

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 8, 2010

1:37 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 60

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

MOVED CSSB 60(L&C) OUT OF COMMITTEE

SENATE BILL NO. 210

"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."

HEARD AND HELD

SENATE BILL NO. 246

"An Act increasing the number of superior court judges designated for the third judicial district; and providing for an effective date."

HEARD AND HELD

SENATE JOINT RESOLUTION NO. 21

Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members of the house of representatives to forty-eight and the number of members of the senate to twenty-four.

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 60

SHORT TITLE: UNIFORM PROBATE CODE; TRUSTS, WILLS

SPONSOR(s): MCGUIRE

01/21/09 (S) PREFILE RELEASED 1/16/09
01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) L&C, JUD
03/24/09 (S) L&C AT 1:30 PM BELTZ 211
03/24/09 (S) Scheduled But Not Heard
03/31/09 (S) L&C AT 1:00 PM BUTROVICH 205
03/31/09 (S) Heard & Held
03/31/09 (S) MINUTE(L&C)
04/16/09 (S) L&C AT 3:45 PM BELTZ 211
04/16/09 (S) Moved CSSB 60(L&C) Out of Committee
04/16/09 (S) MINUTE(L&C)
04/17/09 (S) L&C RPT CS 1DP 2NR 2AM SAME TITLE
04/17/09 (S) DP: THOMAS
04/17/09 (S) NR: MEYER, DAVIS
04/17/09 (S) AM: PASKVAN, BUNDE
02/01/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/01/10 (S) Heard & Held
02/01/10 (S) MINUTE(JUD)
02/08/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 210

SHORT TITLE: MILITARY DEPLOYMENT AND CHILD CUSTODY

SPONSOR(s): HUGGINS

01/19/10 (S) PREFILE RELEASED 1/8/10
01/19/10 (S) READ THE FIRST TIME - REFERRALS
01/19/10 (S) JUD, FIN
02/08/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 246

SHORT TITLE: INCREASING NUMBER OF SUPERIOR CT JUDGES

SPONSOR(s): RULES BY REQUEST

01/29/10 (S) READ THE FIRST TIME - REFERRALS
01/29/10 (S) JUD, FIN
02/08/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR CHARLIE HUGGINS
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 210.

JOSH TEMPEL, Staff
to Senator Huggins
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced SB 210.

MARK SULLIVAN, Family Law Attorney
Raleigh, NC

POSITION STATEMENT: Supported SB 210.

MARK SANSOUCI, Liaison
Northwest State Liaison Office
Department of Defense

POSITION STATEMENT: Supported SB 210.

CHRISTING PATE, Supervising Attorney
Alaska Network on Domestic Violence and Sexual Assault

POSITION STATEMENT: Supported SB 210.

ALLEN M. BAILEY, Family Law Attorney
Anchorage, AK

POSITION STATEMENT: Supported SB 210.

JEAN MISCHEL, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Explained provisions in SB 210.

DOUG WOOLIVER, Administrative Attorney
Alaska Court System
Juneau, AK

POSITION STATEMENT: Provided information related to SB 210 and presented SB 246

THERESA OBERMEYER, representing herself
Anchorage, AK

POSITION STATEMENT: Testified on SB 246.

ACTION NARRATIVE

[1:37:26 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Senators Egan, Coghill,

and French were present at the call to order. Senators Wielechowski and Coghill joined the meeting soon thereafter.

SB 60-UNIFORM PROBATE CODE; TRUSTS, WILLS

[1:38:26 PM](#)

CHAIR FRENCH announced the consideration of SB 60. The bill was heard previously and public testimony was taken. Finding no questions or amendments, he asked for a motion.

[1:38:54 PM](#)

SENATOR EGAN moved to report committee substitute (CS) for Senate Bill 60 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 60(L&C) moved from committee.

At ease at 1:39 p.m.

[1:39:15 PM](#)

SENATOR MCGUIRE joined the committee.

SB 210-MILITARY DEPLOYMENT AND CHILD CUSTODY

[1:40:51 PM](#)

CHAIR FRENCH announced the consideration of SB 210.

SENATOR HUGGINS, Alaska State Legislature, sponsor of SB 210, described SB 210 as part of a national effort to modernize how soldiers and families are addressed in a deployment. He pointed out that the military has changed substantially since the initial legislation was passed. The father being deployed is no longer the classic case. Now it's the father or the mother who is deployed and sometimes it's both the father and the mother who are deployed. This has caused great stress in military families; suicide rates are historically high.

[1:45:19 PM](#)

JOSH TEMPEL, Staff to Senator Huggins, Alaska State Legislature, explained that SB 210 attempts to give the court clear directive on how to deal with child custody matters when a military parent is deployed. Last year Congress said that this matter should be addressed on the state level. The sponsor has received input from the Alaska Bar Association Family Law Section, Alaska National Guard attorneys, JAG attorneys, and family law attorneys within the state who deal with military service members.

SENATOR HUGGINS and Mr. Tempel both spoke to the following sponsor statement in their testimony:

For nearly a decade, the War on Terror has required Alaska to frequently deploy our active military, reserve, and National Guard troops. This high deployment tempo is putting even more pressure on our already strained military families. Children who are already in unusual circumstances due to their parents' military careers are being put in the situation of having to deal with a deployed parent. It is no wonder that the divorce rate for members in the military has been steadily rising for the past decade.

However, while the travesty of divorce is hard enough on all members of a family, the court system is also finding it difficult to balance the issues of deployment with child custody issues. A deploying family member now must fight a battle on two fronts, the one in the Middle East, and the one at home. SB 210 ensures that the court system has clear directive as to how it should deal with a deploying military member if they should find themselves in the midst of a child custody battle. It affords them the right to an expedited hearing so that matters can be taken care of before deployment, if necessary, and it also allows the member to delegate their visitation rights to another family member in order for the child to maintain all familial connections. Most importantly, SB 210 requires that a court not use deployment as the sole reason for a change in a child custody order. Our men and women are sacrificing enough for our country, their military service should not be a reason in itself for them to lose custody of their children.

In 2009, because of the potential for conflict with current states child custody laws, congress deemed military child custody to be the responsibility of individual states.

SB 210 includes the following items and restrictions:

- A definition of a military absence.
- Assurance that military duties cannot be the sole reason for a permanent change of custody.
- Allowance of expedited hearings with restrictions.
- The right to delegate visitation to another family member.

- Allowance of electronic testimony.
- Limitations on temporary custody orders.

In recognizing that the federal government should not legislate a Military Child Custody statute, that Alaska has many service-members, that the United States military currently has a high rate of deployment, and that military divorce rates continue to rise, now is a good time for the Alaska Legislature to address military child custody.

[1:50:06 PM](#)

MR. TEMPEL displayed a CBS news video to illustrate custody issues facing military members today.

[1:53:18 PM](#)

MARK SULLIVAN, Family Law Attorney practicing in Raleigh North Carolina, said he is a retired Army Reserve JAG Colonel. His accomplishments include appointment to the Uniform State Law Commission committee on military custody and visitation laws, author of the North Carolina legislation on child custody, and consultant to states updating child custody statutes. He described the proposed statutory change outlined in SB 210 as superior to the one he wrote. He outlined the provisions in SB 210:

- A parent's deployment may not be considered in determining the best interest of the child on a hearing for a change of custody.
- Grants delegated visitation rights to a family member.
- Allows for expedited hearings.
- Provides electronic participation.
- Requires the return of the child within 10 days after the deployed parent is able to resume custody.
- Absence due to deployment may not be used by a parent as a waiver of right to be with a child unless there is an express waiver to that effect.
- Requires the non-deployed parent to be available to the service member during leave from deployment.
- Requires the non-deployed parent to facilitate contact between the service member and the child.
- It mandates that the deployed parent give timely information to the non-deployed parent about the leave schedule.
- It requires immediate notification by the non-deployed parent of any change in address or contact information.

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MR. SULLIVAN said that when the Uniform Law Commission meets in April he will suggest using the Alaska law as model legislation. SB 210 does a very good job in meeting the needs of mothers and fathers in uniform, he concluded.

SENATOR COGHILL asked if the courts require a power of attorney when the custodial parent has been deployed.

MR. SULLIVAN explained that a power of attorney for education, healthcare, and all other issues is required as part of the Family Care Plan. It's part of military regulations.

[1:58:09 PM](#)

MARK SANSOUCI, Regional Liaison, Department of Defense (DoD) Northwest State Liaison Office said their mission is to be a resource for state policy-makers as they address quality of life issues for military families. He said that many deployed service members have found that states do not consider the unique aspects of military service when making custody decisions. These absences due to military service can undermine and disrupt existing arrangements creating stress on parents and children. The deployed member may be distracted and less able to focus on his or her mission. The DoD state liaison office is focusing on this as a key issue affecting military families in the states.

MR. SANSOUCI said that the policy and language in SB 210 addresses the areas of concern relating to military members and child custody. It prevents the courts from considering absences during deployment as the sole basis for making custody and visitation decisions and allows for expedited hearings or use of electronic communication so that deployment does not prevent a service member from participating in court hearings. SB 210 supports the reinstatement of the custody order after the service member returns from the deployment and allows for the delegation of visitation rights and visitation during periods of leave. This ensures a continued bond between the military member and his or her children.

Currently 32 states have passed laws that address some aspect of the difficulties facing parents who must temporarily give up custody of their children or who must forego visitation when called to take up the burdens of the nation.

[2:01:53 PM](#)

SENATOR EGAN asked how he would classify the proposed legislation using the "strong, weak, and nil" metric referenced in the CBS report.

MR. SANSOUCI replied he agrees with Mark Sullivan. SB 210 has all five provisions that DoD is looking for; it's excellent.

SENATOR COGHILL asked what the DoD will do to ensure that military families aren't burdened by having to rent a motel off post or off base to accommodate hearing and custody requirements.

MR. SANSOUCI agreed that would be of paramount concern. He noted that children continue to have a military ID and they may have benefits, but he hesitates to speculate on each circumstance.

2:06:33 PM

SENATOR COGHILL said his concern is that the bill imposes requirements on the court to do certain things and he wants to make sure that military members and their children aren't left standing outside the gate in cold weather in order to visit one another.

MR. TEMPEL directed attention to page 2, lines 13-15, which states that the child must be made reasonably available for visitation to the deployed parent if it's in the child's best interest. There is no mandate and it must be in the child's best interest, he emphasized.

SENATOR COGHILL clarified that he was looking for DoD to say it wouldn't be a problem to accommodate military parents who are visiting their child while they are on leave and on the post.

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CHRISTINE PATE, Supervising Attorney, Alaska Network on Domestic Violence and Sexual Assault ("Network"), said she has practiced family law in Alaska for about 15 years; for the last ten years she has run a statewide legal program for victims of domestic violence and sexual assault. The Network has worked with the sponsor on the bill and continues to have a few safety concerns with the language as it might apply in cases of domestic violence.

MS. PATE said the first concern relates to the potential for abuse in the expedited hearings at the initial custody phase and the modification phase outlined on page 2, lines 6-10 and page 4, line 5. Court records indicate that up to 80 percent of

people go through family law proceedings pro se and her experience is that abusers, at times, use this as an abusive tactic in litigation.

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SENATOR WIELECHOWSKI joined the committee.

MS. PATE said she appreciates that the sponsor worked to include language to ensure that laws protecting victims of domestic violence and sexual assault in custody cases is clearly linked to this statute. However, the language isn't clear that the rebuttal presumption in custody law would apply to the deployed parent and the one being delegated custodial rights. It should be clear that it would apply to both people as potential custodians of children.

The final concern relates to notice about changes in address and location. Current information is important when there's a deployed parent that has little contact, but for victims of domestic violence it would be helpful to clarify that this is assuming that there are no safety concerns for a parent or a child.

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ALLEN M. BAILEY, Family Law Attorney, Anchorage, said he has been in practice for 36 years, 26 years as a family lawyer primarily handling family law cases for service members from what is now called Joint Base Elmendorf-Richardson. He related that he is the current chair of the Child Custody Committee of the ABA Family Law Section, a former member of the ABA Commission on Domestic Violence, and a member of the Anchorage DV Caucus. The drafters of SB 210 have done an outstanding job of incorporating language to ensure that the courts consider domestic violence issues along with the best interest of children, he said. Those are the two most important things that the judge will consider in these requests.

MR. BAILEY opined that SB 210 will be easier to enforce than the North Carolina law because it has more specific terms and includes broader means for electronic communication. Incorporating Internet-based video testimony helps to reduce the advantage of a person who is present in the courtroom over a person who is not able to be present.

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SENATOR WIELECHOWSKI asked if a custodial parent who is deployed to Iran or Iraq could possibly take the child along and if that would change under this bill.

MR. BAILEY replied there are many ways to handle these matters, but this bill will prohibit a judge from considering deployment in making a determination. There will be a temporary order for the noncustodial parent to have custody of the child during the deployment, but when the deployment ends the order will revert unless someone takes an action to bring the child's safety to issue.

SENATOR WIELECHOWSKI asked if the touchstone in family law is the best interest of the child.

MR. BAILEY replied he tells his clients that it's the guiding star, but the presumption in AS 25.24.150(g) and some resolutions adopted by interdisciplinary groups have brought the safety of the child to an even stronger position.

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SENATOR WIELECHOWSKI asked if the courts ever order children to accompany a deployed parent.

MR. BAILEY said he's never heard a court order that unless the deployment was to a technically overseas base like Alaska.

SENATOR WIELECHOWSKI highlighted his concern that the language in Section 1, subsection (a) appears to say that if a person requests custody to take their child to Iraq or Afghanistan, the court couldn't deny the request simply because it's a war zone. He asked if he reads it the same way.

MR. BAILEY said his understanding is that the service member who has custody has to execute a family care plan including a power of attorney designating someone to care for the child in the event of deployment. "I don't believe parents are permitted to take their children along on deployments or anywhere that children might be endangered," he said.

SENATOR WIELECHOWSKI commented that the language is problematic.

[2:24:30 PM](#)

CHAIR FRENCH said he understands the point is to not penalize a deployed parent for their deployment. It's not intended to allow the child to go along on a deployment across the globe.

MR. TEMPEL pointed out that the language says it can't be done if it isn't in the child's best interest and bringing a child into a war zone definitely isn't in the child's best interest. He hasn't heard of that happening.

SENATOR WIELECHOWSKI said he can't imagine that would be the case, but the way it's written it isn't clear.

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JEAN MISCHEL, Drafting Attorney, Legislative Legal Services, Legislative Affairs Agency, explained that the intention was not to override provisions governing custody and visitation orders in the state, but at the same time to not penalize a parent for being deployed or for moving to active military status. She noted that this and every other state has laws that govern moving a child from their home jurisdiction. She pointed out that the best interest of the child is clearly stated throughout Sections 1 and 2. She would be surprised if a court misconstrued that provision to require or allow a child to be deployed with a parent. Furthermore, deployment orders specify whether it is with or without a family and state law cannot override that order.

CHAIR FRENCH said it's a point for the committee to ponder to ensure that it doesn't raise a question in a judge's mind that doesn't need to be raised.

MS. MISCHEL suggested that it could go back to the sole factor in making a decision.

CHAIR FRENCH reviewed the provision dealing with expedited hearings for parents being deployed or subject to deployment and asked how a judge would analyze the phrase "subject to deployment."

MR. TEMPEL explained that it means that you have received notice that you are going to deploy.

CHAIR FRENCH said it needs clarification so that a nonmilitary judge would understand that.

MS. MISCHEL pointed out that the issue is dealt with in the definitions.

CHAIR FRENCH said his staff, Cindy Smith, just pointed that out as well.

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SENATOR COGHILL asked where in the bill it talks about holding a subsequent hearing after returning from deployment.

MS. MISCHEL directed attention to page 3, lines 26-29. It addresses the resumption or reinstatement of an existing order if it had been temporarily modified under Section 2 of the bill.

SENATOR COGHILL asked if both the deployed parent and the nondeployed parent are subject to reevaluation.

MS. MISCHEL directed attention to page 3, lines 20-29. The answer is yes, but the nondeployed parent has the burden of proof if there's an issue opposing resumption of the original order, she said.

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CHAIR FRENCH asked Mr. Wooliver if the court would be ready to implement the electronic and telephonic aspects of the bill if the law were to pass.

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said they asked the sponsor to clarify the meaning of "electronic." The court can do Skype-type communication, but it doesn't have the ability to do full-blown video teleconferencing. The proposed amendment to [Rule 99(a) of the Alaska Rules of Civil Procedure] makes it clear that it is Internet-based. There may be bandwidth issues in some locations, but there certainly shouldn't be problems in Anchorage and Fairbanks. He presumes that's where most of these hearings will occur because in this state most people are deployed from those locations.

CHAIR FRENCH recalled that child custody is dealt with in superior court rather than district court so the hearings would take place in larger metropolitan areas, not small villages.

MR. WOOLIVER agreed.

SENATOR WIELECHOWSKI asked if Internet conferencing would add cost.

[2:34:31 PM](#)

MR. WOOLIVER replied it may cost \$200 per courtroom.

SENATOR WIELECHOWSKI suggested doing it in every child custody case if it's that inexpensive.

MR. WOOLIVER replied the court is already moving in that direction.

CHAIR FRENCH announced he would hold SB 210 to ponder questions like that.

SB 246-INCREASING NUMBER OF SUPERIOR CT JUDGES

[2:36:20 PM](#)

CHAIR FRENCH announced the consideration of SB 246.

DOUG WOOLIVER, Administrative Attorney, Alaska Court System, said that SB 246 adds one superior court judge to the Third Judicial District. That judge will be located in Anchorage and will handle civil cases. He explained that this change requires a bill because the number of superior court judges is determined in statute.

MR. WOOLIVER said the court could justify three more superior court judges in Anchorage, but they hope to make some procedural reforms so that one additional judge will suffice, at least for this year. He related that a couple of case types, not additional filings, have resulted in increased workload for superior court judges. These are child in need of aid (CINA) cases and cases where one or both parties are unrepresented by counsel. Judges are spending more time on CINA cases now because standing masters are doing less work. Previously, a CINA case would come to a standing master and proceed through the master until it was a contested hearing in which case it would be sent to a superior court judge temporarily and then back to the master. That system saved judge time but it sent families bouncing back and forth between one judge and the master then another judge and the master. Superior court judges have the ultimate authority to make decisions in CINA cases, but the judge wasn't always familiar with the case. More frequently, the family wasn't familiar with the judge that was deciding the case. The new practice in Anchorage takes more time for superior court judges even though the cases don't take longer. Superior court judges are spending more time on these cases, which is better for the families and the outcome of the case.

MR. WOOLIVER said that CINA cases also have more status hearings than in the past. The way the process works now is that families are told all the things they have to do in order to get their children back. Judges found, largely through the therapeutic court process, that regular status hearings before a judge keep

families focused on what they need to do and the judge informed about their progress. This increases the likelihood that the family will be reunited. These two things are keeping superior court judges busier.

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MR. WOOLIVER said that the other case type that causes more work for judges is when parties are unrepresented. In divorce cases about 80 percent of people are unrepresented in all post decree motion work. When domestic relations cases are first filed about 37 percent have counsel on both sides, 37 percent have no counsel on either side, and about 25 percent have counsel on one side but not the other. The court has taken steps to make it easier for people who can't afford a lawyer to access the court system, but that takes more time. By making it easier for pro se litigants, particularly with the Family Law Self-Help Center, more people go to court unrepresented.

Adding one superior court judge will help the workload somewhat, but the court is also looking at less expensive ways to improve the system so it doesn't have to ask for more than one additional judge, he said.

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SENATOR COGHILL asked if therapeutic courts are similarly time consuming or if these cases are on a different level.

MR. WOOLIVER replied they're a little different. In the therapeutic court process it takes a lot of time during the 18 month program, but the hope is that it won't take time in the future. In contrast, custody cases can be before the court for 18 years. The therapeutic approach with CINA cases doesn't save time, but hopefully better decisions are made increasing the likelihood that parents will get their act together and they'll get their kids back.

[2:44:26 PM](#)

THERESA OBERMEYER, representing herself, said she was motivated to testify when she learned that SB 246 is about creating more judgeships. "It's fine with me, but I know this - it's all becoming so bureaucratic," she concluded.

CHAIR FRENCH held SB 246 in committee.

[2:50:38 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:50 p.m.

