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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13

SPONSOR Dodge LAST UPDATED \_\_\_\_\_ HB 246

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

ANALYST Daly

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### 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 246, introduced on behalf of the interim Military and Veterans' Affairs and the interim Courts, Corrections and Justice Committees, enacts the Service Member Child Custody Act (the Act). The Act 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. It also allows for electronic testimony.

The effective date of this bill is July 1, 2013.

## FISCAL IMPLICATIONS

According to the AOC, the fiscal implications on the judiciary will directly follow the amount of litigation that is generated, or alternatively, avoided by the Act. It both gives new grounds to challenge custody awards and modifications, but also might avert attempted modifications if parenting plans are required in the orders and the plans anticipate and address military absences from the beginning. Courts may have to accommodate an increased number of expedited or emergency hearings under the Act, but these hearings are occurring anyway in at least some military parent cases. The Act provides a planning and preparation process that would lend a more ordered process to the requests for and scheduling of these hearings.

## SIGNIFICANT ISSUES

The Act defines “service member” to include a member of the armed forces of the United States or national guard or a member of a reserve component thereof. The Act 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.

The Act declares that deployment or potential deployment is not in itself a substantial and material change in circumstances justifying an existing order concerning custody. The Act 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 a 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 notes that HB 246 is a state version of the federal Servicemembers Civil Relief Act, which was signed into law in 2005. The AOC advises that the Supreme Court’s Domestic Relations Rules Committee worked with military lawyers on the legislation and met with the interim courts committee to support the bill in past sessions. For more information, see the overview of the SCRA at <http://usmilitary.about.com/od/sscra/1/blscramenu.htm>. The AOC also notes that HB 246’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, are consistent with existing domestic relations statutes.

In a past analysis, the AGO cited 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 to his mother.

The 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 the Act; 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 the Act.

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.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The VSD expresses concern that if HB 246 is not enacted, service members who are deployed and have an existing custodial agreement in place face the possibility that their agreement can be modified while they are out of the country serving in the armed forces adding to the stress they already face while being in a combat zone.