

**SUBJECT:** Excluding military deployment as factor in child custody orders

**COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment

**VOTE:** 5 ayes — Dutton, Bolton, Farrar, Gonzalez Toureilles, Strama  
0 nays  
4 absent — Eiland, Farias, Hernandez, Vaught

**SENATE VOTE:** On final passage, April 16 — 30-0

**WITNESSES:** No public hearing.

**BACKGROUND:** Family Code, ch. 156 allows a court with continuing, exclusive jurisdiction to modify an order providing for conservatorship, support, or possession and access to a child. It allows a party affected by an order to file a suit for modification. Sec. 156.006 lists conditions under which a court can render a temporary order in a suit for modification of the order designating who has the exclusive right to determine the child's primary residence. Sec. 156.101 establishes grounds for a court to modify an order establishing conservatorship or possession and access to a child. Sec. 156.102 provides for a hearing process in the event certain circumstances change within one year of a court's order establishing the person with exclusive right to determine the primary residence of a child.

In 2005, the 79th Legislature enacted HB 260 by Goodman, which added provisions governing possession of a child and modification of an order during military deployment. It created sec. 156.105, providing that the military deployment outside of the country of a person who is a possessory or joint managing conservator but does not have the exclusive right to designate a child's primary residence is considered a material and substantial change of circumstances sufficient to justify modification of an order setting terms and conditions for possession or access to a child. It allows a court to modify an order if it determines such an action would be in the best interest of the child.

All four provisions define as a criterion a court can use in considering a change to an order a conservator's voluntary relinquishment of care and possession of the child for more than six months.

**DIGEST:**

SB 43 would amend sec. 156.105 to provide that a military deployment would not by itself constitute a "material and substantial change of circumstances" sufficient to justify modifying an existing order setting terms and conditions for possession or access to a child. This change would apply to a conservator with the exclusive right to designate the child's primary residence who had temporarily relinquished primary care and possession of the child during deployment.

The bill would modify secs. 156.006, 156.101, and 156.102 to exclude military deployment as voluntary relinquishment of care and possession of the child for more than six months as it related, respectively to:

- temporary orders;
- grounds for modifying an order establishing conservatorship or possession and access; and
- modifying an exclusive right to determine a child's primary residence.

Military deployment under these sections would be defined as ordered military duty for more than six months:

- to a location where access to the child was not reasonably possible; and
- under which the member did not have the option of being accompanied by the child.

The bill would take effect September 1, 2007, and apply to an action to modify an order pending in court on that date and any action filed on or after that date.

**SUPPORTERS  
SAY:**

SB 43 would prevent soldiers' absence due to military service from being used against them in custody hearings. Such an action is tantamount to punishing a member of the military for serving his or her country. Although this has not happened in widespread numbers in Texas, it has happened around the country, and this measure is designed to proactively address a potential problem for our soldiers.

The federal Servicemembers Civil Relief Act is designed to protect deployed soldiers by staying civil court actions and administrative proceedings. The law prevents them from being evicted or having their property seized during activation. Any health benefits suspended during deployment have to be reinstated. In courts around the country, however, this law has not been interpreted to protect the rights of military members in custody disputes. California, Michigan, and Kentucky already have approved legislation similar to SB 43 to protect the rights of service members, and Texas should join those states. The state should not add another reason to discourage people from serving their country, and absent this legislation, some divorced parents might have reservations about enlisting or re-enlisting.

SB 43 would make an important change to current law by providing that military deployment alone would not be enough to modify the final custody status of a child. It also would amend existing law to ensure that deployment was not a factor in changing who had the right to decide where the child lived and in setting access and visitation rights. The courts have given one person these rights for a reason, generally because the person has been found to be more responsible or able to provide a nurturing environment for the child. Unfortunately, as has been shown in other states, the non-deployed parent can use the deployment as an opportunity to gain leverage in a custody dispute. Upon returning home, the soldier is at a disadvantage in refuting claims made by the parent with whom the child had been staying or presenting any facts reflecting positively on the soldier's relationship with the child. Although a judge should be able to take action to prevent such a scenario, there is no guarantee that would occur. The bill would ensure no parent would be placed at a disadvantage or lose custody rights solely because of their service to their country.

The bill would not affect joint custody situations, in which cases the child would stay with the non-deployed parent. It also would not prevent a judge from using deployment in addition to other factors in the event that a soldier was seriously injured in combat or other events affected the soldier's ability to care for the child.

**OPPONENTS  
SAY:**

This bill is an attempt to craft legislation for every contingency rather than trusting judges to consider the specific circumstances of each case. The best interest of the child ultimately is the most important consideration in any custody dispute. This bill would tie a judge's hands from placing that

concern ahead of any other in the event the absence of a deployed parent caused enough instability and trauma for a child to warrant changing the child's living situation. Additionally, this bill does not provide for a scenario in which a court could issue temporary orders only during a deployment.