

SUBJECT: Allowing changes in child visitation rights for deployed military members

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Eiland, Bolton, Farrar, Gonzalez Toureilles, Strama

0 nays

3 absent — Farias, Hernandez, Vaught

SENATE VOTE: On final passage, April 26— 31-0 on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1872 by Dutton:*)

For — Claire Mehaffey, Sam Mehaffey (*Registered, but did not testify:*
Chuck Rice)

Against — None

BACKGROUND: In 2005, the 79th Legislature enacted HB 260 by Goodman, which added provisions governing custody of a child and modification of an order providing conservatorship, support, or custody during military deployment.

The bill created Family Code, sec. 156.105, providing that the foreign military deployment of a conservator without the exclusive right to designate a child's primary residence is considered a material and substantial change of circumstances sufficient to justify modifying an order setting terms and conditions for custody of 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.

HB 260 added sec. 153.3161, allowing a conservator without exclusive right to designate the child's primary residence who was a member of the armed forces or reasonably expected to join those forces to designate a person to exercise the conservator's visitation rights during foreign deployment. If the court found such an action would be in the best interest of the child, it would be required to issue an order that during periods of deployment:

- the designated person has the custody rights during the first weekend of each month from 6 p.m. Friday to 6 p.m. Sunday;
- the child will be picked up and dropped off at the beginning and end of this period at the other parent's home;
- the child's other parent and the designated person are subject to the general custody requirements under secs. 153.316(5)-(9);
- the designated person has the rights and duties of a nonparent possessory conservator under sec. 153.376(a) during the period that the person has custody of the child; and
- the designated person is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

Once the parent has returned home at the conclusion of deployment, the designated person's right to limited custody under this program terminates and any applicable court order governs custody of the child.

DIGEST:

CSSB 999 would provide for circumstances under which a divorced parent deployed by the military would be able to change limited visitation rights and designate a person to temporarily assume the role of the deployed parent in his or her absence.

Within 90 days of the conclusion of deployment, a parent without exclusive right to designate the child's residence could petition the court to be awarded the amount of entitled access to the child missed because of the deployment. The court would be required to compute the time periods and could award additional time to the conservator under terms it considered reasonable and using factors it considered appropriate if it determined such an action would be in the best interest of the child. If possession or access was granted, once the allotted time had expired, all affected parties would be governed by the terms of any applicable court order that had been in place. The bill would not apply if a court rendered an order allowing the conservator's visitation rights to be designated to another person under sec. 153.3161.

CSSB 999 would amend sec. 153.3161 to require a court to use every reasonable means to expedite a hearing to ensure that an order designating a person to care for a child in lieu of a deployed parent could occur before the conservator's military deployment. It would provide an exception if the court found an accelerated process would not be in the child's best interest. It would remove specific provisions detailing when the child

would be picked up and dropped off by a person designated by a deployed parent and would instead provide for custody rights in the manner and length the deployed parent would have had if not deployed. It also would expand the general custody requirements that would govern a relationship between a designated person and the other parent under sec. 153.316.

The bill also would amend sec. 156.105 and the aforementioned sections to define military deployment 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 filed under these three sections pending in court on that date and any action filed on or after that date.

NOTES:

The House committee substitute differs from the Senate-passed version by removing the ability of a deployed parent to receive additional time with a child if the parent had designated a person with the same visitation rights. It also modified the procedures and time frames during which a court could decide to grant additional time to a deployed parent.

The House companion bill, HB 1872 by Dutton, was heard by the Juvenile Justice and Family Issues Committee on April 4 and April 25 and left pending.