

- SUBJECT:** Possession of and access to a child by a deployed military parent
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 10 ayes — Hunter, Hughes, Alonzo, Branch, Hartnett, Jackson, Leibowitz, Madden, Martinez, Woolley
- 0 nays
- 1 absent — Lewis
- WITNESSES:** For — James Higdon, Texas Family Law Foundation
- Against — None
- BACKGROUND:** Family Code, ch. 151, establishes rights and duties in a parent-child relationship. Ch. 153 addresses rights of conservatorship, possession, and access to a child, including that the best interests of the child are of primary consideration, and the ability of a court to appoint a managing conservator with primary responsibility for the child and a possessory conservator.
- If a military service member is possessory conservator of a child, or a joint managing conservator who does not have the exclusive right to designate the child's primary residence, and is facing deployment for six months or more, he or she may designate an alternate conservator during the deployment, provided the court determines that possession by the designee is in the best interests of the child.
- DIGEST:** HB 63 would prohibit a court from rendering an order, on the sole basis that the parent has voluntarily abandoned or relinquished possession of the child if the parent has been ordered to active duty as a member of the U.S. armed forces or state National Guard without being able to bring the child with them, or is serving in an area where access to the child is not reasonably possible, affecting a parent's access to his or her child.
- The bill also would allow military service members who do not have partial or joint custody of a child to petition the court to be awarded additional periods of possession of or access to the child to compensate for

time lost due to involuntary deployment. The service member would have to petition the court within 90 days of returning from deployment, and would have to have been deployed in an area where access to the child was not reasonably possible.

The court would have to calculate the amount of possession or access time lost and determine whether awarding additional time was in the best interest of the child. If the court decided to award additional time, it would not be required to award time equal to that which was lost during the parent's deployment. Once the additional time granted expired, the rights of all of the parties involved would revert to those held prior to the service member's deployment.

This bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

HB 63 would ensure that no service member sees his or her parental rights terminated based solely on long deployments. Members of the armed forces and National Guard are doing a service to our country, and military reservists are being deployed more often and for longer periods of time than in previous eras. They should not be penalized either by having their rights terminated or by losing time they were awarded to see or have custody of their child. Nothing in the bill would prevent courts from considering other factors when determining grounds for removal, and deployed service members still could face termination of their parental rights. However, the parent's deployment could no longer be the sole basis for that termination.

This bill would not require courts to award additional time to non-custodial parents, nor would any time awarded have to be equal to the time lost, but the bill would allow courts to consider what would be in the best interests of the child.

Awarding additional time with a child to a service member likely would not result in any net time lost for the non-military parent, as the non-military parent likely would have spent that time with the child during the service member's deployment.

**OPPONENTS  
SAY:**

By allowing non-custodial parents to petition for extra time with their child, this bill could take time away from the child's other parent and alter the terms of the parents' custody agreement. It also could cause disruption to the child's schedule in addition to that caused by the deployment.

NOTES:

The committee substitute differs from the filed bill by adding a section allowing non-custodial parents or parents with joint custody of a child who are military service members to petition the court to award additional periods of possession or access to the child.

A bill containing the provision added by the substitute, HB 409 by Isett, also is on today's General State Calendar.

A similar bill, SB 279 by Nelson, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 19 and has been referred to the House Judiciary and Civil Jurisprudence Committee.