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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12

SPONSOR Garcia, T. LAST UPDATED \_\_\_\_\_ HB 121

SHORT TITLE Service Member Child Custody Act SB \_\_\_\_\_

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY12 | FY13 | FY14 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> | NFI* | NFI* | NFI* |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See discussion in Fiscal Implications.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Children, Youth & Families Department (CYFD)  
 Human Services Department (HSD)  
 Veterans Services Department (VSD)  
 Department of Military Affairs (DMA)

### SUMMARY

#### Synopsis of Bill

House Bill 121, introduced on behalf of the Military and Veterans' Affairs Committee, establishes procedures for modifying existing custody, time-sharing or visitation orders for children of service members. It prohibits entry of final orders modifying existing child custody, time-sharing or visitation orders while a service member is unavailable due to military orders. Similarly, it prohibits modification of these types of orders solely because a service member is absent or might be absent pursuant to military orders. It provides for an expedited hearing when a service member will be unavailable otherwise pursuant to military orders. Finally, HB 121 it allows for electronic testimony.

The effective date of this bill is July 1, 2012.

## FISCAL IMPLICATIONS

According to the AOC, the fiscal implications for the courts directly follow the litigation that is generated, or alternatively avoided, by the proposed changes. This bill provides new grounds to challenge custody awards and modifications, but also might help avoid additional hearings if parenting plans are required in the orders and those plans anticipate and address military absences from the beginning. In the absence of data demonstrating the effect of either of these eventualities, the fiscal impact is assumed to be neutral, and the table above reflects no significant impact.

## SIGNIFICANT ISSUES

In HB 121, “service member” includes a member of the armed forces of the United States or national guard or a member of a reserve component thereof. The bill also provides definitions of the terms deploying parent, military parent, and non-deploying parent. The bill ameliorates the effect that deployment of a military parent may have on that parent’s ability to respond to child custody matters (including time-sharing and visitation), such as prohibiting the court from entering a final order to modify custody of the child of the deploying parent during that deployment.

HB 121 declares that deployment or potential deployment is not in itself a substantial and material change in circumstances justifying an existing order concerning custody. The bill does allow a court to issue a temporary order to modify an existing order in recognition of a parent’s deployment, and requires sharing of information by both parents unless such information is kept confidential pursuant to the Family Violence Protection Act. Every temporary order expires no later than 10 days after the end of a deployment unless an emergency or expedited motion is filed alleging immediate danger or irreparable harm to the child.

The bill also allows a court to delegate all or a portion of the deploying parent’s visitation rights to a family member with a close and substantial relationship to the child for the duration of the deployment upon a finding that such action is within the best interests of the child.

The AOC advises the Supreme Court’s Domestic Relations Task Force worked with military lawyers on the legislation and met with the interim committee in 2010 to support the bill last session. The AOC also notes that the bill’s provisions, at least as to the best interests of the child standard, the use of parenting plans and allowing testimony from witnesses in another state or country, is consistent with existing domestic relations statutes.

CYFD and other responding agencies note that HB 121 is consistent with the provisions of the federal Servicemembers Civil Relief Act, signed into law in 2005. The AGO cites two cases that have been decided since the passage of that act which point out gaps in the intended protection of military service members in that act:

In Lenser et. al. vs. McGowan, 358 Ark. 423, 191 SW3d 506 (2005) the Iowa Supreme Court upheld the judge’s grant of custody to the mother when the mobilized father requested a stay of proceedings to keep physical custody with his own mother and In re Marriage of Grantham, 698 N.W.2d 140 (Iowa 2005) reverses a judge’s order that stayed the custody petition when the father mobilized and gave custody via a Family Custody Plan (FCP) to his mother.

The Department of Military Affairs (DMA) provides these comments:

Many service members have custody of, or visitation rights with, children whose other parent is not the service member's current spouse. Absences due to military service can undermine and disrupt existing arrangements, creating stress on parents and children. In spite of the substantially increased activity of our Armed Forces around the world today, not all States have passed legislation designed to address the unique aspects of military service when balancing equities involved in decisions about child custody and visitation rights. The Department thinks States are in the best position to balance such equities, and believes they should at a minimum address the following basic substantive points and consider certain procedural protections:

- (1) No permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service.
- (2) Past absence due to military service should not serve as the *sole* basis for altering a custody order in place prior to the absence.
- (3) The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The non-absent parent should bear the burden of proof.
- (4) The mere *possibility* of future absence due to military service should not be an appropriate consideration for child custody determinations.
- (5) A service member with visitation rights should be allowed to petition the court to allow those visitation rights to be delegated to a third person during the service member's absence due to military service.

All but one of these provisions are contained in HB 121; as to temporary orders in (3) above, there is no language placing the burden of proof on the non-deploying parent.

In addition, the DMA supports expedited hearings and electronic testimony, which are provided for in HB 121.

According to the VSD, in our current conflicts we have seen more and more National Guard and Reserve members called up to active duty or put on special orders that sometimes affects a custodial issue. This legislation would offer that parent some protection and ease the transition from civilian to military service.

The AGO concludes:

HB121 provides broader protections to a service member (i.e. provides for delegation of visitation rights and expedited hearings), but ultimately does not divest a court of issuing temporary custody/support awards that still may leave children in an questionable situation upon the service members return.

MD/svb