent was called to deployment, except for a temporary order allowed under the bills.
- Allow a parent to file an application for an extension of a stay.
- Allow the court to enter a temporary custody or parenting time order if there is clear and convincing evidence that it is in the best interest of the child.
- Require a parent to inform the court of his or her deployment end date.
- Require the court, upon notification of the deployment end date, to reinstate the custody or parenting time order in effect before deployment.
- Prohibit a court from considering a parent's absence due to deployment, or his or her future deployments, in making a best interest of the child determination.
- Require a deploying parent to notify the other parent of an upcoming deployment, if they share custody of a child.

House Bill 4482 amends 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 bills will take effect on September 7, 2015.

A more detailed description of Senate Bill 9 and House Bill 4071 follows.

Senate Bill 9

Under the 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 bill deletes and re-enacts those provisions as described below.

Under the bill, as provided in the Servicemembers Civil Relief Act (a Federal law described below), if a motion for change of custody is filed during the time a parent is on deployment, a parent may file an application for stay and the court must entertain the application. 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 deployment, but may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. When a temporary custody order is issued, the court may include a limit on the period that the temporary order remains in effect.

In addition, at any stage before final judgment in the custody proceeding, the parent may file an application for stay or otherwise request a stay of the proceedings, or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application. The application will be sufficient if it is a signed, written statement certified to be true under penalty of perjury. The same conditions for the initial stay apply to an application for an extension of a stay. The parent's duration of deployment may not be considered in making a best interest of the child determination.

The parent must inform the court of the deployment end date before or within 30 days after that date. Upon notification of a parent's deployment end date, the court must reinstate the custody order in effect immediately before that period of deployment. If a motion for change of custody is filed after a parent returns from deployment, the court may not consider a parent's absence due to that deployment in making a best interest of the child determination. Future deployments also may not be considered in making a best interest of the child determination.

If the deploying parent and the other parent share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period.

House Bill 4071

The Child Custody Act requires parenting time to be granted in accordance with the best interests of the child, and specifies that it is presumed to be in the best interests of the child for the child to have a strong relationship with both of his or her parents.

The bill specifies that, as provided in the Servicemembers Civil Relief Act, if a motion for change of parenting time is filed during the time a parent is on deployment, a parent may file an application for stay and the court must entertain the application. The court must presume that the best interests of the child are served by not entering an order modifying or amending a previous judgment or order, or issuing a new order, that changes the parenting time that existed on the date the parent was called to deployment, unless the contrary is established by clear and convincing evidence, at which time the court may enter a temporary parenting time order.

When a temporary parenting time order is issued under the bill, the court may include a limit on the period that the temporary order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for a stay or otherwise request a stay of proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application. The application will be sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to an application for an extension of a stay.

The parent must inform the court of his or her deployment end date before or within 30 days after that date. Upon notification of a parent's deployment end date, the court must reinstate the parenting time order in effect immediately before the period of deployment. If a motion for change of parenting time is filed after a parent returns from deployment, the court may not consider a parent's absence due to that deployment in making a determination regarding change of parenting time. Future deployments also may not be considered in making a best interest of the child determination.

If the deploying parent and the other parent share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period.

MCL 722.27 (S.B. 9)
722.27a (H.B. 4071)
722.22 (H.B. 4482)

BACKGROUND

The 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.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.