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FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 02/13/14
LAST UPDATED 02/15/14 HB _____

SHORT TITLE Service Member Child Custody Act SB 130/SJCS

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		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)

Department of Military Affairs (DMA)

Veterans' Services Department (VSD)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 130 enacts the Deployed Parents Custody and Visitation Act (the Act). The Act incorporates many of the provisions included in the Uniform Deployed Parents Custody and Visitation Act.

Major provisions of the Act:

- Define “deploying parent” to mean a member of a uniformed service; “deployment” as the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that are designated unaccompanied, do not authorize dependent travel, or otherwise do not allow family members to move to the location to which the service member is deployed; “custodial responsibility” including all powers and duties relating to caretaking authority and decision-making authority for a child, as well as legal custody and authority to grant limited contact with the child; and “caretaking authority” as the right to live with and care for a child on a day-to-day basis, including physical custody, parenting time, right to access and visitation (Section 2);

- Provide that the residence of the deploying parent remain unchanged when there is a temporary court order regarding custodial responsibility pursuant to the Act, when there is a permanent court order regarding custodial responsibility before notice of deployment and parents modify that order temporarily by agreement pursuant to the proposed Act, and when there is a temporary court order from another state regarding custodial responsibility as a result of impending or current deployment, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, Sections 40-10A- 101 through 112, NMSA 1978 (UCCJEA) (Section 3);
- Set out procedures for notification and parenting plans including:
 - written notification by the deploying parent to the other parent not later than 7 days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service;
 - each parent must provide a written plan for fulfilling that parent's share of custodial responsibility during deployment;
 - no disclosure of contact information of the other parent if protected by court order, in which case notice and plan may be made only to the court for the court to forward to the other parent; and
 - exempts notice if both parents live in same residence and have actual notice of the deployment or plan (Section 4);
- Require the person granted custodial responsibility during deployment to notify the deploying parent and any others with custodial responsibility of change of mailing address or residence until custodial responsibility is terminated, unless a court order prohibits disclosure, in which case notice may be made only to the court for the court (Section 5);
- Prohibit the court from considering parent's past or future deployment in determining the best interest of the child when deciding custodial responsibility (Section 6);
- Provide for a temporary agreement between the child's parents granting custodial responsibility during deployment, which agreement must be in writing and signed by both parents and any nonparent granted custodial responsibility (Section 7);
- Provide that the parents' agreement is temporary and terminates after deploying parent returns, unless earlier terminated by a court, and that such an agreement does *not* create independent, continuing right to caretaking or decision-making authority or limited contact by the person granted custodial responsibility; also provide standing to nonparent with caretaking or decision-making authority or limited contact to enforce the agreement until its termination by the court (Section 8); and
- Provide an expedited hearing by the Court upon motion to grant custodial responsibility before deployment (Section 9).

The effective date of the bill is July 1, 2014.

FISCAL IMPLICATIONS

AOC reports there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Sections 4 and 5 assign additional duties to the court to provide notice to a parent whose address or contact information is protected from disclosure by court order.

SIGNIFICANT ISSUES

AOC explains the need for this bill:

The increased deployment of service members in recent years has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. Service members struggle to balance their military duties with their parental duties. Divorce rates in the uniformed services are higher than the general population, leaving a significant proportion of service members as single parents. The US Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact the overall war effort, and can impact the ability for service members to complete assigned missions.

Military mobilizations, temporary duty, deployment and remote assignments can also take their toll on judges who handle custody cases, as well as the parents who are parties to the lawsuit. In the past there have been few laws or rules to guide the courts when a family separation arises and there is a dispute over the care of the children. Recently, states have enacted legislation to protect the rights of service members and their children in custody and visitation matters, while some states have not yet acted, creating disparate situations for deploying parents depending on where they live.

Similarly, VSD comments that with the current conflict in Afghanistan and others around the world, it has seen more and more National Guard and Reserve members called up to active duty or put on special orders that sometimes impact custodial issues. This legislation would offer a deploying parent some protection and ease the transition from civilian to military service. Further, it reports that according to the Family Law Section of the New Mexico Bar Association, this bill could assist courts and service members by protecting the service member from having their custody agreements modified while they are deployed.

VSD calls attention to provisions of the bill which provide protection for the deploying parent and allow for notifications and plans to be submitted and signed by electronic means, while maintaining confidentiality in cases that the courts has determined the address of a parent should kept sealed. VSD highlights the provision that allows parents to create a temporary agreement between themselves to grant custodial responsibility to a parent or non-parent, which agreement is temporary and terminates either upon return of the deployed parent or by court order when such termination is deemed in the child's best interest, as well as that which requires courts to conduct expedited hearings if proceedings are begun before a deployment and that which bars

consideration of past or possible future deployment in determining what is in the best interest of the child.

AOC advises the bill is based on a model statute addressing deployment and custody which was developed in 2012 by the Uniform Law Commission:

Nine and Washington, D.C. have adopted the Uniform Deployed Parents & Visitation Act, which facilitates expeditious and fair disposition of cases involving custody rights of a member of the military. The American Bar Association has approved the Uniform Act, and the National Conference of State Legislatures provided training on the issue in the spring of 2013. Rather than enacting federal law on what is typically a state topic such as family laws regarding child custody, the states have been strongly encouraged to follow the model act's language to provide some standardization across the states for military parents who can find themselves ordered to service in a state far from their family home.

SB 130/CS establishes a modified version of the Uniform Act in order to offer military parents some protection and ease the transition from civilian to military service. The model act not only provides an expedited process for military families to plan for temporary deployment, but also assures deployed parents that they will be able to see their children when their deployment ends and provides a method to ensure deployed parent is able to see the children while on leave. The bill establishes as a presumption that the mere absence of a parent due to deployment may not be the sole factor in determining the welfare of a child.

However, AOC notes this bill omits much of the detail in the model act. AOC comments that it is unclear if these omissions expand or limit the current discretion of New Mexico judges to protect the best interests of the children in establishing or modifying temporary custody orders, especially when automatic termination of temporary orders after deployment ends may not be in the best interest of the children.

AGO questions whether an agreement addressing custodial responsibility pursuant to Section 7 should be filed with the court.

PERFORMANCE IMPLICATIONS

AOC reports that the courts participate in performance-based budgeting, and it is unknown if this bill will impact performance measures as they relate to judicial budgeting.

OTHER SUBSTANTIVE ISSUES

DMA provides these comments as to issues facing deploying parents and legislative provisions that address them:

Many service members have custody of, or visitation rights with, children whose other parent is not the 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. DMA 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 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 member's absence due to military service.

Additionally, the Department believes States should consider procedural protections to allow expedited hearings and electronic testimony.

Other than the assignment of burden of proof discussed in (3), it appears SB 130/CS addresses the concerns raised, including the right to visitation discussed in (5) which can be the subject of an expedited hearing upon the filing of a motion for custodial responsibility.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

VSD expresses concern that without legislation addressing issues facing deploying parents, service members who are deployed and have custodial agreements in place face the possibility that their agreements 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.

MD/svb