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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/10

SPONSOR HJC LAST UPDATED _____ HB 136/HJCS

SHORT TITLE Military Service & Child Custody Proceedings SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$10.0-\$20.0	\$10.0-\$20.0	\$20.0-\$40.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Based on Responses Received for Original Bill

Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Department of Military Affairs (DMA)

No Responses Received From

Attorney General's Office

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 136 amends Section 40-4-7 NMSA 1978 to stay, in accordance with the federal Servicemembers Civil Relief Act, child custody modification proceedings while a parent service member is unavailable due to military orders. The proposed legislation amends Section 40-4-9 NMSA 1978 that in regards to modifying custody the court is not to terminate custody unless there has been substantial and material change in circumstances affecting the welfare of the child. The absence of a parent due to military orders is not in itself a substantial and material change in circumstances affecting the welfare of the child. The proposed legislation amends Section 40-4-9.1 NMSA 1978 that in any proceeding in which the custody of a child of a service member is an issue, the court is not to prefer one parent as a custodian solely because of past absence or the possibility of future absence due to military orders.

The proposed legislation also requires a temporary deployment plan with the following additional requirements to the parenting plan when joint custody is awarded to a parent who is a service member:

- The care of the child during the service member’s time with the child and periods of responsibility while the service member is absent due to temporary duty, deployment, activation or mobilization orders received from the military;
- Methods of communicating and maintaining contact between the service member and the child, including through a family member or a mutually agreed-upon third party, while the service member is absent due to temporary duty, deployment, activation or mobilization orders received from the military;
- The designation of specific decision-making responsibilities while the service member is absent due to temporary duty, deployment, activation or mobilization orders received from the military;
- Arrangements for visitation between the service member and the child during the service member’s leave from current temporary duty, deployment, activation or mobilization orders received from the military; and
- The manner the time frame for returning to the permanent status quo specified in the parenting plan upon the termination of the service member’s temporary duty, deployment, activation or mobilization orders received from the military.

The proposed legislation also defines a “service member” as a member of the armed forces of the United States or National Guard while serving on active duty.

FISCAL IMPLICATIONS

AOC reported there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts which requires additional resources. The fiscal implications on 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 modification, but also might avert attempted modifications with the requirements that parenting plans anticipate and address military absences from the beginning.

SIGNIFICANT ISSUES

CYFD noted the proposed legislation seeks to ameliorate the effect that active duty may have on the ability of the service member to respond to child custody matters. It requires the court to stay child custody modification proceedings of a child of a service member when that service member is deployed, mobilized or ordered to temporary duty and is unavailable pursuant to military orders. The proposed legislation establishes as a presumption that the mere absence of a parent due to temporary duty, deployment, activation or mobilization ordered received from the military is not a substantial and material change in circumstances that may be used to terminate custody. The proposed legislation prohibits the court from giving preference as a custodian to one parent over the other parent who is a service member solely based on past absences or the possibility of future absence due to military service and requires that when joint custody is awarded to a parent who is a service member, that the parenting plan include provisions for alternative care when the service member receives orders from the military that limit the capability of providing adequate care.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the following measures of the district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

OTHER SUBSTANTIVE ISSUES

DMA noted that service member families can be subject to significant domestic disorder, if child custody or support issues develop during overseas deployments. Such a law would stabilize a service member's family obligations, until the service member returns from a call of duty.

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