



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1015 (as introduced 7-16-14)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 8-6-14

CONTENT

The bill would amend the Child Custody Act to do the following if a motion for change of custody or change of parenting time were filed during the time a parent was in active military duty:

- **Require the court to ask the parent if an application for stay was requested.**
- **Prohibit the court from entering an order modifying a previous judgment or order, or issuing a new order, that changed the child's placement or the parenting time that existed when the parent was called to active military duty.**
- **Allow the court to enter a temporary custody or parenting time order if there were clear and convincing evidence that it was in the best interest of the child.**
- **Require the court to request a review by the State Court Administrative Office, if the court denied either an initial application for a stay or an application for an extension of a stay under the bill.**

Child Custody

Under the Act, when a child custody dispute is before the circuit court, the court may take certain actions for the best interests of the child (defined below). These include awarding custody of the child to one or more of the parties involved or to others, and providing for the payment of child support; providing for reasonable parenting time; and modifying or amending the court's previous judgments or orders for proper cause shown or because of a change of circumstances. The court may not modify or amend its previous judgments or orders or issue a new order changing the child's established custodial environment unless there is clear and convincing evidence that it is in the best interest of the child.

In addition, if a motion for change of custody is filed during the time a parent is in active military duty, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty. The court, however, may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court must reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court may not consider a parent's absence due to that military duty in a best interest of the child determination.

The bill would delete and re-enact the provisions that prohibits the court from entering an order modifying or amending a previous judgment or order, or issuing a new order, that changes the child's placement that existed on the date the parent was called to active duty.

Under the bill, in addition to the child custody rights and remedies provided in the Federal Servicemembers Civil Relief Act (described below), if a motion for change of custody were filed during the time a parent was in active military duty, the court would have to ask that parent if an application for stay was requested. As under the current provision, the court could not enter an order modifying or amending a previous judgment or order, or issue a new order, that changed the child's placement that existed on the date the parent was called to active military duty, but could enter a temporary custody order if there were clear and convincing evidence that it was in the best interest of the child.

In addition, at any stage before final judgment in the custody proceeding, the parent serving in active military duty could file an application for stay or otherwise request a stay of the proceedings. The parent, his or her custodial designee, and the custodial child could not be required to be present to consider the application for stay. The court would have to consider the application sufficient if it were a signed, written statement certified to be true under penalty of perjury. A good-faith estimated future date of the parent's ability to appear would be sufficient to consider the application for stay, and the length of the stay would have to be set to the estimated future date or 720 days, whichever was shorter.

The parent's duration of deployment, prisoner of war status, or being missing in action but not declared dead by a court could not be considered in a best interest of the child determination.

The same conditions for the initial stay would apply to applications for extensions of the stay. The parent would have to inform the court of the official active duty end date before or within 30 days after that date, and the stay would have to be adjusted to not less than 90 days, and not more than 180 days, after the official active duty end date.

The court would have to request review by the State Court Administrative Office (SCAO) within 24 hours of denying either the initial application for a stay, or an application for an extension of a stay, according to Michigan Court Rule (MCR) 8.113 (described below). This review would not preclude or prejudice any right of appeal or additional remedies.

Parenting Time

The Child Custody Act requires parenting time to be granted in accordance with the best interests of the child, and specifies that it is presumed to be in the best interests of the child for the child to have a strong relationship with both of his or her parents. A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.

The bill specifies that, in addition to the child custody rights and remedies provided in the Servicemembers Civil Relief Act, if a motion for change of parenting time were filed during the time a parent was in active military duty, the court would have to ask the parent if an application for stay was requested. The court could not enter an order modifying or amending a previous judgment or order, or issue a new order, that changed the parenting time that existed on the date the parent was called to active military duty, but could enter a temporary parenting time order if there were clear and convincing evidence that it was in the best interest of the child.

At any stage before final judgment in the proceeding, the parent could file an application for stay or otherwise request a stay of proceedings. The parent, his or her custodial designee, and the custodial child could not be required to be present to consider the application for stay. The court would have to consider the application sufficient if it were a signed, written statement, certified to be true under penalty of perjury.

A good-faith estimated future date of the parent's ability to appear would be sufficient to consider the application for stay, and the length of the stay would have to be set to at least

180 days or any portion of the active duty deployment over 180 days. The same conditions for the initial stay would apply to applications for an extension of a stay. The parent would have to inform the court of the official active duty end date before or within 15 days after that date, and the stay would have to be adjusted to not less than 60 days, and not more than 90 days, after the official active duty end date.

The court would have to request review by the SCAO within five business days of denying either the initial application for a stay or an application for an extension of stay, according to MCR 8.113. No parenting time could be scheduled until the review was complete. This review would not preclude or prejudice any right of appeal or additional remedies.

Upon a parent's return from active military duty, the court would have to reinstate the parenting time order in effect immediately preceding the period of active military duty. If a motion for change of parenting time were filed after a parent returned from active military duty, the court could not consider a parent's absence due to that military duty.

MCL 722.27 & 722.27a

BACKGROUND

Federal Law

The Servicemembers Civil Relief Act (50 USC 501 to 597b) provides protections for military members as they enter active duty. Section 522 of that Act provides for a stay of proceedings and applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant, at the time of filing an application for a stay, is in military service or is within 90 days after termination of or release from military service, and has received notice of the action or proceeding.

At any stage before final judgment in a civil action or proceeding in which such a servicemember is a party, if certain conditions are met, the court must grant a stay of at least 90 days upon application by the servicemember, and may do so on its own motion. A servicemember may apply for an additional stay based on military duty continuing to affect his or her ability to appear.

Best Interests Definitions

Under the Child Custody Act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- The love, affection, and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under Michigan law in place of medical care, and other material needs.
- The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- The permanence, as a family unit, of the existing or proposed custodial home or homes.
- The moral fitness of the parties involved.
- The mental and physical health of the parties involved.
- The home, school, and community record of the child.
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

- The willingness and ability of each of the parties to facilitate and encourage a close and continuing relationship between the child and the other parent or the child and the parents.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- Any other factor the court considers to be relevant to a particular child custody dispute.

Michigan Court Rule

Under MCR 8.113, a request for investigation of a court may be submitted to the State Court Administrator, who may do any of the following:

- Attempt to resolve the dispute informally.
- Inform the complainant that an investigation pursuant to the rule is not appropriate under the circumstances.
- Direct the complainant to the Judicial Tenure Commission or the Attorney Grievance Commission.
- Request an investigation by the Judicial Tenure Commission or the Attorney Grievance Commission.
- Refer a matter to the Supreme Court for possible exercise of the Court's power of superintending control over the judiciary.
- Take any other appropriate action.

Judges, court employees, and members of the bar must cooperate with the State Court Administrator on request for assistance in inquiries pursuant to MCR 8.113. There is no appeal from, or review of, any action taken by the State Court Administrator under MCR 8.113, but nothing in the rule limits the right of any person to request an investigation by the Judicial Tenure Commission or the Attorney Grievance Commission or to file an action for superintending control in an appropriate court.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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