

HB

334

Representative Jay Ramras
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Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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Alaska State Legislature



House of Representatives

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House District 10

Fax

To: Jean Mischel
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 2

From: Jane W. Pierson

Date: March 8, 2010

Re: HB334

Today, the HJUD committee considered and passed a CS for HB334 (26-LS1310\S) with the following amendments:

Page 2, line 11, following "writing":
Insert "or on the record"

Page 2, line 9
Delete "construed"
Insert "presumed"

Amendment S.6

Amendment S.5

Amendment S.3

Page 1, line 8:
Delete "schedule of a"

Amendment S.1

Representative_Jay_Ramras@legis.state.ak.us

Page 2, line 29

Delete: "domestic violence against a spouse, a child, or a domestic living partner"

Insert:"a history of perpetrating violence"

Jean, is this inconsistent with other statutory language in child custody proceedings?

Also, the committee had trouble understanding page 2, lines 6-8, might you please clarify what expedited means, subject to an additional 10 days notice?

Please go final on a CSHB334(JUD).

Should you have any questions, please do not hesitate to contact me at 465-4990.

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

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MEMORANDUM

March 9, 2010

SUBJECT: Expedited Hearings and Violence Standard (CSHB 334(JUD))
(Work Order No. 26-LS1310P)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Jean M. Mischel *JM Mischel*
Legislative Counsel

You have asked two distinct questions about the above referenced bill: (1) how expedited hearings work under this bill and the court rules; and (2) whether the inclusion of "any violent behavior" in the best interest standard is consistent with current custody law.

Expedited Hearings.

The bill provides for mandatory expedited hearings on a motion filed by the deployed parent and requires an additional 10 days' notice at page two, lines 10 - 12. The committee heard testimony and comment alleging that this provision is inconsistent with Civil Rule 77(g) and may work to delay a hearing on a petition by a deployed parent seeking custody or visitation of the parent's child. The civil rule requires evidence to justify expediting a hearing and decision, a response time for the motion except in rare circumstances, and judicial discretion all of which is covered by the bill provision that requires expediting when a deployed parent requests it.¹

¹ Rule 77(g), Rules of Civil Procedure, provides as follows:

(g) Expedited Consideration. A party may move for expedited consideration of its principal motion by filing a second motion requesting relief in less time than would normally be required for the court to issue a decision.

(1) The motion must be captioned "Motion for Expedited Consideration" and must have an appropriate order on the issue of expedited consideration attached.

(2) The motion for expedited relief must comply with other provisions of this rule, including paragraph (e) concerning any request for oral argument except as the provisions of this paragraph specify otherwise.

(3) The motion for expedited consideration must include an affidavit or other evidence showing the facts which justify expedited consideration, and the date before which a decision on the principal motion is needed.

(4) If the parties are represented by counsel, the motion for expedited consideration shall include a certification of counsel that a good faith effort has been made to resolve the issues raised with opposing counsel, but that these efforts were not successful; or, in the alternative, that it was not possible to attempt to resolve the issues with opposing counsel beforehand. The certification shall include a description of what efforts were made to resolve the issues for which expedited consideration is sought, or an explanation of why no efforts were made.

(5) The motion for expedited consideration must include proof of service; and, if the motion requests a decision before the usual time for response to the motion, must include a certificate indicating when and how the opposing party was notified of the motion, or, if the opposing party was not notified, what efforts were made to notify the opposing party and why it was not practical to notify the opposing party in a manner and at a time that a response could be made.

(6) The court may not grant the motion for expedited consideration prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, absent compelling reasons for a prompt decision and a showing that reasonable efforts were made to notify the opposing party of the motion for expedited consideration in time to allow a reasonable opportunity to respond.

(7) The court may not grant the principal motion prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, unless it clearly appears from the specific facts in the motion papers or court records that immediate and irreparable injury, loss or damage would result to the moving party before any reasonable opportunity to respond could be given. In no event will a decision be rendered on the principal motion without a response until at least 24 hours after the date of service of the principal motion or the date actual notice is given, whichever is sooner. However, this limitation does not preclude a decision in less than 24 hours on an application for relief made pursuant to Civil Rule 65(b) or any other rule or statute authorizing such action.

Representative Jay Ramras

March 9, 2010

Page 3

On the other hand, the bill as currently drafted would not allow a hearing to be held in less than 10 days (during which time a response opposing the motion could be filed) while the civil rule could result in an earlier hearing date, sometimes within 24 hours of the motion being filed, but only if the evidence is sufficient to justify that level of urgency. It is my understanding that the 10 days' notice provision was intended to avoid abuse of the mandated expedited hearing schedule when a parent may be unavailable and to take into consideration the complexity and importance of the custody decision under consideration. That is a policy call.

In any event, without being expedited, a custody hearing may be delayed for months, depending upon the court calendar, the case priority, and the response time of at least ten days in addition to time to file a reply and oral argument provided for motions, if requested, filed in the case.

If you wish to clarify for the court that any perceived inconsistency with the court rule should result in the statute being applied (to avoid a shorter time for the hearing allowed by the rule, for example), the bill should be amended to include an indirect court rule change. Let me know.

Violence Standard.

The incorporation of amendment S.1 that requires a court to consider "any history of violent behavior," excluding military actions, exhibited by a parent in making a determination of the best interests of the child. While the standard does not appear in current law describing the best interest factors under AS 25.24.150(c), that statute contains a catch-all for other relevant considerations that may be employed by a court to disallow custody or visitation with a parent exhibiting violent behavior. Other express factors in AS 25.24.150(c)(7) and 25.24.150(g) limit the consideration of a parent's violent behavior to that behavior that occurs in the custodial home or against a parent, child, or domestic living partner.

The standard is very broad and requires no criminal conviction so that the evidence of the violence must be clear on the record of the custody determination, as is provided for in the written findings requirement of the amendment. Even with the findings, however, it may be that a court would disregard the standard if it finds it to be unconstitutionally vague or otherwise infringe on a constitutionally protected right.

If I may be of further assistance, please advise.

JMM:ljw
10-146.ljw

Enclosure



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

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Sponsor Statement HB 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.”

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. HB 334 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, HB 334 requires that a court *not* consider deployment when determining child custody. 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.

HB 334 includes the following items and restrictions:

- A definition of a military absence.
- Assurance that military duties cannot be considered when determining child 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.



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

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Sectional

HB 334

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

Section 1: AS 25.20 adds a new section:

Sec. 25.20.095. Custody and visitation proceedings involving a military parent.

(a) Military service cannot be a factor in granting or denying a petition for custody or visitation.

(b) – (e) Upon receiving deployment orders a military parent shall receive an expedited hearing and the parent can delegate visitation rights to a family member if doing so is within a child's best interests. Any petition for custody or visitation will be given the same protections as afforded under the SCRA. Additionally, rights or protections regarding custody or visitation can only be waived in writing

(f) A court order entered under this section must require

- (1) a child be made reasonably available during periods of leave
- (2) the facilitation of written and electronic contact between the deployed parent and the child, preferably electronic contact with a video image
- (3) the deployed parent provide timely leave information

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service"

Section 2: AS 25.20.110 is amended by adding new subsection to read:

(d) Except as provided in (e) – (h) military service cannot be a factor in finding a change of circumstances on a motion to modify child custody or visitation

(e) A court may provide for a temporary modification of a custody or visitation order to make reasonable accommodation for a deployment. The temporary order must include provisions for

- (1) custody or visitation during periods of leave if doing so is within the child's best interests.
- (2) termination of the temporary order within 10 days of notification of the deployed parent's ability to resume custody if doing so is within the child's best interests. The non-deployed parent shall bear the burden of proof.

(3) a hearing if a child of a deployed parent moved out of state and the non-deployed parent files a motion that alleges that resumption of the permanent custody order will result in immediate danger of irreparable harm to the child or that the presumption under AS 25.24.150(g) exists

(4) delegation of the deployed parent's visitation rights to a family member if doing so is within the child's best interests.

(5) immediate notification from the non-deployed parent of a change of address or contact information.

(f) A court shall expedite a hearing to modify custody or visitation on a motion made by a parent who is subject to deployment.

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service." Cross reference to AS 25.20.095

Section 3: AS 25.24.150 is amended by adding new subsection to read:

(l) Except as provided in AS 25.20.095 and 25.20.110 military service cannot be a factor in determining the best interest of the child under (c) of this section.

Section 4: The uncodified law of the State of Alaska is amended by adding a new section to read:

(a) Authorization for Telephonic, Video, or Internet Participation.

The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is defined in AS 25.20.095, at the request of the deployed parent.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB334(MLV)
 () Publish Date: _____

Identifier (file name): HB334CS(MLV)-LAW-CIV-03-05-10 Dept. Affected: Law
 Title An Act establishing child custody, modification and RDU Civil
visitation standards for a military parent Component Child protection
 Representative(s) THOMAS, Dahlstrom, Gatto, Wilson, Lynn,
 Sponsor Ramras, Buch
 Requester House Military & Veterans' Affairs Component Number 2961

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
| | | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | | | | | | | | |
| Contractual | | | | | | | | |
| Supplies | | | | | | | | |
| Equipment | | | | | | | | |
| Land & Structures | | | | | | | | |
| Grants & Claims | | | | | | | | |
| Miscellaneous | | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|

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|-------------------------------|--|--|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | | | |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | | | |
| 1003 GF Match | | | | | | | | |
| 1004 GF | | | | | | | | |
| 1005 GF/Program Receipts | | | | | | | | |
| 1037 GF/Mental Health | | | | | | | | |
| Other Interagency Receipts | | | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2010) cost: _____

POSITIONS

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill is 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. The Department of Law, Attorney General's office, does not handle private civil custody arrangements. Therefore, there will be no fiscal impact on the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
 Division: Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
 Date/Time 3/5/10 9:30 AM
 Date 3/5/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 334(MLV)
 (H) Publish Date: 2/24/10

Identifier (file name): _____ Dept. Affected: Alaska Court System
 Title Military Deployment and Child Custody RDU Trial Courts
 Sponsor _____ Component _____
 Requester Representative Thomas Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | Appropriation Required | Information | | | | | |
|------------------------|------------------------|-------------|------------|------------|------------|------------|------------|
| | FY 2011 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | FY 2016 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Contractual | | | | | | | |
| Supplies | | | | | | | |
| Equipment | | | | | | | |
| Land & Structures | | | | | | | |
| Grants & Claims | | | | | | | |
| Miscellaneous | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | | |
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| CHANGE IN REVENUES () | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | | |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | | | | | | | |
| 1005 GF/Program Receipts | | | | | | | |
| 1037 GF/Mental Health | | | | | | | |
| Other Interagency Receipts | | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2010) cost: _____

POSITIONS

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

House Bill 334 changes some of the provisions that govern child custody in cases where a parent is a service member who is or recently has been deployed. Two provisions have the potential to impact the court system. The first is the right to a custody hearing within 10 days after a service member requests the hearing after returning from deployment. Courts already frequently set these hearings on an expedited basis and this change will probably not have a significant impact on current practices. However, should a significant number of hearings be sought soon after the return of a large number of deployed service members, this may create scheduling problems.

The second possible impact involves internet testimony when a deployed parent wishes to participate in a custody hearing. The court can currently use this technology in the courts most likely to hear these cases (Anchorage, Fairbanks and Palmer). Any associated costs are likely to be minor and can be absorbed without the need for additional funding.

Prepared by: Doug Wooliver, Administrative Attorney
 Division: Alaska Court System
 Approved by: Doug Wooliver for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4750
 Date/Time 2-16-10 @ 12:00 pm
 Date 2/16/2010

National Association for Uniformed Services

Military Divorce Rate Continues to Climb

The divorce rate in the armed forces continues to grow, despite efforts by the military to help struggling couples.

The Pentagon recently reported there were an estimated 27,312 divorces among roughly 765,000 married members of the active-duty Army, Air Force, Navy and Marine Corps in fiscal year 2009.

That's a divorce rate of about 3.6 percent, compared with 3.4 percent a year earlier, according to figures from the Defense Manpower Data Center. Marriages among reservists failed at a rate of 2.8 percent compared to 2.7 the previous year.

The reported 3.6 percent rate is a full percentage point above the 2.6 percent reported in late 2001, when the U.S. began sending troops to Afghanistan in response to the Sept 11 terrorist attacks.

As in previous years, women in uniform suffered much higher divorce rates than their male counterparts: 7.7 percent compared to 3 percent for men in 2009.

The only comparable measure for civilian divorce rates is what the Centers for Disease Control said in 2005 that 43 percent of all first marriages end in divorce within 10 years.

Critics believe that the divorce rate reported by the Pentagon comes nowhere close to depicting the damage done to marriages and families by the two ongoing wars.

The Pentagon number doesn't count veterans, who divorce after leaving the services, let alone reflect other possible wartime consequences on families, such as increases in alcoholism or the toll on orphaned or emotionally stressed children of troops.

In an Army battlefield survey taken in Iraq in the spring, nearly 22 percent of young combat soldiers questioned said they planned to get a divorce or separation, compared to 12.4 percent in a survey conducted in 2003.

For deployed Vermont military, help with child custody

By Peter Hirschfeld Vermont Press Bureau - Published: January 20, 2010

MONTPELIER – For military parents deployed to war zones overseas, the toughest battle can often be the child-custody dispute awaiting them back home.

The call to duty, family-law experts told Vermont lawmakers on Tuesday, can be used in court against military parents who split custody of their children with a former spouse or partner. And the impacts, they said, can exacerbate the intense emotional trauma that long deployments inflict on troops and their children.

"We don't have a lot of horror stories here, but boy are they out there in the rest of the country," said Patricia Benelli, a family-law attorney from Chester. "And we're trying to avoid them here."

Lt. Col. Ellen Abbott, a judge-advocate general in the Vermont National Guard, said she had to assist a Vermont soldier who returned from a long deployment to Iraq only to find that his ex-partner had been granted full custody of their child in his absence. It took months of court proceedings and \$23,000 in legal fees, Abbott said, for the man to regain custody of his child.

"It was a very difficult thing for this soldier to go through," Abbott said. "Had we had something in place to provide protections to him, it might have made things easier."

Lawmakers this session will consider a bill that supporters say would provide those protections by addressing the legal pitfalls into which at least some military parents fall. Without such reforms, Benelli said, the state risks "penalizing people in the military for serving their country."

Rep. Maxine Grad, a Waitsfield Democrat and vice-chairwoman of the House Judiciary Committee, introduced the legislation, which now has 88 co-sponsors. With more than 5,000 Vermonters serving as active members of the military, including 1,500 headed for Afghanistan next month, she said it's incumbent upon the state to protect the parental rights of servicemen and women.

When deployment orders come through, Abbott said, many military parents "are afraid to go to court because they're going to take their children away."

Indeed, legal experts said Tuesday, a military deployment can be construed by family-court judges as the "real, substantial and unanticipated change" required by Vermont statutes to amend child-custody arrangements.

Proposed legislation would prevent judges from using deployment-related separation as the sole reason for changing custody or visitation orders.

"I think this bill provides the framework to give assurances to military parents that they won't lose contact with their children either before, during or after their deployment," Abbott said.

The bill would also ensure that parents forced to cede custody or visitation during a deployment could appoint a friend or family member to assume those rights on their behalf. The measure is needed, lawyers said Tuesday, to ensure a continued bond with members of the deployed parent's family.

The legislation additionally ensures contact rights for deployed parents wishing to correspond with their children via telephone, e-mail or Web cameras. Abbott, who herself has been deployed to Iraq, said contact with children is important to sustaining soldiers' morale.

"Being over there I can tell you soldiers live for contact with their children," Abbott said. "We also have soldiers who are devastated when they get no response from their children – none whatsoever. It degrades their ability to focus on the mission and that's what we need – the ability to focus on the mission so they can come back."

The bill would also force family courts to make deployment-related custody hearings priority cases, and allow deployed soldiers to participate in those hearings via phone.

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Deployed Troops Battle for Custody

Associated Press | May 07, 2007



She had raised her daughter for six years following the divorce, handled the shuttling to soccer practice and cheerleading, made sure schoolwork was done. Hardly a day went by when the two weren't together. Then Lt. Eva Crouch was mobilized with the Kentucky National Guard, and Sara went to stay with Dad.

A year and a half later, her assignment up, Crouch pulled into her driveway with one thing in mind - bringing home the little girl who shared her smile and blue eyes. She dialed her ex and said she'd be there the next day to pick Sara up, but his response sent her reeling.

"Not without a court order you won't."

Within a month, a judge would decide that Sara should stay with her dad. It was, he said, in "the best interests of the child."

What happened? Crouch was the legal residential caretaker; this was only supposed to be temporary. What had changed? She wasn't a drug addict, or an alcoholic, or an abusive mother.

Her only misstep, it seems, was answering the call to serve her country.

Crouch and an unknown number of others among the 140,000-plus single parents in uniform fight a war on two fronts: For the nation they are sworn to defend, and for the children they are losing because of that duty.

[Alert: Tell your public officials how you feel about this issue.](#)

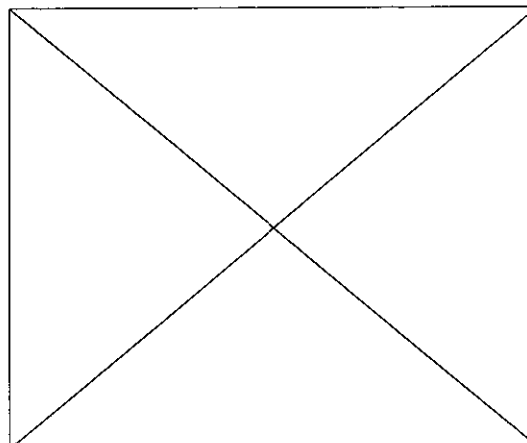
A federal law called the [Servicemembers Civil Relief Act](#) is meant to protect them by staying civil court actions and administrative proceedings during military activation. They can't be evicted. Creditors can't seize their property. Civilian health benefits, if suspended during deployment, must be reinstated.

[Understanding Military Legal Matters](#)

And yet servicemembers' children can be - and are being - taken from them after they are deployed.

Some family court judges say that determining what's best for a child in a custody case is simply not comparable to deciding civil property disputes and the like; they have ruled that family law trumps the federal law protecting servicemembers. And so, in many cases when a soldier deploys, the ex-spouse seeks custody, and temporary changes become

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lasting.

Even some supporters of the federal law say it should be changed - that soldiers should be assured that they can regain custody of children after they return.

"Now, they've got a great argument when Johnny comes marching home that the child should remain where they are, even though it was a temporary order," says Lt. Col. Steve Elliott, a judge advocate with the Oklahoma National Guard, referring to non-deployed parents.

Military mothers and fathers, meanwhile, speak of birthdays missed. Bonds, once strong, weakened. Returning from duty not to joyful reunions but to endless hearings.

They are people like Marine Cpl. Levi Bradley, helping to fight the insurgency in Fallujah, Iraq, at the same time he battles for custody of his son in a Kansas family court.

Like Sgt. Mike Grantham of the Iowa National Guard, whose two kids lived with him until he was mobilized to train troops after 9/11.

Like Army Reserve Capt. Brad Carlson, fighting for custody of his American-born children in a foreign land after his marriage crumbled while he was deployed to the Middle East and his European wife refused to return to the States.

And like Eva Crouch, who spent two years and some \$25,000 pushing her case through the Kentucky courts.

"I'd have spent a million," she says. "My child was my life ... I go serve my country, and I come back and have to go through hell and high water."

In the midst of World War II, back in 1943, the U.S. Supreme Court held that the soldiers' relief law should be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."

Shielding soldiers, after all, would allow them "to devote their entire energy" to the nation's defense, as the law itself states.

But in child custody cases, the opposite often happens.

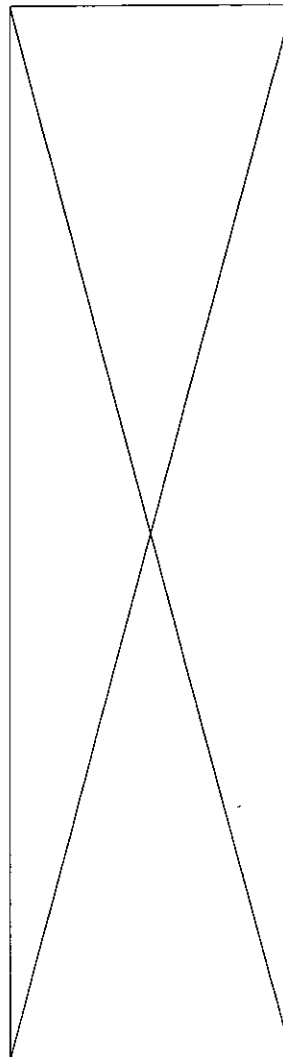
"The minute these guys are getting deployed, the other parent is going, 'I can do whatever I want now,'" says Jean Ann Uvodich, an attorney who represented Bradley. "If you have an ex who wants to take advantage, they can and will. The obstacle is that the judge needs to respect the law."

Bradley had already joined the Marines, and his young wife, Amber, was a junior in high school when their son Tyler came along in September 2003. With Bradley in training, Amber and the baby lived with Bradley's mother, Starleen, in Ottawa, Kan.

When the marriage fell apart two years later, Bradley filed for divorce and Amber signed a parenting plan granting him sole custody of Tyler and agreeing that the boy would live with Starleen while Bradley was on duty.

In August 2005, Bradley deployed to Iraq. A month later, Amber sought to void the agreement and obtain residential custody of Tyler. She didn't fully understand what she had signed, she said later.

Bradley learned of the petition in Fallujah, after calling his mom's house one night to say hello to his son. He was infuriated.



He worked during the day as a mechanic with the 8th Communications Battalion, then headed back to the barracks and, because of the time difference, waited until midnight to call his mother to hear the latest from court.

"My mind wasn't where it was supposed to be," he says. And the distraction cost him. One day he rolled a Humvee he was test-driving. Though he wasn't injured, Bradley was reprimanded.

Uvodich sought a stay under the Servicemembers Civil Relief Act, which provides for a minimum 90-day delay in proceedings upon application by an active duty service member. She argued that Bradley had a right to be present to testify.

But the judge refused to postpone the case, saying he didn't believe it was subject to the federal law because "this Court has a continuing obligation to consider what's in the best interest of the child," court records show.

After a November 2005 hearing, the judge awarded temporary physical custody to Amber. Last summer, that order was made permanent.

Bradley, now 22, is stationed at Camp Lejeune, N.C., awaiting his second deployment to Iraq later this year. He gets to Kansas on leave for about two weeks every six months, and sees Tyler for four days at a time.

"I fought the best I could," he says. "The act states: Everything will be put on hold until I'm able to get back. It doesn't happen. I found out the hard way."

Deployment News and Resources

Oregon Circuit Court Judge Dale Koch, president of the National Council of Juvenile and Family Court Judges, said that as state court judges, those deciding custody cases are obligated to follow their family codes - and "in most states there is language that says the primary interest is the best interest of the child."

"We recognize the competing interests," he says. "You don't want to penalize a parent because they've served their country. On the other hand ... you don't want to penalize the child."

But what does "best interest" really mean? Koch mentions factors such as stability and considering who has been the child's main emotional provider, parameters that conflict directly with military service. So how do you balance those things against upholding a deployed parent's civil rights? When, too, should a temporary change mean just that?

Iowa Guardsman Mike Grantham thought he was serving the best interests of his children when he arranged for his son and daughter to stay with his mother before reporting for duty in August 2002. She lived a few blocks from the kids' school in Clarksville, Iowa, and he figured, "There wouldn't be much disruption."

He had raised Brianna and Jeremy since his 2000 divorce, when ex-wife Tammara turned physical custody over to him.

After mobilizing, Grantham was served with a custody petition from Tammara, delivered to his unit's armory. His lawyer tried twice to request a stay under the federal law. His commanding officer even wrote a letter stating that Grantham's battalion was charged with protecting U.S. facilities deemed national security interests and that his case would cause the entire command structure "to refocus away from the military mission."

The trial judge nevertheless held hearings without Grantham and

temporarily placed the children with Tammara. A year later, though Grantham had returned from duty, the judge made Tammara the primary physical custodian.

An appeals court later sided with Grantham, saying: "A soldier, who answered our Nation's call to defend, lost physical care of his children ... offending our intrinsic sense of right and wrong."

But the Iowa Supreme Court disagreed, saying Tammara was "presently the most effective parent."

Now, Grantham says, his visitation rights mirror those that his ex-wife once had: every other weekend, Wednesdays, and certain holidays - Father's Day, for example.

"There ain't nothing you can do," he says. "Being deployed, you lose your armor."

Military and family law experts don't know how big the problem is, but 5.4 percent of active duty members - more than 74,000 - are single parents, the Department of Defense reports. More than 68,000 Guard and reserve members are also single parents.

Divorce among military men and women also has risen some in recent years, with more than 23,000 enlisted members and officers divorcing in 2005.

Army reservist Brad Carlson lived in Phoenix with his wife, Bianca, and three kids when he volunteered to deploy to Kuwait in 2003. His wife and children were spending that summer with her parents in Luxembourg and expected to remain there until he returned from duty.

A year later, after his wife indicated she wanted to end the marriage and remain in Luxembourg, Carlson filed for divorce in an Arizona court, seeking custody of Dirk, Sven and Phoebe, all American citizens.

The Arizona court dismissed the custody case after Bianca's lawyer argued that jurisdiction belonged in Luxembourg because the children had resided there for at least six months.

Again citing the Servicemembers Act, Carlson's attorney argued that the time the kids spent in Luxembourg shouldn't count toward residency because it came during Carlson's deployment.

A Luxembourg court awarded custody to Bianca, and the kids remain there to this day.

They call him "Bradley" now, he says, instead of "Daddy." They converse in German in stilted long-distance phone calls that provide few precious minutes for a father to absorb missed moments - soccer games, kindergarten, birthdays. On Dirk's 9th, Carlson stood beneath a rainbow-colored birthday banner and had a friend take a digital photo of him holding a sign: "Happy 9th Birthday Dirk!"

Tears fill his eyes when it hits him: "That's how I celebrate."

"I feel really betrayed," Carlson says. "To be able to send me into harm's way ... and my own country can't protect my child custody rights. Why aren't they looking out for me, when I'm looking out for the country?"

The solution, some say, lies in amending the federal law to specify that it does apply in custody cases, and to spell out that jurisdiction should rest with the state where the child resided before a soldier deployed.

Some states aren't waiting for congressional action.

In 2005, California enacted a law saying a parent's absence due to military activation cannot be used to justify permanent changes in custody or visitation. Michigan and Kentucky followed suit, requiring that temporary changes made because of deployment revert back to the original agreement once deployment ends.

Similar legislation has been proposed in Arizona, Florida, Oklahoma, Texas and North Carolina.

"These men and women need to know that when we deploy them, they don't have to worry about being ambushed in our family law court system," says Michael Robinson, a lobbyist who helped write the California and Michigan laws. "The insurgents are doing enough ambushing over there. The only difference between what's occurring there and here is ... it's an emotional bomb."

Crouch knows that all too well.

When she was mobilized back in 2003, Crouch considered having her mother come live in her Frankfort, Ky., home to care for 9-year-old Sara. But her ex-husband, Charles, wanted Sara with him, and Crouch agreed.

"You have to promise me you won't try anything funny," Crouch told him.

He promised.

They drew up a temporary order, moved Sara's belongings 2 1/2 hours east to her dad's place near Ashland, and Crouch headed out - to Iraq, she thought, although she wound up stateside at Fort Knox, providing personnel support to units shipping out.

The fortunate assignment allowed her to visit Sara most weekends, but no one ever brought up the idea of making the temporary situation permanent until Crouch returned.

"Right up until the day I came home there was every indication that I was picking her up," she says.

Charles Crouch says that's true, and acknowledges their agreement was supposed to be temporary. But when the time came for Sara to return to her mom, Charles says his daughter expressed a desire to stay with him. She liked her school, had made new friends.

"I had no intention of trying to talk her into staying or anything," he says. "All I wanted was what was best for my daughter."

Eva Crouch helped fight for the new Kentucky law. Last year, the state Supreme Court cited it in overturning the trial judge's decision granting custody to Charles.

Last September, she got Sara back.

Crouch knows she's one of the lucky few whose cases have happy endings. She's remarried now, and expecting another baby this August. But with 18 years in the military, she knows she could be mobilized again after she gives birth. One thing is clear to her now: Serving her country isn't worth losing her daughter.

"I can't leave my child again - regardless of whether or not I know when I come home, she comes home.

"Still," she says, "I can't."

[More Deployment News](#)



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

OFFICE OF THE GOVERNOR
MAILROOM

NOV 23 2009

NOV 16 2009

2588
WH
GOV
COS
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CS
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The Honorable Sean Parnell
Governor of Alaska
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Parnell:

I am writing to you about a matter that is of critical concern to me - the support of our Service members and their families in child custody disputes. I am deeply committed to preventing any inequitable treatment our deployed soldiers, sailors, airmen, and Marines may face in child custody disputes as a result of their service to the Nation.

I ask that you consider how your state can address the special difficulties facing military parents who must balance the demands of military service with the equally compelling demands of parenthood. These demands are often felt most acutely when military members must deploy and either lose visitation time or face challenges to existing custody orders by a parent to whom the military member is not married.

To date, thirty 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 forgo visitation when called to take up the burdens of the nation. One possible legislative response could include the presumption that the prior custody agreement be restored upon the military member's return from deployment. Another legislative response could be to allow a parent with visitation rights the ability to delegate those rights to a third party during the deployment. I note that Alaska has not passed legislation to address military and visitation issues.

The Department recognizes the complexities of such cases and the difficulties in balancing the interests of the Service member against the best interests of the child. The Department also believes that the States are in the best position to balance the needs of both within the context of existing domestic relations laws.

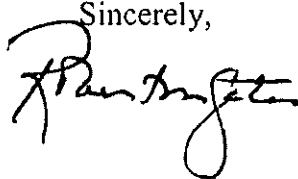
Because of the potential impact this could have on the full spectrum of our



military families, I am writing you directly to let you know that we stand ready to assist you with any additional information that you may need to address this issue. Mr. Ed Kringer, my staff contact, can provide a more detailed description about how other states have approached this issue. Your staff can contact him at 703-602-4949, ext. 114, or at ed.kringer@osd.mil.

Thank you for all you do for our Service members and their families. Helping them with this extremely important family concern would provide a great service to our men and women in uniform, as well as to your State and the nation as a whole.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Kringer". The signature is written in a cursive style with a large initial "E" and "K".

Sean Parnell, GOVERNOR

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
OFFICE OF THE COMMISSIONER

P. O. BOX 5800
Ft Richardson, ALASKA 99505-5800
PHONE: (907) 428-6003
FAX: (907) 428-6019

February 26, 2010

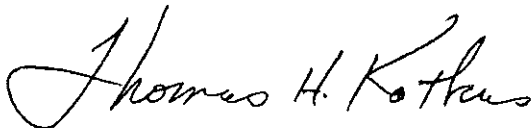
Rep. Bill Thomas:

Members of the United States Armed Forces train very hard to meet the high standards we set as a nation for excellence. These standards are important to protect the lives of each individual member, but also to protect the fellow Soldiers, Airmen, Marines, and Seamen who go into battle together.

The members of the Armed Forces need to be focused on the mission they are about to execute and not have any distracters that could jeopardize the safety of the team or success of the mission. The number one distraction for deployed military members is family concerns. There is a loop-hole in Alaska Statute that allows child custody hearings to take place while a military member is deployed. This must be stopped.

I fully support the efforts of the Rep. Bill Thomas and the Veterans Caucus to correct this problem by sponsoring House Bill 334. Please protect the troops by allowing them to focus on the mission while deployed. Passing this bill will improve morale and allow families to deal with issues in person between deployments.

Sincerely,



Brigadier General Thomas H. Katkus
Commissioner

FILED

AMENDMENT

#1

By Gruentberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 2, following "finds":
- 2 Insert "by clear and convincing evidence"

Bahl N
Her N
Gat W
Lynn N
Orue Y
Holmes Y
Ramas N

Passes AMENDMENT #2

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 11, following "writing":
- 2 Insert "or on the record"

Passed
AMENDMENT #3

Gruentz

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 9:
- 2 Delete "construed"
- 3 Insert "presumed"

FILED
AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

1 Page 3, line 18, following "circumstances":

2 Insert "that materially affects the welfare of the child if the court approves a military
3 family care plan ~~and if the temporary duty, mobilization, or deployment is for a period that is~~
4 ~~less than six months"~~

5

6 Page 4, line 18, following "consider":

7 Insert "the terms of the parent's military family care plan and"

H-N
G-Not AV
L-N
G-4
H-4
D-N
R-N

Passed
AMENDMENT #5

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

1 Page 1, line 6, following "(a)":

2 Insert "In determining the availability of a parent for custody or visitation, if a parent
3 is deployed or in a position where the parent may be deployed, the court shall take particular
4 care to ensure that the child has the maximum opportunity, consistent with the best interests
5 of the child, to have contact with the parent."

FAILS
AMENDMENT #6

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, lines 6-8:
- 2 Delete all material
- 3
- 4 Reletter the following paragraphs accordingly.
- 5
- 6 Page 4, lines 15-16:
- 7 Delete all material
- 8
- 9 Reletter the following paragraphs accordingly.

*G-NP
L-N
G-Y
H-Y
D-N
H-N
R-N*

Passed
AMENDMENT #7

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

1 Page 3, line 13, following "cause":

2 Insert ";

3 "(4) "parent" includes a legal guardian of the child"

4

5 Page 4, line 26:

6 Delete "and military service"

7 Insert ", military service, and "parent"'"

Passed
AMENDMENT # 8

OFFERED IN THE HOUSE
TO: CSHB 334(MLV)

BY REPRESENTATIVE GRUENBERG

1 Page 2, line 16:

2 Delete "the nondeployed"

3 Insert "each"

4

5 Page 2, line 17:

6 Delete "deployed parent's child and the deployed parent"

7 Insert "other parent and the child"

8

9 Page 2, line 19:

10 Delete "and"

11

12 Page 2, line 21, following "schedule":

13 Insert "; and"

14 (4) each parent provide immediate notification of a change of address
15 or contact information as provided under AS 25.20.110(e)(5)"

16

17 Page 4, line 8:

18 Delete "the parent who is not deployed"

19 Insert "each parent"

20

21 Page 4, line 9:

22 Delete "deployed"

23 Insert "other"

1

2 Page 4, line 12:

3 Delete "who is not deployed"

Passed
AMENDMENT #9

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

1 Page 1, line 8:

2 Delete "schedule" *of a*"

Passes

AMENDMENT #10

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

1 Page 2, lines 22 - 25:

2 Delete "In making a determination of the best interests of the child, the court shall
3 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption under
4 AS 25.24.150(g) to visitation, delegation, and custody orders issued under this section."

5 Insert "In making a determination of the best interests of the child, the court shall
6 consider (1) the factors under AS 25.24.150(c) and apply the rebuttable presumption under
7 AS 25.24.150(g) to visitation, delegation, and custody orders issued under this section, and
8 (2) any history of violent behavior exhibited by a parent."

9

10 Page 2, line 30, following "partner.":

11 Insert "The court shall make specific written findings regarding the considerations
12 required to be considered in (1) and (2) of this subsection. In this subsection, "history of
13 violent behavior" does not include any behavior or actions performed or undertaken in
14 connection with military duties."

Conceptual Amendment #11

P.2, L. 29 history of violence
delete "domestic."
- Perpetrating.

Passed

w/d AMENDMENT #12

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 4, line 2:
- 2 Delete "result in immediate danger of irreparable harm"
- 3 Insert "be detrimental"

~~FAILS~~
AMENDMENT #13

Grumberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

1 Page 1, lines 10-11:

2 Delete "(b) A parent who is deployed may petition a court of competent
3 jurisdiction for custody or visitation. The"

4 Insert "(b) If a parent petitions a court of competent jurisdiction for custody
5 or visitation, the"

L-N
G-Y
H-Y
D-N
H-N
R-N
G-NP

~~FALS~~
AMENDMENT #14

Grunberg.

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 1:
- 2 Delete "shall"
- 3 Insert "may"

G-4

H-4

D-2

H-2

G-ND

L-2

R-2

* SCHILAWSKI, MICHAEL F.
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*Dist. by Grossberg
re. HB334*

American Academy of Matrimonial Lawyers Certified Fellows 2005

* Denotes recertification ^ Denotes Foundation member

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 1, line 8:
- 2 Delete "schedule"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

1 Page 1, lines 10-11:

2 Delete "(b) A parent who is deployed may petition a court of competent
3 jurisdiction for custody or visitation. The"

4 Insert "(b) If a parent petitions a court of competent jurisdiction for custody
5 or visitation, the"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 2, following "finds":
- 2 Insert "by clear and convincing evidence"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 1:
- 2 Delete "shall"
- 3 Insert "may"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

1 Page 2, lines 6-8:

2 Delete all material

3

4 Reletter the following paragraphs accordingly.

5

6 Page 4, lines 15-16:

7 Delete all material

8

9 Reletter the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 2, line 9:
- 2 Delete "construed"
- 3 Insert "presumed"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 . Page 2, line 11, following "writing":
- 2 Insert "or on the record"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

- 1 Page 4, line 2:
- 2 Delete "result in immediate danger of irreparable harm"
- 3 Insert "be detrimental"

Jane Pierson

From: Kaci Schroeder
Sent: Wednesday, March 03, 2010 1:37 PM
To: 'Jane_Pierson@legis.state.ak.us'
Subject: Military Child Custody

Follow Up Flag: Follow up
Flag Status: Flagged

Jane,

If you think it is appropriate, I would like to show this 3 min news clip on Military Child Custody to the committee. I've never successfully done this (tried in MVA and the technology didn't work) so I really don't know what I am doing in regards to this. However, the video was shown in the Senate. It just helps illustrate the issue with a real live person who has been affected by it. I'll go with your advice though, if you don't think it would add anything to the bill presentation I'm fine with skipping it.

<http://www.cbsnews.com/video/watch/?id=5972491n&tag=contentMain;contentBody>

So far I am expecting the following people to be online to testify:

Mark San Souci (Quality of Life Regional Liaison, Department of Defense)
Mark Sullivan (Practicing Attorney, Expert in the field of Military Domestic Matters)
Anndrea Wells (Husband is in the midst of a child custody battle and will be deploying this summer)
Jean Michelle (drafting attorney)

Adam Torem, JAG Atty

Kaci Schroeder Hotch
Legislative Aide to Rep. Thomas
State Capitol, Rm 501
Juneau, AK 99801
1-888-461-3732
(907) 465-3732
fax: (907) 465-2652

"In things pertaining to enthusiasm,
no man is sane who does not know how to be insane on proper occasions.
- Henry Ward Beecher