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Senate Bill 1015 (Substitute S-1)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 8-13-14

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:

- **Allow a parent to file an application for a stay of the proceedings, and require the court to entertain the application.**
- **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 a parent to file an application for an extension of a stay.**
- **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.**

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. 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. The bill would delete and re-enact these provisions, as described below.

Under the bill, as provided in the Servicemembers Civil Relief Act (a Federal law described below), if a motion for change of custody were filed during the time a parent was in active military duty, a parent could file an application for stay and the court would have to entertain the application. 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 could file an application for stay or otherwise request a stay of the proceedings, or file an application for an extension of a stay. The parent, his or her custodial designee, and the custodial child could not be required to be present to consider the application for stay or extension. The court would have to consider the application sufficient if it were a signed, written statement certified to be true under penalty of perjury. The same conditions for the initial stay would apply to applications for extensions of the stay.

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 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 after the official active duty end date.

Currently, 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. Under the bill, future active duty military deployments also could not be considered.

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.

The bill specifies that, as 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, a parent could file an application for stay and the court would have to entertain the application. 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, or file an application for an extension of a stay. The parent, his or her custodial designee, and the custodial child could not be required to be present to consider the application. The court would have to consider the application sufficient if it were a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay would apply to applications for an extension.

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 90 days after the official active duty end date.

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.

Future active duty military deployments could not be considered in the best interest of the child determination.

BACKGROUND

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.

Legislative Analyst: Patrick Affholter
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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.