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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/11

SPONSOR Garcia, T. LAST UPDATED \_\_\_\_\_ HB 108

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

ANALYST Haug

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Human Services Department (HSD)  
 Veterans Service Department (VSD)  
 Children, Youth and Families Department (CYFD)  
 Department of Military Affairs (DMA)

### SUMMARY

#### Synopsis of Bill

House Bill 108, introduced on behalf of the Military and Veterans' Affairs Committee, establishes procedures for modifying existing custody, time-sharing, or visitation orders for children of service members. It prohibits entry of final orders modifying existing child custody, time-sharing, or visitation orders while a service member is unavailable pursuant to military orders. It prohibits the modification of existing child custody, time-sharing, or visitation orders solely because a service member is absent or might be absent pursuant to military orders. It provides for a service member to delegate visitation rights. It provides for an expedited hearing when a service member will be unavailable pursuant to military orders. Finally, it provides for electronic testimony.

### FISCAL IMPLICATIONS

According to the AOC, the fiscal implications for the judiciary will directly follow the amount of litigation that is generated, or alternatively, avoided by the amendments. The amendments both give new grounds to challenge custody awards and modifications, but also might avert attempted

modifications if parenting plans are required in the orders and the plans anticipate and address military absences from the beginning.

Absent the availability of any concrete data for either of the eventualities noted above, the fiscal impact is assumed to be neutral and the table above reflects NFI.

## **SIGNIFICANT ISSUES**

The CYFD states:

House Bill 108, the Service Member Child Custody Act, is consistent with the provisions of the federal Servicemembers Civil Relief Act.

The bill defines the term “service member” to include a member of the armed forces of the United States or national guard or a member of a reserve component thereof and defines deploying parent, parent, military parent and non-deploying parent. The bill seeks to ameliorate the effect that deployment of a parent may have on the ability of the service member to respond to child custody matters including time-sharing and visitation. It prohibits the court from entering a final order to any petition, motion or pleading to modify custody of a child of a service member when that service member is deployed.

The bill establishes as a presumption that the mere absence of a parent due to deployment is not a substantial and material change in circumstances affecting the welfare of a child. The bill allows the court to issue a temporary order to modify an existing order to account for the parent’s deployment and provides requirements for sharing of information by both the deploying and non-deploying parent unless such information is kept confidential pursuant to the Family Violence Protection Act.

The bill also delegates all or a portion of the deploying parent’s visitation rights to a family member with close and substantial relationship to the child for the duration of the deployment if in the best interest of the child. The bill prohibits the court from counting any time periods in which the parent was deployed towards failure to exercise time-sharing or visitation rights and provides that for the duration of the military parent’s deployment that this state retains exclusive jurisdiction.

According to the VSD, that in our current conflicts we have seen more and more National Guard and Reserve members called up to active duty or put on special orders that sometimes affects a custodial issue. This legislation would offer that parent some protection and ease the transition from civilian to military service

The DMA notes HB 108 could assist courts and service members by holding abeyance modifications or changes to any “guardianship, care, custody, maintenance, visitation rights, or removal from the State” issues, when the service member was on active duty tour.

The AOC comments:

The Supreme Court’s Domestic Relations Task Force worked with military lawyers on the legislation and met with the interim committee to support the bill. The impact on the courts, however, is of some concern because of the increase in crowded dockets with

additional emergency expedited hearings. The courts have always conducted similar proceedings, and HB 108 would codify those processes and procedures for military families.

The legislation provides guidance to the courts and to both parents, deploying and non-deploying, regarding custody, time-sharing and visitation, during times of deployment and leave by allowing the court to issue temporary orders to modify existing orders when in the best interest of the child, establish communications between the two parents regarding the child's custody, time-sharing or visitation, and between the deployed parent and the child, ensure adequate notice to the non-deploying parent of the deployed parent's leave time or termination of deployment, and reasonable efforts by the non-deploying parent – while incurring no financial burden except to transport the child within the State for a visit – to facilitate the deploying parent's access to the child. The bill would not place additional financial burdens on the non-deploying parent, except to ensure that the child is transported for the visitation with the deployed parent when on leave or deployment ends.

The provisions not limiting the court's options in determining placement of the child provide the courts with much needed flexibility. However, the language in Sec. 6 of HB 108 terminating the temporary custody order established during deployment within ten days of the end of the deployment and reinstating the terms of the original order may have practical problems for children and their families. In fact, the best interests of the child may actually be in conflict with the parent's desire to have the child returned immediately.

For example, in the case of an infant or toddler where the mother is the service member and was deployed for a year, during which time the father had custody. It may not be in the best interest of the child to return immediately to the mother for whom the child has little memory. In the situation of the school-age child, the custodial mother who is a service member is deployed in March and returns the following March, and the father has taken custody relocating to Colorado. Would the child be removed from school and the father's custody immediately, or would it be in the best interests of the child to finish the school year and then return to the custody of the mother in this state?

## **OTHER SUBSTANTIVE ISSUES**

The AOC notes that several sections of the bill are very similar to the provisions of current State law in Chapter 40. For example, the language in Sec. 3B of the bill indicates that the district court would use the same standard, "the best interests of the child," as in Chap. 40-4-9 when making custody determinations. The bill makes reference to a "parenting plan" in Sec. 5C, which is included in current provisions relating to joint custody in Chap. 40-4-9.1. Similarly, the language in Sec. 8 regarding testimony from witnesses in another state or country tracks Chap. 40-10A-111's provisions allowing testimony from individuals in other states.

GH/svb