



STATEMENT OF
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BEFORE THE
HOUSE JUDICIARY COMMITTEE
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Thank you, Mr. Chairman, for the opportunity to appear before you with regard to Senate Bill 1107, PN 1987, related to child custody proceedings during military deployments. We want to thank Senator Folmer for introducing this bill, the State Senate for passing it unanimously, and your committee for considering it here today.

Prior to my appointment as Chief Counsel for the Department of Military and Veterans Affairs, I served as staff judge advocate for Headquarters, Pennsylvania Air National Guard, prior to my retirement in January 2003. By coincidence, the judge advocates of the Pennsylvania Army and Air National Guard had a conference this weekend and I had a chance to discuss child custody issues with some of my former colleagues. I can confirm what General Wagner and Lt Col Kollar have already said: Although we have no highly-publicized cases here in Pennsylvania, like those in New York and other states, these issues can be gut-wrenching for our personnel. Most legal assistance issues that deployed soldiers, airmen, sailors, and marines raise are related to family issues. Our personnel have encountered situations where their deployed status has been raised as a negative factor in child custody hearings.

General Wagner and Lt Col Kollar described some of these cases, and I won't repeat these descriptions here. My purpose is to address some of the legal issues related to this proposed legislation.

One of the questions I've been asked is whether state legislation is needed on this subject in light of the recent amendment to the Servicemembers Civil Relief Act. This new revision of the SCRA became law as part of the 2008 National Defense Authorization Act, which was enacted in January 2008.

Section 584 of the bill amended two sections of the Servicemembers Civil Relief Act to make it clear that they apply to child custody proceedings. Section 201 of the SCRA (50 USC App. § 521) applies to protections of servicemembers against default judgments. This section was amended to state that these protections, which prevent the entry of default judgments against military personnel on active duty in most circumstances, apply in child custody cases. The DoD Authorization Act also amended Section 202 of the SCRA (50 USC App. § 522) which relates to stay of proceedings in which military personnel are parties. Servicemembers whose service materially affects their ability to appear in a proceeding are entitled to stay, and now these provisions apply expressly to child custody proceedings.

These changes to federal law, and the legislative history that accompany them, are important on a nation-wide basis. They apply to state courts and state proceedings as well as federal courts. The Conference Committee Report that accompanied this federal legislation stated the intent of the Congress that judges should not consider the absence of military members for deployments as the sole or even a major factor in determining child custody arrangements. Section 584 of the Defense Authorization Act as finally adopted does not go quite as far as the version that earlier passed the House of Representatives, but it is a positive step at the federal level.

Senate Bill 1107 or similar state legislation is still needed because it provides important additional guidance to judges and those involved in child custody decisions. This legislation represents a careful balance. First, it applies by its terms only to “eligible servicemembers,” which is defined as a member of the active or reserve components, including the Pennsylvania National Guard, who is serving on active duty for 30 or more consecutive days in support of contingency operations. It does not apply to all members of the armed forces or even all members on active duty but just those supporting contingency operations.

Second, the bill does not upset the long-standing precedent that the best interests of the children is the guiding factor in making child custody decisions. It merely provides guidance to judges that the fact one parent is serving his or her country in the armed forces in support of contingency operations should not be a factor in determining the child’s best interests. And the bill very carefully makes it clear that when a deployment is over and the parent is available to take custody of the child, the custody order or arrangements that were in effect prior to the deployment should be reinstated.

Third, the bill provides procedural safeguards, akin to those in the federal Servicemembers Civil Relief Act, concerning the impact of the failure of a deployed soldier to appear at a hearing. Such a failure to appear shall not, in and of itself, justify a modification of custody or visitation orders.

As both General Wagner and Lt Col Kollar reported, consideration of this bill comes at an important time. The Pennsylvania National Guard is about to embark on its largest mobilization since World War II. We will have more men and women serving on federal active duty in the next year that we've had in years past. Although everyone hopes that these difficult and sensitive custody issues can be worked out by agreement among the parties, this bill will, if enacted, help our soldiers and airmen and reassure them that their military service will not be held against them. It will also help retention of personnel and promote readiness.

Thank you again for the opportunity to make this presentation. We'd be happy to answer any questions you may have.