

HB 2061 HD1

Measure Title:

Statutorily establishes a process by which the Family Court can resolve matters regarding custody and visitation for service members of the United States armed forces, armed forces reserves, and National Guard whose military duties require temporary absences. Effective July 1, 2050.



DoD-State Liaison Office

**OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE
(MILITARY COMMUNITY AND FAMILY POLICY)**

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

**Senator Will Espero , Chair, Public Safety and Military Affairs
Senator Suzanne Chun Oakland, Chair, Human Services**

March 8, 2010

**Testimony of
Laurie Crehan, Ed.D.
Quality of Life Regional Liaison
Office of the Under Secretary of Defense (Personnel and Readiness)
Office of the Deputy Under Secretary of Defense, (Military Community and Family Policy)
DoD-State Liaison Office
Joint Committee Hearing March 9, 2010 1:15 p.m.**

HB 2061 HD 1 Relating to Children: Child Custody (Evans)

The Department of Defense State Liaison Office operates under the direction of the Under Secretary of Defense for Personnel and Readiness, and the Deputy Under Secretary of Defense for Military Community and Family Policy. Our mission is to be a resource to state policymakers as they work to address quality of life issues impacting military families.

Testimony

Chair Espero and Chair Chun Oakland, on behalf of the Department of Defense, I would like to thank you for the opportunity to submit testimony today supporting policies as reflected in HB 2061 HD 1, a bill relating to child custody and Service members. Many divorced Service members have custody of, or visitation rights with, children whose other parent is not the Service member's current spouse. Many of these Service members who are deployed away from their family sometimes find that state courts do not consider the unique aspects of military service when making custody decisions. These absences due to military service can undermine and disrupt existing arrangements, creating stress on parents and children.

The Department of Defense believes the welfare of the child is of utmost importance; however, it also believes the demands of military service should not abrogate the parent's rights. The Department agrees with the American Bar Association's conclusion that States are in the best position to balance such equities. As a result, The ABA and DoD both oppose current federal legislation that opens the door for federal court oversight of state implementation of federal law. Instead, we are supporting state efforts to address the custody concerns our military families face due to deployment.

The Department of Defense believes there are several protections that states could enact which would serve both the parent's rights and the welfare of the children. In particular, we would like to see states enact the following 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, nor should the mere *possibility* of future absence due to military service be an appropriate consideration for child custody determinations.
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. 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.

The policy put forth in the language of HB 6021 HD 1, we believe, addresses these areas of concern, as well as some others, related to Service members and child custody. We believe these additional protections assist in addressing the unique aspects of military service when balancing equities involved in decision about child custody and will strengthen state policy in this regard.

The two areas of possible revision outlined below will help to clarify this legislation and align the policy with the Department's intent relative to our concerns for the affected families.

1. In the section on "Permanent Custody and Visitation Order," the bill states: (b) *A service member's deployment or temporary duty, or the potential for future deployment or temporary duty, and the associated ramifications, shall not be the sole factor supporting a change in circumstance or grounds sufficient to result in a permanent modification of an existing custody or visitation order, if a motion is filed to transfer custody away from the service member.* The inclusion of "*and the associated ramifications*" is problematic because literally all effects of deployment should not be ignored by a judge. There are sometimes unfortunate but serious ramifications of the Service member's deployment and exposure to battle, and we would not want a judge to be compelled to ignore what might be in the best interest of a child in such matters.
2. In that same section, paragraph *c* should include a comma after the word *upon* in order to get the likely intended result of the drafter.

I appreciate the opportunity to submit testimony and look forward to Hawaii's leadership adopting these vital protections for our Service members. Please do not hesitate to contact me if you have any concerns or questions.

Dr. Laurie Crehan
858-274-3314
lcrehan@juno.com



THE JUDICIARY, STATE OF HAWAII

Testimony to the Senate Committee on Public Safety and Military Affairs

The Honorable Will Espero, Chair
The Honorable Robert Bunda, Vice Chair

Senate Committee on Human Services

The Honorable Suzanne Chun Oakland, Chair
The Honorable Les Ihara, Jr., Vice Chair

Tuesday, March 9, 2010, 1:15 p.m.
State Capitol, Conference Room 229

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2061, H.D. 1, Relating to Children

Purpose: Statutorily establishes a process by which the Family Court can resolve matters regarding custody and visitation for service members of the United States armed forces, armed forces reserves, and National Guard whose military duties require temporary absences.

Judiciary's Position:

We take no position on these important policy issues but offer the following comments and suggestions.

Even if the statement in the introduction of the bill that, "Nationwide, a number of family court judges use a military service member's absence from home while serving the United States in countries such as Iraq and Afghanistan to take away child-custody and visitation rights..." were true for certain areas in the country, it is not true in our state. Hawaii's Family Court judges take all factors into account when deciding contested custody issues and it is very rare that just one factor is enough to "take away" custody and visitation rights.



House Bill No. 2061, H.D. 1, Relating to Children
Senate Committee on Public Safety and Military Affairs /
Senate Committee on Human Services
March 9, 2010
Page 2

At the bottom of page 7, line 17 (new section 571- Permanent custody or visitation order) to the top of page 8, the bill prohibits the entry of a "permanent" custody order until ninety days after the deployment or temporary duty ends and "the deploying parent returns to the deploying parent's permanent residence." We respectfully request that the second clause be amended to read, "and the deploying parent returns to the United States." We believe this would be necessary to ensure that "permanent" custody orders can be made in a timely manner.

Furthermore, we wish to point out that the court does not label custody orders as "permanent." For the child's minority, custody orders that result from a divorce decree or a paternity judgment can be modified by agreement of the parties or in the event of a material change in circumstances, depending of the court's finding of the child's best interest.

At page 10, from line 5 (new section 571- Delegation of parental visitation rights), this bill allows for a "delegation of parental visitation rights." While this section gives the appropriate discretion to the court to fashion an order in the child's best interest, we are deeply concerned that this section may cause an increase in litigation. We are further concerned that, despite the language that no entitlement is created by this bill (page 10, from line 10), litigation will nevertheless arise, particularly as time passes and emotions run high. We are mindful that, especially in this state, grandparents and extended ohana are honored and important to our keiki. The Family Court judges agree with these principles but they have also repeatedly observed that active participation by the extended family in the lives of children works well only when the ohana itself works it out. Once there is a breakdown and litigation ensues, the children are negatively impacted and competent parents find themselves mired in time, cost, and tension. This sort of litigation will not be good for children and will impact on the rights and ability of competent parents to raise their children.

At page 12, line 19 (new section 571- Removal of the child from the state), this bill forces jurisdiction to remain in Hawaii and it appears to "trump" the provisions in HRS Chapter 583A, Uniform Child-Custody Jurisdiction and Enforcement. This may not be a good idea and perhaps this section should be deleted. A great many servicemembers and their spouses who are stationed in Hawaii do not come from Hawaii. It is very common for the remaining spouse to return to his/her home on the Mainland after the servicemember spouse has been deployed. This is usually a very good idea since the remaining parent and child(ren) will have the support of family at home on the Mainland. For these families, given the length of current deployments (as well as repeated deployments), it is reasonable to assume that the best information about the child and the child's circumstances will not be in Hawaii. This bill understandably wishes to provide every advantage to the servicemember. However, this section provides that advantage at the cost of sound decision making on behalf of and in the best interest of the out-of-state children.



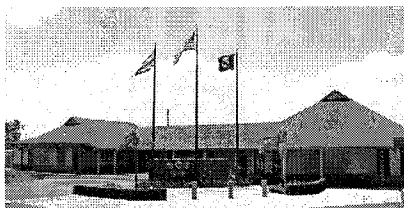
House Bill No. 2061, H.D. 1, Relating to Children
Senate Committee on Public Safety and Military Affairs /
Senate Committee on Human Services
March 9, 2010
Page 3

Thank you for the opportunity to provide testimony on this matter.

OAHU VETERANS COUNCIL

OAHU VETERANS COUNCIL

President - Fred Ballard
1st V.P. - Cecil Meadows
2nd V.P. - Jim Santos
Secretary - John Harms
Treasurer - Eugenia Woodward
Chaplain - Frank Lamson



"a gathering place for veterans"
OAHU VETERANS CENTER

OAHU VETERANS CENTER

EXECUTIVE DIRECTOR
Sandy Ballard

March 7, 2010

MEMBER ORGANIZATIONS

5th Regimental Combat Team
45th Infantry Division Assn.
Air Force Assn. - Chapter 138
Air Force Sergeants Association
American Legion Aux. Dept. of HI
American Legion - Dept. of HI
American Legion Post 32
American Veterans Empowerment &
Support Community Operations
BPOE VAVS Hawaii Dist.
China-Burma-India Veterans Assn.
Chosin Few - Aloha Chapter
Combat Infantrymen's Assn.
Combat Veterans Motorcycle Club
Disabled American Veterans -
Chapter 3
Fleet Reserve Association Branch
And Unit 46
Hawaii Multiple Schools Unit - Jr. ROTC
Korean War Veterans Assn -
Chapter 1
Military Officers Assn. of America -
Aloha Chapter
Military Officers Assn. of America -
Hawaii State Chapter
Military Order of the Purple Heart
Military Order of World Wars
National Assn. for Atomic Veterans
National Assn. of Uniformed Services
National Sojourners - Hawaiian # 9
National Sojourners - Honolulu # 11
National Sojourners - Kamehameha #439
Pearl Harbor Survivors Association
Radiated Veterans
Samoan Providers
Society of Military Widows -
Aloha Chapter
Sons & Daughters of
Pearl Harbor Survivors
Special Forces Assn. - Chapter VIII
State Office of Veterans Services
Veterans of Foreign Wars
Dept. of Hawaii
Veterans of Foreign Wars Post 970
Vietnam Veterans of America
Chapter 858
Waves National - Unit 131
Women Veterans of America #26

TESTIMONY IN FAVOR OF HOUSE BILL 2061-HD1 RELATING TO CHILDREN

SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS AND SENATE COMMITTEE ON HUMAN SERVICES

HEARING TUESDAY, MARCH 9, 2010, 1:15 PM, ROOM 229

Aloha Senators Will Espero, Chair, Robert Bunda, Vice Chair, and members of the Senate Public Safety and Military Affairs Committee, and Senators Suzanne Chun Oakland, Chair, Les Ihara, Jr., Vice Chair and members of the Senate Committee on Human Services.. My name is Fred Ballard, President Oahu Veterans Council. The Oahu Veterans Council is comprised of over 35 Oahu veteran organizations that in turn represent over 80,000 veterans and their families. The Council voted unanimously at a previous meeting to communicate our complete support of House Bill 2061, HD1

The Council feels very strongly that a process by which the Family Court can resolve matters regarding custody and visitation for those who are deployed to combat zones and those who are frequently away from home training. The Council supports and joins in the efforts of those who have been working hard to make this bill the best it can be.

The Oahu Veterans Council strongly supports the passage of House Bill 2061 HD1.

Mahalo for allowing us the opportunity to testify in support of this very important bill.

Fred Ballard

Fred Ballard
President
Oahu Veterans Council



1298 Kukila St.

E-Mail: sballard@oahuveteranscenter.com



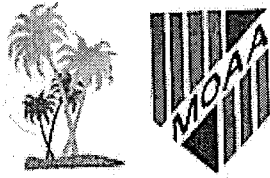
Honolulu, Hawaii 96818

Website: <http://www.oahuveteranscenter.com>



(808) 422-4000 FAX: (808) 422-4001





Hawaii Chapter, MOAA
P.O. Box 1185
Kailua, Hawaii 96734-1185

Testimony of

Thomas Smyth, President

Military Officers Association of America, Hawaii Chapter

Before the House Committee on Human Services

Tuesday, March 9, 2010, 1:15pm, Room 229

On HB 2061 HD1 Relating to Children

Chairs Espero & Chun Oakland, Vice Chairs Bunda & Ihara, Members

Our association of 500 retired and currently serving officers of the seven Uniformed Services strongly supports HB 2061, HD1, as amended, which takes a military parent's deployment status into account in child custody cases.

With the increase in unit deployments since the beginning of military operations in Iraq, Afghanistan and other places around the world, there has been a corresponding increase in challenges to the child custody responsibilities of parents who have court-ordered child custody, but are ordered to deploy. With more women serving in all branches of the Armed Forces, and since mothers are more likely to be the court ordered custodial parent, this issue has become even more significant.

About 7.8% of all military members are single parents and there are about 36,000 families where both parents are in the armed forces. These parents must prepare a Family Care Plan designating a person, living in their area and often, but not always, a relative, to take care of the child while they are deployed.

Even when a child custody plan has been prepared and accepted by the military command, non-custodial individuals are more frequently filing for custody, just on the basis of the custodial parent's absence. They argue that the custodial parent is now "unfit" since they are absent.

As noted in Section 1 of the bill, many states and municipalities have recognized this problem and take deployment status into account. Similar federal legislation has been proposed but child custody is, after all, a state matter. Hawaii should take action now and we believe that this bill will be an important step in this direction. The bill does not limit the authority of Family Court judges to act in child custody disputes; it just sets forth guidelines for those actions.

The provision for accommodation of the absent parent not being able to be present at a hearing and allowing other means of representation is very important. In this age of inexpensive and convenient video conferencing, all parties should have a fair opportunity to participate.

We understand that the Family Law Section of the Hawaii State Bar Association is not in full agreement with the provisions of this bill, as amended, but we do believe that any specific language issues can be resolved and that the bill should move on to the Committee on Judiciary and Government Operations.

Thank you for the opportunity to provide this testimony.

THE CHAMBER OF COMMERCE OF HAWAII

1132 Bishop Street, Suite 402

Honolulu, HI 96813

Testimony to the Senate Committee on Public Safety and Military Affairs

Tuesday, March 9, 2010

1:15 PM

Conference Room 229

RE: HOUSE BILL NO. 2061, HD 1, RELATING TO CHILDREN

Chair Espero, Vice Chair Bunda, and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's support of House Bill 2061, HD 1, Relating To Children.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the US military and its civilian workforce and families, and has provided oversight for the state's multi-billion dollar defense industry since 1985.

The measure proposes to statutorily establish a process by which the Family Court can resolve matters regarding child custody and visitation for service members of the US Armed Forces, Armed forces Reserves, and National Guard whose military duties require temporary absences.

The composition of the military has changed dramatically over the years as the US shifted to an all volunteer force. Nearly 50% of the force consists of married and single parent families. This large number of military members with families has resulted in the recognition of changing needs for military families.

Moreover, the protracted conflicts in the Middle East have given rise to increased deployment of military parents. There have been growing concerns over the custody rights of children of deployed single parents, and cases where both parents are deployed. These concerns greatly impact the quality of life for these families and the cause of anxiety for patents serving on extended deployments.

This measure would provide Hawaii's military parents with the degree of protection needed to prevent the courts from denying custody or visitation rights based on the parents' extended deployment in the service of the Nation. This is deemed essential to the well-being of military families and the rights of military parents.

For these reasons, we respectfully request that the proposed measure be approved for adoption.

Thank you for the opportunity to testify.

THOMAS D. FARRELL
Attorney at Law ♦ L.L.C.
Certified Specialist in Family Law*
700 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

March 6, 2010

Hon. Suzanne Chun-Oakland
Chair, Senate Committee on Human Services
Hon. Will Espero
Chair, Senate Committee on Public Safety and Military Affairs
Twenty Fifth Legislature, State of Hawaii
415 South Beretania Street, Room 229
Honolulu, Hawaii 96813

via internet

**Re: *Testimony of Family Law Section, Hawaii State Bar Association,
House Bill 2061, HD1 (proposed SD1)***

Dear Senator Chun-Oakland and Senator Espero and Members of your Committees:

I am an attorney who has practiced law in Honolulu for some thirty years, and I am also the vice chair of the Family Law Section of the Hawaii State Bar Association. The Family Law Section is comprised of over a hundred attorneys who practice primarily in Family Court. We handle child custody cases day in and day out, and quite a few of our clientele are either members of the military or have a child in common with someone who is. I write on behalf of the Section. I apologize for the length of this testimony, but sometimes it can be important to know more about a bill than just who is for it and against it. This is one of those times.

Our position on House Bill 2061, HD1 is that it has our lukewarm support, provided that it passes out of your committee in the form attached as proposed Senate Draft 1. In any other form, we oppose it. Since that is hardly a ringing endorsement, a bit of explanation is in order.

With literally hundreds of thousands of Americans having deployed to either Iraq or Afghanistan over the last eight years, it isn't surprising that some of them are also parents who are either divorced or were never married to and no longer cohabit with the other parent. Courts issue child custody orders that affect these parents in divorce and paternity matters, and overwhelmingly the orders that are issued are the result of agreements between parents. Sometimes, however, parents can't agree and a judge has to make a decision for them. When that occurs, courts throughout the United States generally follow two principles. First, as against any non-parent or absent parent, the other parent has a Constitutionally-protected right to the custody of his or her child, unless shown to be unfit. This is called parental primacy. Second, in any dispute between parents, the best interests of the child are paramount.

Divorce • Paternity • Custody • Child Support • TROs • Arbitration
also handling national security cases involving revocation or denial of security clearances

Telephone (808) 535-8468 • Fax (808) 585-9568 • email to tom@farrell-hawaii.com

*Certified by the National Board of Trial Advocacy. The Supreme Court of Hawaii grants Hawaii certification only to lawyers in good standing who have successfully completed a specialty program accredited by the American Bar Association.

Ten years ago, a lady named Tanya Towne got divorced in New York. She and her soon-to-be ex, Richard Diffin, agreed that Tanya would have physical custody of their five year old son, Derrell. It so happened that Tanya was a member of the New York National Guard. In April 2004, Richard learned that she was deploying within thirty days and would be spending at least a year in Iraq. Mom's plan was to leave Derrell with her new husband. Richard thought otherwise. He filed a post divorce motion asking the court to change custody and let him have his son, at least while Tanya was gone. Tanya tried to stop that by pleading the stay provisions Servicemembers' Civil Relief Act (SCRA). The court only partly agreed with her, staying the action until her return, but awarding temporary custody of Derrell to his father. *Diffin v. Towne*, 787 N.Y.S.2d 677 (N.Y. Fam. Ct. 2004).

In due course, Tanya returned from her deployment and further hearings were held. The court decided that Derrell was doing well with dad, that mom's family situation had changed in the intervening year (she went through a second divorce and moved to a new home), and that it was in Derrell's best interest to remain with dad. Tanya appealed and lost. *Diffin v Towne*, 47 AD3d 988, 849 N.Y.S.2d 687 (2008). The Appellate Division of the Supreme Court of New York explained their decision, saying:

...[T]he fact remains that the mother was deployed and... we must consider the consequences of her extended absence ... Derrell is settled in his school and doing well, plays on several teams, has ongoing friendships with local children, and is comfortable and happy in his father's home. Although it is likely that Derrell would be equally well settled and happy had he continued living with his mother without interruption, and although the disruption caused by her deployment was not her fault, this record does not demonstrate that Derrell's best interests would be enhanced by ordering a change in his present physical custody. Under the circumstances of this case, his interests are best served by the stability of an uninterrupted custody arrangement.

Since 2004, *Diffin v. Towne* has become a cause célèbre, and is typically cited as the case of the patriotic mom who lost her child because she chose to serve her country. Typical is the characterization of one lawyer, who said that the New York justices should be "ashamed of themselves for this blatantly anti-servicemember decision." This was a unanimous decision, by the way, in which two of the four justices who heard the case were prior military – one, in fact, was a Vietnam veteran. The truth is that in neither this decision, nor any one of the other thirty-three reported appellate decisions involving child custody and military deployment, was a parent's deployment the sole factor in awarding custody. It was certainly a factor, however.

As often happens in these matters, Congress decided to get into the act. Rep. Michael Turner (R-Ohio) sits on the House Armed Services Committee. He sponsored H.R. 2647, which died in the last Congress, but has been revived as H.R. 4469. This bill would amend the SCRA by (1) prohibiting anything but a temporary change of custody during a parent's deployment, (2) creating a presumption that the prior custody order should be reinstated upon return from

deployment, and (3) tell state family court judges that they cannot consider deployment in a custody decision. In case you find that as unbelievable as I do, here is the precise language:

Exclusion of Military Service From Determination of Child's Best Interest- If a motion for the change of custody of the child of a servicemember is filed, no court may consider the absence of the servicemember by reason of deployment, or possibility of deployment, in determining the best interest of the child.

The American Bar Association is on record as strongly opposing Congressman Turner's bill, and even the US Defense Department was rather taken aback by this proposal. The DOD position has been that Congress should give the various states an opportunity to legislate first. Unofficially, DOD probably recognizes (as most lawyers do) that the exclusion language is on shaky ground should a challenge ever reach the Supreme Court. So Defense Secretary Robert Gates handed his Deputy Undersecretary for Military Community and Family Policy---a fellow by the name of Tommy T. Thomas---the project of trying to get states to pass statutes dealing with child custody and military deployment. Mr. Thomas, in turn, has in his employ a Dr. Laurie Crehan, who is the "Quality of Life State Liaison, Pacific Region," and I believe that Dr. Crehan approached State Representative Cindy Evans to introduce HB2061.

As originally drafted, HB2061 was simply a terrible piece of legislation, basically a state version of Congressman Turner's bill. Although you wouldn't know it from reading the report of the House Committee on Human Services, the Family Law Section testified in strong opposition to the bill on February 11. In favor, of course, were the various organizations who automatically support anything that is viewed as beneficial to our men and women in uniform, and who really don't need to know much else about a piece of legislation in order to support it. Nor were some of them particularly gracious towards anyone who might have other views. An official of the Oahu Veterans' Council wrote to me afterwards stating that the Family Law Section's position "supports the belief that Hawaii is not the place for military personnel with families to be stationed."

I was asked to lead the effort of the Family Law Section on this issue, not only because I am the co-chair of its legislation committee, but also because my own credentials leave no doubt that I fully understand and honor the sacrifices that our military personnel have made, particularly since 2001. I served as an Army Reserve officer for over twenty-nine years. When Tanya Towne was coming back from Iraq, I was on my way over. During our year there, my Brigade of some eight hundred soldiers suffered six killed and twenty-three wounded. No one needs to tell me about the debt we owe to those men and women. That does not mean, however, that we should put the interests of soldiers above the interests of children, particularly when those children are the innocent victims of their parents' inability to cooperate.

Because it became apparent that some sort of bill was going to cross over, we have tried to come up with a custody and military deployment statute that addresses genuine concerns, but does not trample on the principles of equal justice under law, judicial independence, parental

FLS Testimony re HB2061, HD1
March 6, 2010
page 4

primacy, and the best interests of the child. Mr. Tom Marzec, a former Naval officer and a concerned citizen who has been active in matters involving Family Court, proposed a House Draft 1, which was largely accepted by the Committee on Human Services (See, SCR No. 388-10). Our careful review of HD1 left us with the conclusion that much (but not all) of the objectionable material had been deleted, but there were still a number of problems. HD1 passed out of the House Committee on Finance without further amendment.

During the weekend of February 20-21, I spent quite a bit of time with Mr. Marzec, and the product of our collaboration is the SD1 which is attached to this testimony. I don't know if this will satisfy Dr. Crehan or Undersecretary Thomas, and frankly the Family Law Section does not care. We do not accept the proposition that the Pentagon should dictate the terms of family law to the Hawaii State Legislature, even under the threat that Congress may do something worse should you fail to accede to their demands.

In essence, the proposed SD1 codifies what the Family Court is already doing in most cases to ensure that deployed or deploying servicemembers involved in child custody disputes get a fair shake. This includes expediting hearings when a deployment is imminent, making only temporary custody orders for the duration of the deployment, and setting a review hearing shortly after the parent's return from deployment. It also explicitly encourages what the court is already doing to ensure that deployed servicemembers have every opportunity to be heard, by allowing liberal participation in proceedings by way of telephone, web-based video, or other electronic means. It also allows a deployed servicemember to delegate to a family member (such as a grandparent or step-parent) those visitation rights that he would otherwise exercise but for deployment, and directs the court to consider visitation rights for siblings who may be separated as the result of a temporary order. The proposal also encourages specific visitation orders during the deployment that maximize technological advances, and accommodate the servicemember's leave cycle. What this SD1 does not do is to create any presumption of return to the status quo ante upon return of the deployed parent, nor does it carry a prohibition against considering deployment or potential for deployment in determining the best interest of the child. These are "redlines" for the Family Law Section, and any legislation to the contrary will have our strongest and public condemnation.

While we do not believe that legislation is particularly needed, we are not opposed to HB2061 if it passes in the form attached as SD1. We hope the other stakeholders will see the merit of this proposal and will support it.

Sincerely,



Thomas D. Farrell

enclosure: HB2061, HD1, SD1 (proposed)

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2061 H.D. 1, S. D. 1

A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Hawaii has approximately fifty thousand active-duty military personnel, and sixty-one thousand associated family members. Hawaii has approximately twelve thousand Reserve and National Guard members. According to the 2000 U.S. Census, Hawaii topped all other states with the highest percentage of people ages sixteen to sixty-four in the armed forces at 4.95 per cent.

In fiscal year 2008-2009, the Judiciary reported five thousand six hundred and twenty-two marital actions (primarily divorces) filed and two thousand and twenty-one parental proceedings filed. Many of these cases included military parents. Also, single military parents and previously divorced families where one parent is a military member are a significant population. It has been reported that approximately eight per cent of military service members are single parents and that approximately ten thousand single-parent service members have been deployed overseas for more than six months. These numbers do not include divorced service-member parents who have remarried, where a custodial or non-custodial parent must still deal with deployments and the children.

The issues surrounding military duty which separates a parent from his or her children, have a significant effect on the military readiness of the parent and on the well-being of the child.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

“571-46. . Military Deployment.

(a) Purpose. The purpose of this section is to provide a fair, efficient and swift process for resolving child custody and visitation matters when a parent is or will be deployed in support of military operations, consistent with section 571-46.

(b) Definitions. The definitions set forth below are controlling for the purpose of the construction and implementation of this section, notwithstanding any other definitions of the same or similar terms in publications of the United States Department of Defense or the Armed Forces.

“Deployment” means the absence of a servicemember from his or her usual place of residence and/or duty station pursuant to military orders, however styled:

(1) for a period of at least sixty days, and

(2) in support of a specified military operation, and

(3) under conditions that preclude a child from accompanying the servicemember, and

(4) from which the servicemember is expected to return to his or her usual place of residence and/or the duty station from which he or she deployed.

“Parent” means a person who is the natural, legal, adoptive parent or legal guardian or a child under the age of eighteen (18) or who has commenced legal proceedings to establish that relationship and whose parental rights have not been terminated.

“Deploying Parent” means a parent who is a servicemember and is likely to deploy within the next sixty (60) days.

“Deployed Parent” means a parent who is a servicemember and has actually deployed.

“Servicemember” means an active duty member of the Armed Forces of the United States (the Army, Navy, Marine Corps, Air Force, and Coast Guard, or members of the reserve components or National Guard when serving on active duty under Title 10, United States Code, and in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than thirty (30) consecutive days under section 502(f) of Title 32, United States Code. This does not include

members of the reserve components in inactive duty, active duty other than under Title 10 or Title 32, or members of the National Guard serving on active service pursuant to section 121-30.

“Return from Deployment” means the date upon which the deployed parent returns to his prior place of residence or duty station, or arrives at a new duty station for an indefinite period or a period that will exceed ninety (90) days. This does not include periods of leave during which the deployed parent may return to the location from which he was deployed, nor to periods of temporary duty during deployment.

“Electronic Means” means communication by telephone, radiotelephone, video teleconference, webcam, fax, email or other available electronic communication systems.

(c) Enforcement of existing judgments, orders and decrees. Where there is an existing judgment, order or decree addressing what shall occur with respect to custody and visitation of a minor child in the event of the deployment of either or both parents, the court shall enforce the provisions of that decree, upon application by either parent, unless the court finds that to do so would not be in the best interests of the child.

(d) Expedited Hearing.

(1) Upon motion by either parent seeking to establish or modify custody or visitation orders and alleging that a parent has deployed or will likely deploy within the next sixty (60) days, the court shall set the motion for an expedited hearing. Said hearing shall be set within fourteen days of presentation of the motion for filing and, whenever possible, prior to the parent’s deployment. Any motion seeking an expedited hearing under this section shall specify the factual basis upon which the movant claims that a parent has deployed or is likely to deploy. Any such motion shall specify when and how the deploying or deployed parent notified the nondeploying parent of the deployment. The court may consider the deploying parent’s timeliness disclosing an impending deployment to the other parent in making any orders under this section, unless a delay or failure to disclose was necessitated by valid military or operational security concerns.

(2) Following the hearing, the court shall enter a temporary order for a period not to exceed thirty (30) days after return from deployment.

(3) If the deploying parent is the custodial parent, and unless the parties have agreed to other custodial arrangements or the court finds the non-deploying parent to be unfit, the court shall award temporary custody and temporary child support to the non-deploying parent.

(4) Any temporary order shall provide for visitation to the deployed parent, affording priority to the deployed parent's pre-deployment, mid-tour and post-deployment or other leave, and providing further that the court may require visitation to occur in a location that shall not interfere with the child's schooling or other specified activities. The temporary order shall also provide for visitation by way of electronic means and surface mail between the deployed parent and child. The temporary order may also provide for visitation between the child and the child's siblings who may be separated as a result of the temporary order. Upon request of the deployed parent, the court may order visitation that the deployed parent might otherwise exercise in the absence of deployment to be exercised by the deployed parent's delegate(s).

(5) The temporary order may authorize the temporary relocation of the child outside of the State of Hawaii. Notwithstanding any other law to the contrary, having made a temporary order under this section, the court shall retain continuing exclusive jurisdiction until such time as a post-deployment review hearing is held.

(e) Review Hearing.

(1) Upon entering a temporary custody order, the court shall set the matter for a review hearing within thirty (30) days the deploying parent's anticipated return from deployment. The review hearing may be advanced if the deployed parent returns from deployment sooner than anticipated, or continued if the deployed parent remains deployed longer than anticipated.

(2) Following the review hearing, the court may (i) set the matter for a further evidentiary hearing, if appropriate, and/or (ii) make any further orders necessary in the best interests of the child.

(f) Service of Process. In addition to any other method prescribed by law, service of process on a deploying or deployed parent may be made by first class mail addressed to the

individual through his APO or FPO address, or addressed to the servicemember at his or her unit or military installation. The court may accept service by any other means if the court is satisfied that the deploying or deployed parent received actual notice, including by electronic means. Any motion seeking an expedited hearing shall be served upon the other party not less than forty-eight hours prior to the hearing

(g) Testimony and Evidence. The court may permit alternate methods of participation and testimony by electronic means in any hearing conducted under this section, for either parent for whom physical attendance is impractical or would impose undue hardship. A parent's affidavit or declaration under penalty of perjury shall be admissible, and a fax, email or scanned copy of the same or any other relevant document may be admitted in the same manner as an original unless there is a genuine issue as to its authenticity.

(h) Application and construction of other laws.

(1) This section does not create or confer a separate right of action. Any person seeking court orders under this section must initiate or have a pending proceeding in the Hawaii Family Court or meet the requirements for filing a proceeding under Chapter 580, Annulment, Divorce and Separation, Chapter 583A, the Uniform Child Custody Jurisdiction and Enforcement Act, Chapter 584, the Uniform Parentage Act, or any other statute authorizing an action in which the custody and visitation of a child may be established or modified.

(2) This section does not confer child custody jurisdiction or child support jurisdiction upon the Hawaii Family Court where it would not otherwise exist under Chapter 583A, the Uniform Child Custody Jurisdiction or Enforcement Act, and Chapter 576B, the Uniform Interstate Family Support Act.

(3) This section is not intended to supersede, modify, or constitute a waiver of any rights or protections provided by the Servicemembers' Civil Relief Act of 2000, as amended, and shall be construed in conformity therewith."

SECTION 3.

Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

"§571-46 Criteria and procedure in awarding custody and visitation; best interest of the child. (a) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

(1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court [also] may also consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child; provided that the custody award shall be made in accordance with section 571-46. , if applicable;

(2) Custody may be awarded to persons other than [the father or mother] a parent whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;

(3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;

(4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to

effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available[[];[]]

(5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;

(6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award; provided that the modification shall be made in accordance with section 571-46. , if applicable;

(7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;

(8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;

(9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:

(A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and

(C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;

(10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;

(11) In a visitation order, a court may:

(A) Order an exchange of a child to occur in a protected setting;

(B) Order visitation supervised by another person or agency;

(C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;

(E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;

(F) Prohibit overnight visitation;

(G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;

(H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and

(I) Order the address of the child and the victim to be kept confidential;

(12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;

(13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and

(14) A supervised visitation center shall provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence.

(b) In determining what constitutes the best interest of the child under this section, the court shall consider[,] but not be limited to[,] the following:

(1) Any history of sexual or physical abuse of a child by a parent;

(2) Any history of neglect or emotional abuse of a child by a parent;

(3) The overall quality of the parent-child relationship;

(4) The history of caregiving or parenting by each parent prior and subsequent to a marital or other type of separation;

(5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing needs, interests, and schedule; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;

(6) The physical health needs of the child;

(7) The emotional needs of the child;

(8) The safety needs of the child;

(9) The educational needs of the child;

(10) The child's need for relationships with siblings;

(11) Each parent's actions demonstrating that they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;

(12) Each parent's actions demonstrating that they separate the child's needs from the parent's needs;

(13) Any evidence of past or current drug or alcohol abuse by a parent;

(14) The mental health of each parent;

(15) The areas and levels of conflict present within the family; and

(16) A parent's prior wilful misuse of the protection from abuse process under chapter 586 to gain a tactical advantage in any proceeding involving the custody determination of a minor. [Such] The wilful misuse may be considered only if it is established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular family circumstance the wilful misuse tends to show that, in the future, the parent who engaged in the wilful misuse will not be able to cooperate successfully with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of the best interests of the child. For the purposes of this section, when taken alone, the voluntary dismissal of a petition for protection from abuse shall not be treated as prima facie evidence that a willful misuse of the protection from abuse process has occurred."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

Report Title:

Child Custody; Military Deployment

Description:

Statutorily establishes a process by which the Family Court can resolve matters regarding child custody and visitation for service members of the United States armed forces, armed forces reserves, and National Guard whose military duties require deployment. Effective July 1, 2010. (HB2061 HD1, SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Hawaii has approximately fifty thousand active-duty military personnel, and sixty-one thousand associated family members. Hawaii has approximately twelve thousand Reserve and National Guard members. According to the 2000 U.S. Census, Hawaii topped all other states with the highest percentage of people ages sixteen to sixty-four in the armed forces at 4.95 per cent.

In fiscal year 2008-2009, the Judiciary reported five thousand six hundred and twenty-two marital actions (primarily divorces) filed and two thousand and twenty-one parental proceedings filed. Many of these cases included military parents. Also, single military parents and previously divorced families where one parent is a military member are a significant population. It has been reported that approximately eight per cent of military service members are single parents and that approximately ten thousand single-parent service members have been deployed overseas for more than six months. These numbers do not include divorced service-member parents who have remarried, where a custodial or non-custodial parent must still deal with deployments and the children.

The issues surrounding military duty which separates a parent from his or her children, have a significant effect on the military readiness of the parent and on the well-being of the child.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

“571-46. . Military Deployment.

(a) Purpose. The purpose of this section is to provide a fair, efficient and swift process for resolving child custody and visitation matters when a parent is or will be deployed in support of military operations, consistent with section 571-46.

(b) Definitions. The definitions set forth below are controlling for the purpose of the construction and implementation of this section, notwithstanding any other definitions of the same or similar terms in publications of the United States Department of Defense or the Armed Forces.

“Deployment” means the absence of a servicemember from his or her usual place of residence and/or duty station pursuant to military orders, however styled:

- (1) for a period of at least sixty days, and
- (2) in support of a specified military operation, and
- (3) under conditions that preclude a child from accompanying the servicemember, and
- (4) from which the servicemember is expected to return to his or her usual place of residence and/or the duty station from which he or she deployed.

“Parent” means a person who is the natural, legal, adoptive parent or legal guardian or a child under the age of eighteen (18) or who has commenced legal proceedings to establish that relationship and whose parental rights have not been terminated.

“Deploying Parent” means a parent who is a servicemember and is likely to deploy within the next sixty (60) days.

“Deployed Parent” means a parent who is a servicemember and has actually deployed.

“Servicemember” means an active duty member of the Armed Forces of the United States (the Army, Navy, Marine Corps, Air Force, and Coast Guard, or members of the reserve components or National Guard when serving on active duty under Title 10, United States Code, and in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than thirty (30) consecutive days under section 502(f) of Title 32, United States Code. This does not include members of the reserve components in inactive duty, active duty other than under Title 10, or members of the National Guard serving on active service pursuant to section 121-30.

“Return from Deployment” means the date upon which the deployed parent returns to his prior place of residence or duty station, or arrives at a new duty station for an indefinite period or a period that will exceed ninety (90) days. This does not include periods of leave during which the deployed parent may return to the location from which he was deployed, nor to periods of temporary duty during deployment.

“Electronic Means” means communication by telephone, radiotelephone, video teleconference, webcam, fax, email or other available electronic communication systems.

(c) Enforcement of existing judgments, orders and decrees. Where there is an existing judgment, order or decree addressing what shall occur with respect to custody and visitation of a minor child in the event of the deployment of either or both parents, the court shall enforce the provisions of that decree, upon application by either parent, unless the court finds that to do so would not be in the best interests of the child.

(d) Expedited Hearing.

(1) Upon motion by either parent seeking to establish or modify custody or visitation orders and alleging that a parent has deployed or will likely deploy within the next sixty (60) days, the court shall set the motion for an expedited hearing. Said hearing shall be set within fourteen days of presentation of the motion for filing and, whenever possible, prior to the parent’s deployment. Any motion seeking an expedited hearing under this section shall specify the factual basis upon which the movant claims that a parent has deployed or is likely to deploy. Any such motion shall specify when and how the deploying or deployed parent notified the nondeploying parent of the deployment. The court may consider the deploying parent’s timeliness disclosing an impending deployment to the other parent in making any orders under this section, unless a delay or failure to disclose was necessitated by valid military or operational security concerns.

(2) Following the hearing, the court shall enter a temporary order for a period not to exceed thirty (30) days after return from deployment.

(3) If the deploying parent is the custodial parent, and unless the parties have agreed to other custodial arrangements or the court finds the non-deploying parent to be unfit, the court shall award temporary custody and temporary child support to the non-deploying parent.

(4) Any temporary order shall provide for visitation to the deployed parent, affording priority to the deployed parent’s pre-deployment, mid-tour and post-deployment or other leave, and providing further that the court may require visitation to occur in a location that shall not interfere with the child’s schooling or other specified activities. The temporary order shall also provide for visitation by way of electronic means and surface mail between the deployed parent and child. The temporary order may also provide for visitation between the child and the child’s siblings who may be separated as a result of the temporary order. Upon

request of the deployed parent, the court may order visitation that the deployed parent might otherwise exercise in the absence of deployment to be exercised by the deployed parent's delegate(s).

(5) The temporary order may authorize the temporary relocation of the child outside of the State of Hawaii. Notwithstanding any other law to the contrary, having made a temporary order under this section, the court shall retain continuing exclusive jurisdiction until such time as a post-deployment review hearing is held.

(e) Review Hearing.

(1) Upon entering a temporary custody order, the court shall set the matter for a review hearing within thirty (30) days the deploying parent's anticipated return from deployment. The review hearing may be advanced if the deployed parent returns from deployment sooner than anticipated, or continued if the deployed parent remains deployed longer than anticipated.

(2) Following the review hearing, the court may (i) set the matter for a further evidentiary hearing, if appropriate, and/or (ii) make any further orders necessary in the best interests of the child.

(f) Service of Process. In addition to any other method prescribed by law, service of process on a deploying or deployed parent may be made by first class mail addressed to the individual through his APO or FPO address, or addressed to the servicemember at his or her unit or military installation. The court may accept service by any other means if the court is satisfied that the deploying or deployed parent received actual notice, including by electronic means. Any motion seeking an expedited hearing shall be served upon the other party not less than forty-eight hours prior to the hearing

(g) Testimony and Evidence. The court may permit alternate methods of participation and testimony by electronic means in any hearing conducted under this section, for either parent for whom physical attendance is impractical or would impose undue hardship. A parent's affidavit or declaration under penalty of perjury shall be admissible, and a fax, email or scanned copy of the same or any other relevant document may be admitted in the same manner as an original unless there is a genuine issue as to its authenticity.

(h) Application and construction of other laws.

(1) This section does not create or confer a separate right of action. Any person seeking court orders under this section must initiate or have a pending proceeding in the Hawaii Family Court or meet the requirements for filing a proceeding under Chapter 580, Annulment, Divorce and Separation, Chapter 583A, the Uniform Child Custody Jurisdiction and Enforcement Act, Chapter 584, the Uniform Parentage Act, or any other statute authorizing an action in which the custody and visitation of a child may be established or modified.

(2) This section does not confer child custody jurisdiction or child support jurisdiction upon the Hawaii Family Court where it would not otherwise exist under Chapter 583A, the Uniform Child Custody Jurisdiction or Enforcement Act, and Chapter 576B, the Uniform Interstate Family Support Act.

(3) This section is not intended to supersede, modify, or constitute a waiver of any rights or protections provided by the Servicemembers' Civil Relief Act of 2000, as amended, and shall be construed in conformity therewith."

SECTION 3.

Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

"§571-46 Criteria and procedure in awarding custody and visitation; best interest of the child. (a) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

(1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court [also] may also consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child; provided that the custody award shall be made in accordance with section 571-46. _____, if applicable;

(2) Custody may be awarded to persons other than [the father or mother] a parent whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;

(3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;

(4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available[[];[]]

(5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;

(6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award; provided that the modification shall be made in accordance with section 571-46.____, if applicable;

(7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;

(8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;

(9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:

(A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and

(C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;

(10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;

(11) In a visitation order, a court may:

(A) Order an exchange of a child to occur in a protected setting;

(B) Order visitation supervised by another person or agency;

(C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;

(E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;

(F) Prohibit overnight visitation;

(G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;

(H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and

(I) Order the address of the child and the victim to be kept confidential;

(12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;

(13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and

(14) A supervised visitation center shall provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence.

(b) In determining what constitutes the best interest of the child under this section, the court shall consider[,] but not be limited to[,] the following:

(1) Any history of sexual or physical abuse of a child by a parent;

(2) Any history of neglect or emotional abuse of a child by a parent;

(3) The overall quality of the parent-child relationship;

(4) The history of caregiving or parenting by each parent prior and subsequent to a marital or other type of separation;

(5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing needs, interests, and schedule; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;

(6) The physical health needs of the child;

(7) The emotional needs of the child;

(8) The safety needs of the child;

- (9) The educational needs of the child;
- (10) The child's need for relationships with siblings;
- (11) Each parent's actions demonstrating that they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;
- (12) Each parent's actions demonstrating that they separate the child's needs from the parent's needs;
- (13) Any evidence of past or current drug or alcohol abuse by a parent;
- (14) The mental health of each parent;
- (15) The areas and levels of conflict present within the family; and
- (16) A parent's prior wilful misuse of the protection from abuse process under chapter 586 to gain a tactical advantage in any proceeding involving the custody determination of a minor. [Such] The wilful misuse may be considered only if it is established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular family circumstance the wilful misuse tends to show that, in the future, the parent who engaged in the wilful misuse will not be able to cooperate successfully with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of the best interests of the child. For the purposes of this section, when taken alone, the voluntary dismissal of a petition for protection from abuse shall not be treated as prima facie evidence that a willful misuse of the protection from abuse process has occurred."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

Report Title:

Child Custody; Military Deployment

Description:

Statutorily establishes a process by which the Family Court can resolve matters regarding custody and visitation for service members of the United States armed forces, armed forces reserves, and National Guard whose military duties require deployment. Effective July 1, 2010. (HB2061 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.