

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

March 22, 2010

4:06 p.m.

MEMBERS PRESENT

Representative Nancy Dahlstrom, Chair
Representative Bob Herron, Vice Chair
Representative Charisse Millett
Representative Mark Neuman
Representative Kurt Olson
Representative Berta Gardner
Representative Beth Kerttula

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 334

"An Act establishing child custody, modification, and visitation standards for a military parent who is deployed; and amending Rule 99, Alaska Rules of Civil Procedure."

- MOVED CSHB 334(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 3

"AN ACT RELATING TO ISSUANCE OF IDENTIFICATION CARDS AND TO ISSUANCE OF DRIVER'S LICENSES; AND PROVIDING FOR AN EFFECTIVE DATE."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 334

SHORT TITLE: MILITARY DEPLOYMENT AND CHILD CUSTODY

SPONSOR(S): REPRESENTATIVE(S) THOMAS

02/10/10	(H)	READ THE FIRST TIME - REFERRALS
02/10/10	(H)	MLV, JUD
02/23/10	(H)	MLV AT 1:00 PM BARNES 124
02/23/10	(H)	Moved CSHB 334(MLV) Out of Committee
02/23/10	(H)	MINUTE(MLV)
02/24/10	(H)	MLV RPT CS(MLV) NT 6DP

02/24/10 (H) DP: T.WILSON, LYNN, KAWASAKI, BUCH,
RAMRAS, HARRIS
03/08/10 (H) JUD AT 1:30 PM CAPITOL 120
03/08/10 (H) Moved CSHB 334(JUD) Out of Committee
03/08/10 (H) MINUTE(JUD)
03/11/10 (H) JUD RPT CS(JUD) NT 4DP 2AM
03/11/10 (H) DP: LYNN, HERRON, DAHLSTROM, RAMRAS
03/11/10 (H) AM: GRUENBERG, HOLMES
03/22/10 (H) RLS AT 4:00 PM CAPITOL 120

WITNESS REGISTER

KACI SCHROEDER-HOTCH, Staff
Representative Bill Thomas
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke on behalf of the prime sponsor of HB 334, Representative Thomas.

JEAN MISCHEL, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 334, answered questions.

ACTION NARRATIVE

[4:06:43 PM](#)

CHAIR NANCY DAHLSTROM called the House Rules Standing Committee meeting to order at 4:06 p.m. Representatives Dahlstrom, Herron, Millett, Neuman, Olson, Gardner, and Kerttula were present at the call to order.

HB 334-MILITARY DEPLOYMENT AND CHILD CUSTODY

[4:07:14 PM](#)

CHAIR DAHLSTROM announced that the first order of business would be HOUSE BILL NO. 334, "An Act establishing child custody, modification, and visitation standards for a military parent who is deployed; and amending Rule 99, Alaska Rules of Civil Procedure." [Before the committee is CSHB 334(JUD).]

[4:07:25 PM](#)

REPRESENTATIVE HERRON moved to adopt CSHB 334, Version 26-LS1310\C, Mischel, 3/12/10, as the working document.

REPRESENTATIVE NEUMAN objected for discussion purposes.

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KACI SCHROEDER-HOTCH, Staff, Representative Bill Thomas, Alaska State Legislature, speaking on behalf of the prime sponsor of HB 334, Representative Thomas, informed the committee that Version C includes several small technical changes. On page 2, line 10, the language "an additional 10 days' notice" was deleted. On page 2, line 11, the term "presumed" was replaced with the term "found" as it is stronger and clearer legal language. On page 2, lines 27-31 and on page 3, lines 1-3, the reference to "violent behavior" is replaced with the rebuttable presumption for domestic violence. The provision on page 5, lines 22-27, is the indirect court rule amendment in order to address the two sections that change Civil Rule 77(g) regarding expedited hearings. On page 5, lines 28-31 and on page 6, lines 1-2, are conditional effect provisions. To change a court rule, she interjected, it requires a two-third vote in the affirmative from each house.

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REPRESENTATIVE KERTTULA surmised then that the original legislation would've required 10-day notice to the non deployed parent.

MS. SCHROEDER-HOTCH explained that the intent is for an individual to have an expedited hearing prior to being deployed. Civil Rule 77 already addresses the aforementioned, and therefore the additional 10-day notice would slow the process.

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CHAIR DAHLSTROM mentioned that the aforementioned was thoroughly discussed in the House Judiciary Standing Committee and it was the intent of that committee to address that matter.

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REPRESENTATIVE GARDNER related that she is troubled by the element of delegation of visitation. She opined that a child has a right to family on both sides, particularly when the

parents are separated. A child, she emphasized, isn't like an inheritance. A child, first of all, has a right to the parent. Therefore, in a situation in which parents share custody or have a visitation agreement the child should remain with the available parent, she opined. The parental right trumps the right of another family member to have time with the child.

CHAIR DAHLSTROM said that although she agreed with Representative Gardner's intent, the House Judiciary Standing Committee discussed other circumstances that could surround a divorce or separation of the parents. She asked Ms. Schroeder-Hotch to elaborate on the discussion held in the House Judiciary Standing Committee.

MS. SCHROEDER-HOTCH told the committee that courts in the Lower 48 have dealt with this fairly extensively and treated it "as in the parent's stead." For instance, if a dad has custody of a child every other weekend and he wants to go to the gym, the grandmother can watch the child. The courts have been treating this situation with deployed parents in that fashion because when a parent is deployed it's a special and temporary circumstance. The courts have decided that the contact with the deployed parent's family is crucial. She emphasized that this is not grandparent visitation or custody. She further emphasized that the best interest of the child is the prevailing guideline, and therefore if it's not in the best interest of the child to have a delegation of visitation, it won't occur.

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REPRESENTATIVE GARDNER recalled her experience as a guardian ad litem when she advocated in the court for the child's best interest. Therefore, she said she's very familiar, in terms of child protection issues, with the context of the child's best interest. Representative Gardner opined that when one parent isn't available, the child should be with the other available parent. She expressed hope that competent parents will understand and promote a relationship with the other parent's family as it's in the child's best interest. Still, the available parent should be first in line if the other parent isn't available. To that end, she suggested that the custodial parent should make the decision about the relationships with the rest of the family rather than the court.

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CHAIR DAHLSTROM recalled the discussion in the House Judiciary Standing Committee in which it was brought out that in an ideal world that would happen. However, since that hasn't always been the case and families have had to go to court because one or both of the parents couldn't agree and deployment is happening, the issue needs to be addressed.

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REPRESENTATIVE GARDNER acknowledged that the situation can be difficult and hateful in these cases. When there is conflict between the parents, the parents have representatives, child custody investigators and perhaps a guardian ad litem would be appointed to provide a recommendation as to what's in the best interest of the child. Representative Gardner maintained that the available parent should make that decision rather than the court, the legislature, or an appointed guardian ad litem to decide what's best for the child if one parent isn't available.

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REPRESENTATIVE HERRON informed the committee that during the House Judiciary Standing Committee hearing it had to consider the differences between individuals who are "about to be deployed" and individuals who are "deployed," which led to two different standards being placed in the legislation. He opined that the aforementioned is why HB 334 is a military parent piece of legislation. She requested further clarification from Ms. Schroeder-Hotch.

MS. SCHROEDER-HOTCH explained that the about to be deployed parent would want to expedite hearings and ensure that the child will have proper care while the deployed parent is away. The deployed parent would be addressing the situation while away, which is why the legislation has a provision allowing the deployed parent to testify electronically. She further explained that the parent who's about to be deployed needs to have the hearing while present and the parent that's deployed has to have the opportunity to testify while away.

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REPRESENTATIVE NEUMAN inquired as to who decides the best interest of the child. He then inquired as to the definition of "child."

MS. SCHROEDER-HOTCH answered that in this case a judge would decide what's in the best interest of the child. A child would generally be an individual under the age of 18 or would be extended if the individual is incapable of making decisions or is developmentally delayed.

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REPRESENTATIVE NEUMAN inquired as what happens in situations in which the child, perhaps a 17-year-old, doesn't want to go with the other [non deployed] parent.

MS. SCHROEDER-HOTCH recalled that the judge will factor in the opinion of a child age 12 or 13.

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REPRESENTATIVE NEUMAN surmised then that the judge would render the opinion for a child, even if the child didn't want to go to the other [non deployed] parent if the child was younger than 12-13 years of age.

MS. SCHROEDER-HOTCH answered that's correct, but added that the judge will take into account the child's opinion when making the best interest finding. The best interest findings have a list of factors that judges consider. When the child is pre-teen or teen, the child can testify and tell the judge what he/she wants. Although the child's wishes will be considered, it will not be the determining factor.

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REPRESENTATIVE NEUMAN expressed concern with this proposed expedited situation in which the judge is making determinations because a child, age 17, could be placed with a parent with which the child doesn't want to be. At this point, Representative Neuman didn't believe the aforementioned is a good idea.

MS. SCHROEDER-HOTCH opined that if a judge were to issue an expedited hearing in the aforementioned case and finds the case to be too complicated, the judge would likely issue a temporary order to allow time to make a final determination. In further response to Representative Neuman, Ms. Schroeder-Hotch said that the aforementioned isn't specifically in HB 334, but it's how it works.

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REPRESENTATIVE MILLETT said that she respects Representative Gardner's opinion. However, she related that in her own family, which is Native and non Native, it becomes an issue when one parent is unreasonable and the deployed parent wants the child to have exposure to his/her culture. She surmised that the aforementioned situation could arise related to religious cultures as well as family traditions and lifestyles. Although she said she understood a non deployed parent having the first right of refusal when the other parent is deployed, Representative Millet also understood the deployed parent's wish to have continuity regarding how the deployed parent would parent and to what he/she would expose the child. She said she could foresee a situation in which an unreasonable parent who doesn't particularly care about the cultural, traditional, or religious issues of the other parent could be detrimental to the child. Therefore, having a deployed parent's wishes known regarding visitation is appropriate. Representative Millet said she understood the need for HB 334 and characterized it as a safety net for parents who are deployed.

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REPRESENTATIVE GARDNER said she understands those concerns. Then she inquired as to the difference between visitation rights and shared custody. She posed a situation in which parents with shared custody of a two-year-old can't agree and require court intervention. In this scenario the mom is amenable to sending the child to the dad for six months and the dad is amenable to sending the child to the mom for six months. When one parent is deployed, would the child have to be sent to another relative for six months, she asked.

MS. SCHROEDER-HOTCH replied yes, if the judge orders it as such. However, another provision in HB 334 provides for temporary orders such that while the custodial parent is away, a temporary order can be issued to allow the other parent custody. The temporary order would expire once the deployed parent returns from deployment. The aforementioned would likely be the preferable method so long as the noncustodial parent is "okay."

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REPRESENTATIVE GARDNER noted that she remains confused regarding the distinction between visitation and shared custody. She

asked if there is a maximum time of visitation that a very young child might be sent to someone other than a parent.

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JEAN MISCHEL, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, began by explaining that there are at least three types of custody: legal, physical, and joint or shared. The visitation rights are irrespective of custody rights. Therefore, a parent could have a visitation right without any form of custody or a parent could have visitation rights with custody. This legislation allows the deployed parent to delegate only the visitation rights not the custodial interest that they retain over the child. The visitation wouldn't involve decision making or a parental role of any sort. The family member being delegated visitation rights would have no educational, religious, or other rights. The parent would have a visitation order providing visitation rights to [the deployed] parent prior to delegating the right. Therefore, this is a situation in which a parent who already has a visitation order, with or without custody, that says he/she will be [deployed] and would like to grant his/her visitation time while deployed to a family member that already has a close relationship with the child. Assuming that the other parent opposes that, the court would have to weigh the interest of the two parents in maintaining access to and enjoyment of the child as well as weigh the best interest of the child. In Lower 48 cases of deployed parent delegations the court has shown that it's not the same as a third party petitioning a court to take a child away from the available parent. There is the assumption that there is already access to that family member, there is already a visitation order to the deployed parent, and there is a reason the deployed parent wants the child to have continuing contact with the family member. The courts have articulated that the non deployed and the deployed parent have similar rights. No one is able to tell a non deployed parent with physical custody of a child not to leave the child with a person that doesn't harm the child. Parents have inherent rights in raising their child, she highlighted. The intent of the provision and the reason it has been upheld thus far is to equalize the interests of both parents. Ms. Mischel acknowledged that it's a policy call for the legislature to make, but pointed out that both parents have constitutional interest in directing the care and custody of their own child. Therefore, mutual interests are at stake.

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REPRESENTATIVE GARDNER remarked that although the legislation has language regarding the child's best interest it's really about the parents' interest. She emphasized that since she is fully committed to the child's interest, this legislation is difficult for her.

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CHAIR DAHLSTROM said that she sympathizes with Representative Gardner because if only the rights of the child were reviewed, this legislation wouldn't be necessary.

[4:33:37 PM](#)

REPRESENTATIVE GARDNER posed a scenario in which two parents have shared legal custody of their two children, one of which who isn't in school and one who is in school. The agreement between the parents is that the parent who doesn't have the children through the school year has the children all summer. If the parent who has the child in the summer is deployed, that parent could for the summer delegate the care of both children to another relative. Therefore, the situation is one that hangs on whether a custody investigator, guardian ad litem, or judge determines it's in the best interest of the children to be with relatives for the summer. The other parent who has the children during the school year doesn't get to make the decision.

MS. MISCHEL indicated that could occur under this legislation.

[4:34:54 PM](#)

REPRESENTATIVE NEUMAN inquired as to the location of the rights of a child in this legislation or existing law.

MS. MISCHEL answered that existing statute don't specifically articulate [the rights of a child] other than that the courts shall consider a child's preference after age 14.

[4:36:09 PM](#)

REPRESENTATIVE NEUMAN surmised then that those children under age 14 don't have a say [in terms of their placement].

MS. MISCHEL related that courts have determined that children have constitutional rights in many contexts. However, that doesn't appear in this legislation specifically, although it's

implied that HB 334 doesn't invalidate any constitutional rights that children share with adults as citizens of the U.S. In custody disputes, other than the stated preference provision for children age 14 and older, courts are required to review the physical, mental, emotional, religious, and social needs of the child through evidence brought to the court as well as the love and affection existing between the child and each parent. Ms. Mischel stated that a right is an extremely general term. Although children do have constitutional rights in the U.S. and Alaska, the courts are restricted in how much they can defer to a child's wishes when there is a best interest finding, based on the evidence provided, to the contrary. As we all know children aren't always able to articulate their own needs and the courts have had to step in to family disputes and make a determination.

[4:38:52 PM](#)

REPRESENTATIVE NEUMAN asked if there is a way to review the rights of the child in terms of their placement.

MS. SCHROEDER-HOTCH said that issue didn't come up in prior discussions of the legislation. Although she agreed that placing a child in a home the child doesn't want to be in is something to consider, it's a larger custody issue that's beyond the parameters of this legislation.

[4:40:12 PM](#)

REPRESENTATIVE HERRON directed attention to page 2, line 1, and pointed out that the rights of the child are consistent with the protections afforded under federal law. The federal government, he related, wants each individual state to accommodate military parents and their dependents. Therefore, each state has statute that includes these protections for those in the military, specifically the military dependent. He suggested that there is specific [federal] legislation to accommodate military dependents.

MS. SCHROEDER-HOTCH responded that the Servicemembers Civil Relief Act generally has to do with delaying certain actions while a servicemember is deployed. Therefore, one can't foreclose on a deployed servicemember home, repossess his/her car, or sue for child custody. The servicemember has the right to request a delayed hearing until he/she returns. The difference in HB 334 is that it provides for an expedited hearing process.

MS. MISCHEL highlighted that the Servicemembers Civil Relief Act is specifically for the benefit of the servicemember and not much of it deals with custody and care of the servicemember's child. The Act is an attempt to maintain the status quo in all aspects of the servicemember's life. Therefore, she opined that there aren't provisions specifically for a child's rights.

CHAIR DAHLSTROM recalled that the sponsor felt that the lack of provisions specifically for [the child] is why he felt this legislation is necessary.

[4:42:34 PM](#)

REPRESENTATIVE MILLETT pointed out that sometimes what a child wants is different than what's in his/her best interest. Furthermore, sometimes a child knows something isn't in his/her best interest, perhaps the lack of parenting from one parent, and that's precisely why the child pushes for that.

MS. MISHEL stated that the aforementioned is the reason for judicial review and relief in these cases. Additionally, children are uniquely susceptible to coercion by a parent or another adult.

[4:43:44 PM](#)

REPRESENTATIVE NEUMAN withdrew his objection. There being no further objection, CSHB 334, Version C was adopted.

[4:43:58 PM](#)

REPRESENTATIVE GARDNER inquired as to the meaning of the language on page 5, line 2.

MS. MISCHEL explained that Section 3 amends existing statute, AS 25.24.150, which describes what the courts shall determine in making a best interest finding. The statute includes a list of nine factors that a court shall consider. Existing statute, AS 25.24.150(c) limits the consideration of modification or awarding a petition of custody to the factors already specified and doesn't allow the court to use deployment as one of the relative factors.

[4:46:07 PM](#)

REPRESENTATIVE HERRON moved to report CSHB 334, Version 26-LS1310\C, Mischel, 3/12/10, out of committee with individual

recommendations and the accompanying fiscal notes. There being no objection, CSHB 334(RLS) was reported from the House Rules Standing Committee.

4:46:24 PM

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 4:46 p.m.