

SB

210

SENATE COMMITTEE REPORT

DATE: 2/3/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 2/12/10

Judiciary Committee considered HOUSE BILL NO. 307

HB 307 SEXUAL ASSAULT PROTECTIVE ORDERS

"An Act relating to sexual assault protective orders."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

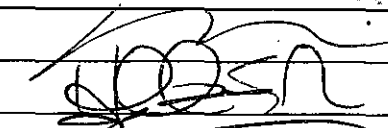

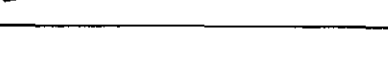

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Law	1/25/10			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wielechowski	✓			
	French	#			
	French	✓			
CHAIR: 	French	✓			

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 210(), Draft Version "N"

1 Page 4, line 4, following "court":

2 Insert "; if a valid court order issued under AS 12.61.120 or AS 25.20.060 or an
3 equivalent provision in another jurisdiction is in effect that requires that the address or contact
4 information of the parent who is not deployed be kept confidential, the notification shall be
5 made to the court only, and a copy of the order shall be included in the notification"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: CSSB 210(), Draft Version "N"

1 Page 2, line 25, following "section.":

2 Insert "In addition, there is a rebuttable presumption that a deployed parent's visitation
3 rights may not be delegated to a family member who has a history of perpetrating domestic
4 violence against a spouse, a child, or a domestic living partner, or to a family member with an
5 individual in the family member's household who has a history of perpetrating domestic
6 violence against a spouse, a child, or a domestic living partner."
7

8 Page 4, line 10, following "section.":

9 Insert "In addition, there is a rebuttable presumption that a deployed parent's visitation
10 rights may not be delegated to a family member who has a history of perpetrating domestic
11 violence against a spouse, a child, or a domestic living partner, or to a family member with an
12 individual in the family member's household who has a history of perpetrating domestic
13 violence against a spouse, a child, or a domestic living partner."

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Mischel
2/4/10

CS FOR SENATE BILL NO. 210()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATOR HUGGINS

A BILL

FOR AN ACT ENTITLED

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 25.20 is amended by adding a new section to read:

5 **Sec. 25.20.095. Custody and visitation proceedings involving a military**
6 **parent.** (a) Except as provided in this section, a parent's temporary duty, mobilization,
7 or deployment to military service and the resultant temporary disruption to the
8 schedule of a child of the parent may not be a factor in a court's decision to grant or
9 deny a petition for custody or visitation.

10 (b) A parent who is deployed may petition a court of competent jurisdiction
11 for custody or visitation. The petition shall be construed to be an application for
12 affirmative relief, consistent with the protections afforded under 50 U.S.C. App. 501 -
13 596 (Servicemembers Civil Relief Act) and may include a request to delegate the
14 deployed parent's visitation rights to a family member.

1 (c) A court shall order a delegation of visitation rights based on a petition filed
2 under (b) of this section if the court finds that

3 (1) the family member receiving the delegation has an existing close
4 relationship to the child; and

5 (2) the delegation is in the child's best interest.

6 (d) A hearing on a petition filed under this section shall be expedited by the
7 court on a motion filed by the deployed parent and subject to an additional 10 days'
8 notice.

9 (e) A parent who is deployed may not be construed to have waived any rights
10 or protections with regard to custody or visitation of the deployed parent's child unless
11 the deployed parent expressly waives the right or protection in writing.

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

13 (1) the nondeployed parent make the child reasonably available for
14 visitation to the deployed parent when the deployed parent is on leave if the visits are
15 in the child's best interest;

16 (2) the nondeployed parent facilitate contact, including telephonic and
17 electronic contact, between the deployed parent's child and the deployed parent if the
18 contact is in the child's best interest; electronic contact with a video image must be
19 facilitated whenever feasible; and

20 (3) the deployed parent provide timely information to the nondeployed
21 parent regarding the deployed parent's leave schedule.

22 (g) In making a determination of the best interests of the child, the court shall
23 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption
24 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
25 section.

26 (h) In this section,

27 (1) "deployment" or "deployed" means military services performed in
28 compliance with a valid order received by an active duty or reserve member of the
29 armed services of the United States, National Guard, or United States Coast Guard to
30 report for combat operations, contingency operations, peacekeeping operations,
31 temporary duty, a remote tour of duty, or other active service for which the deploying

1 parent reports unaccompanied by any family member;

2 (2) "family member" means a person who is an adult sibling, aunt,
3 uncle, first cousin, or grandparent related by blood, adoption, or marriage or a
4 stepparent to the child who is the subject of a custody order issued under this section;

5 (3) "military service" includes the period from which the deployed
6 parent receives and is subject to deployment orders and the period in which the parent
7 is awaiting travel or remains deployed because of sickness, wounds, leave, or other
8 lawful cause.

9 * **Sec. 2.** AS 25.20.110 is amended by adding new subsections to read:

10 (d) Except as provided in (e) - (h) of this section, a parent's temporary duty,
11 mobilization, or deployment to military service and the resultant temporary disruption
12 to the schedule of a child of the parent may not be a factor in finding a change of
13 circumstances on a motion to modify child custody or visitation.

14 (e) A court may provide for a temporary modification of a custody or
15 visitation order during the period of a parent's deployment to military service to make
16 reasonable accommodation for the deployment. The temporary order must specify that
17 deployment is the basis of the order and include provisions for

18 (1) custody or reasonable visitation during a period of leave granted to
19 the deployed parent if the custody or visitation is in the child's best interest;

20 (2) termination of the temporary order and resumption of the
21 permanent order within 10 days after notification of the deployed parent's ability to
22 resume custody or visitation unless the court finds that resumption of the custody or
23 visitation order in effect before deployment is no longer in the child's best interest; the
24 nondeployed parent shall bear the burden of proving that resumption of the order is no
25 longer in the child's best interest;

26 (3) a hearing if a child of a deployed parent has been moved out of
27 state and the nondeployed parent has filed a motion that alleges that resumption of the
28 permanent custody order will result in immediate danger of irreparable harm to the
29 child or that the presumption under AS 25.24.150(g) exists;

30 (4) delegation, on request of the deployed parent, of the deployed
31 parent's visitation rights under an existing order, if any, to another family member who

1 has an existing close relationship to the child if the delegation is in the child's best
2 interest; and

3 (5) immediate notification by the parent who is not deployed of a
4 change of address or contact information to the deployed parent and to the court.

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

7 (g) In making a determination of the best interests of the child, the court shall
8 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption
9 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
10 section.

11 (h) In this section, "deployment," "family member," and "military service"
12 have the meanings given in AS 25.20.095.

13 * Sec. 3. AS 25.24.150 is amended by adding a new subsection to read:

14 (l) Except as provided in AS 25.20.095 and 25.20.110, a court may not
15 consider a parent's activation to military service and deployment in determining the
16 best interest of the child under (c) of this section. In this subsection, "deployment" has
17 the meaning given in AS 25.20.095.

18 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 DIRECT COURT RULE AMENDMENT. Rule 99(a), Alaska Rules of Civil
21 Procedure, is amended to read:

22 (a) **Authorization for Telephonic, Video, or Internet Participation.** The
23 court may allow one or more parties, counsel, witnesses or the judge to participate
24 telephonically in any hearing or deposition for good cause and in the absence of
25 substantial prejudice to opposing parties. **The court shall allow video or Internet**
26 **testimony if the hearing or deposition involves the custody or visitation of a child**
27 **of a parent who is deployed, as that term is defined in AS 25.20.095, at the**
28 **request of the deployed parent.** Authorization for a witness to telephonically
29 participate in a deposition does not bar the witnesses' testimony from being videotaped
30 under Civil Rule 30.1; nor does it bar a party or attorney from being present at the site
31 at which the witness is physically present.

1 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **CONDITIONAL EFFECT.** The amendment to Rule 99(a), Alaska Rules of Civil
4 Procedure, made by sec. 4 of this Act, takes effect only if sec. 4 of this Act receives the two-
5 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
6 Alaska.

ALASKA STATE LEGISLATURE

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Charlie Huggins Senator

Sponsor Statement SB 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."

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 overseas, 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.

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Charlie Huggins
Senator

Sectional **SB 210**

"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 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 25.24.250(c) and AS 25.24.250(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.

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.

NO RESOLUTION PRESENTED HEREIN REPRESENTS THE POLICY OF THE ASSOCIATION UNTIL IT SHALL HAVE BEEN APPROVED BY THE HOUSE OF DELEGATES. INFORMATIONAL REPORTS, COMMENTS AND SUPPORTING DATA ARE NOT APPROVED BY THE HOUSE IN ITS VOTING AND REPRESENT ONLY THE VIEWS OF THE SECTION OR COMMITTEE SUBMITTING THEM.

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AMERICAN BAR ASSOCIATION

**SECTION OF FAMILY LAW
STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association opposes the enactment of federal
2 legislation that would:

3
4 (a) create federal-question jurisdiction in child custody cases, including cases
5 involving servicemember-parents;

6
7 (b) dictate case outcomes or impose evidentiary burdens in state child-custody
8 matters involving servicemember-parents;

9
10 (c) co-opt the discretionary authority of state courts, in cases involving
11 servicemember-parents, to determine the best interests of the child and award custody
12 accordingly; and

13
14 (d) pre-empt the growing body of state laws that comprehensively address
15 servicemember domestic relations matters, including child custody.

16
17 FURTHER RESOLVED, That the American Bar Association urges states to enact
18 legislation prohibiting denial of child custody to a servicemember based solely on absence due
19 to military deployment.

REPORT

We Americans owe many things to those who disproportionately bear the burden of national sacrifice, but bad law is not one of them. Today as always, the American Bar Association is as resolutely committed to the legal rights of American military members as it is to those of America's children. Yet there can be no Solomon-like splitting of interests when it comes to legislation that, in the name of deployed servicemembers' parental rights, would create a federal child custody law that usurps the historic primacy of the states in domestic relations law and relegates the best interests of the child to a secondary consideration in custody disputes.

Such legislation was kept out of the Fiscal Year 2009 National Defense Authorization Act at the eleventh hour. Similar measures had been introduced in prior sessions of Congress, and there is every reason to believe that this measure will keep resurfacing until either passed, or finally dispatched after a full vetting. Should such a measure re-surface, the ABA urges Congress to reject in its entirety this unsound incursion into the realm of the states, however well-intentioned its proponents, with the understanding that the rights of servicemembers and their children are best served within the existing framework of state laws and court-integrated social services, and the formidable procedural protections already built into the federal Servicemembers Civil Relief Act (SCRA).

The Recent Legislation

The latest iteration of the opposed legislation, section 4510 of H.R. 5658, 110th Congress, would have amended 50 U.S.C. App. § 521, the SCRA, by adding language dictating outcomes in child custody cases, where a servicemember parent had legal custody of the child at the time the parent was deployed to a contingency operation such as Iraq or Afghanistan. The bill would have compelled courts to restore custody of the child to the servicemember parent upon his or her return home post-deployment, unless it could be demonstrated by "clear and convincing evidence" that it was not in the child's best interest to have custody restored to the returning servicemember parent. The bill also would have prohibited a court, in deciding the child's interests, from considering how a servicemember's extended absence due to deployment may have affected those interests. The bill further would have prohibited change in child custody while a servicemember was deployed, through modification of a child custody arrangement that existed at the time of deployment, absent clear and convincing evidence that the change was in the child's best interests.

The Threat to Existing, Effective Legal Mechanisms

On its face, the proposition that an American servicemember must not lose custody of his or her child by virtue of service to our country in distant danger zones seems unassailable. On the other hand, is it ever reasonable to suggest that a court, in deciding a child's best interest, be prohibited from even considering how a parent's prolonged military deployment, *among other factors*, might affect the child's-best-interests analysis? The reality is that conflicting interests within separated families do not lend themselves to inflexible legal prescriptions. Such matters must be

decided on a case-by-case basis, always focusing on the best interest of the child as the primary factor.

Wielding the club of a federal child-custody law that pre-ordains pro-servicemember outcomes in these cases would compromise the generally-accepted “best interests of the child” standard governing custody decisions.

- A. Creating a Federal Law of Child Custody for These Servicemember-Parent Cases Would Invade the Province of State Courts and Disrupt Existing, Effective Legal Frameworks for Resolving Child Custody Disputes.

Child Custody Is Not a Federal Question.

The opposed legislation would create a new substantive legal interest in restored child-custody rights, under the SCRA. It would thus create federal-question jurisdiction over covered child custody cases, forcing federal judges to venture into the *terra incognita* of child custody jurisprudence when a covered case is originally filed in federal court pursuant to 28 U.S.C. §1331 or removed to federal court pursuant to 28 U.S.C. §1446.

Such an outcome would run counter to a long and unbroken history of federal deference to state courts on subject matters not expressly reserved to federal judicial authority. In particular, federal courts have not entertained claims addressing child custody or visitation, or other “adjustments to family status.” See *Ankenbrandt v. Richards and Kessler*, 504 U.S. 689 (1992); *Thompson v. Thompson*, 798 F.2d 1547 (9th Cir. 1986), aff’d 484 U.S. 174 (1988); *Cole v. Cole*, 693 F.2d 1083 (4th Cir. 1980); *Doe v. Doe*, 660 F.2d 101 (4th Cir. 1981). In *Ankenbrandt*, the Supreme Court observed:

Issuance of [custody] decrees . . . not infrequently involves retention of jurisdiction by the court and deployment of social workers to monitor compliance. As a matter of judicial economy, state courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling that arise out of conflicts over divorce, alimony, and child custody decrees. Moreover, as a matter of judicial expertise, it makes far more sense to retain the rule that federal courts lack power to issue these types of decrees because of the special proficiency developed by state tribunals of the past century and a half. 504 U.S. at 703-04.

The same reasoning must guide Congress in consideration of the next bill purporting to create a federal law of child custody.

Such Legislation Would Tie the Hands of Judges.

Whether these matters are decided in federal or state court, the opposed legislation would tie the hands of judges by mandating a particular result in favor of the servicemember parent returning from deployment. It would mandate automatic restoration of custody to the returning parent, provided that he or she had custody of the child at the time of deployment. In forcing that decision, the opposed rule would bar a court from even considering the effect of prolonged parental absence, due to deployment, on the child's best interests. The court would have no discretion in these custody decisions, absent a showing by "clear and convincing" evidence that the child should not resume residence with that parent.

Even where it could be proven by a preponderance of the evidence that the child's best interests lay with a grant of custody to the other parent, the court would be forced to restore the child to the custody of the returning servicemember, unless the more stringent "clear and convincing" threshold could be met.

The States Are Making Rapid Progress in Addressing These Matters.

The states have moved rapidly and responsibly to address the extraordinarily complex set of family law and other legal issues confronting this generation of servicemembers and their families, of whom so much has been demanded. Nine states have enacted legislation squarely addressing the child custody circumstances at issue in the opposed legislation: Arizona, California, Kansas, Kentucky, Louisiana, Michigan, Mississippi, North Carolina and Virginia. More than 20 states have adopted legislation acknowledging the potentially competing interests of the child and custodial servicemember and seeking to balance those interests within the framework of the individual states family service systems. These recent state statutes provide, or will provide, broad protections of family member interests, addressing not only restoration of custody but representation of the servicemember's interests in state proceedings and incorporation of mental health and other state support services.

The typical emergent state statute goes much further than the opposed federal bill in protecting servicemembers' interests. For example, it provides for electronic testimony by deployed servicemembers and expedited dockets for those wishing to organize their affairs in advance of deployment.

Importantly, many of the new comprehensive state laws, unlike the proposed federal legislation, also address child-visitation for servicemembers who do *not* have custody. Most active-duty servicemembers who have minor children are not custodial parents. Department of Defense regulations generally prohibit first-term single parents from having legal custody of a minor child. Moreover, the military lifestyle often compels the servicemember parent to relinquish custody to the non-servicemember parent.

These state-law solutions, tailored to and consonant with particular state social service systems and the broad array of servicemember parental interests, represent by far the better and more effective remedy.

The U.S. Department of Defense strongly opposes the type of legislation at issue — the department has urged in its position statement on point:

The progress with which the states have embraced the military-specific issues has been phenomenal and shows no indication of waning. Five military custody bills became law in just the first six months of 2008. It would be a mistake to intrude on the significant protections and creativity demonstrated by the states.

The opposed bill would do substantial damage to this significant new line of state-based protections, as federal law would be pre-emptive on the burden of proof question and, in a radical and unprecedented departure from the long history of state dominion over family relations disputes, would mandate custody-dispute outcomes from afar without due consideration of the child's best interests. It must be recognized that, at the end of the day, the creative servicemember-parent protections offered by the new and growing array of state statutes are significantly stronger than those contained in this misguided proposal.

B. This Legislation Would Undermine and Misuse
The Servicemembers Civil Relief Act.

The opposed bill would compromise the purpose and effect of the SCRA by converting it into a results-driven hammer for forcing particular outcomes in child custody cases. Such a misuse of this far-reaching legal shield for American servicemembers and their families would destroy its procedural focus, as it applies to courts and litigation, with its provisions for issuing automatic stays, vacating default judgments and appointing counsel for servicemembers.

As the Department of Defense noted in its opposition:

The SCRA . . . currently provides powerful rights to mobilized custodial caregivers. A number of high-visibility custody cases have resulted in custody decisions adverse to deployed servicemembers; however, in many of these cases the basic and generally easily met prerequisites for automatic 90-day stays under the SCRA were not followed. In other cases, judges simply ignored the SCRA. This indicates a problem of a lack of education about the effect and use of the SCRA rather than a problem with its substantive limitations.

The opposed initiative would also introduce a real risk of dilution of important protections already found in the SCRA, by creating the possibility of a legal inference that those protections *only* apply to the particular child custody circumstances addressed by the bill, (i.e., the custody rights of servicemembers who had custody pre-deployment and are returning from deployment.)

The Department of Defense also points out that passage of the proposal could leave “other types of domestic cases vulnerable to arguments that the failure to explicitly address them indicates a legislative intent to exclude them” from SCRA procedural protections.”

The SCRA, as it is written, provides clear protections for civil litigants in uniform, including deployed servicemembers in child custody matters, and it means what it says. Doubt as to the scope and reach of this seminal statute's array of servicemember protections must not be legislatively introduced, where no such doubt currently exists.

Damage to the purpose and function of this pre-eminent servicemember-protection statute was a primary consideration of an original sponsoring entity of the instant resolution, the Standing Committee on Legal Assistance for Military Personnel (LAMP), in its decision to strongly oppose the legislative proposal at issue here. LAMP exists to serve and support American servicemembers and their families. While on its face the offending legislation purports to support servicemember parents, the LAMP Committee has concluded that this support is largely illusory, as the bill would do irreparable harm to state-law-based servicemember protections, which are rapidly improving, and upset the well-established legal-social framework for managing child custody cases affecting military and civilian families alike.

C. The Best Interests of the Child Standard Must be Preserved in Custody Cases.

The opposed bill would compromise the best interest of the child standard in custody decisions. To be sure, in fairness to those who leave home to answer their country's call to arms, the mere fact of deployment of a custodial caregiver, standing alone, cannot constitute legal grounds for depriving a servicemember parent of custody. But the proposal in question veers off to the opposite extreme, making restoration of pre-deployment custody *automatic* and relegating the child's interests to a secondary consideration, unless it can be shown by "clear and convincing" evidence that restoring custody to that servicemember-parent would be against the child's best interests. In the murky world of most family relationships, proving anything to a "clear and convincing" certainty is a tall order indeed. The proposed standard thus would turn on its head the generally-accepted "best interests" standard, a deviation that would represent a dangerous precedent that ultimately serves no one's interests, including those of servicemembers or their families.

Additional Considerations

The proposal is also unworkable to the extent that it would only create custody rights in cases involving the actual deployment of a servicemember to a "contingency operation," which means a designated conflict zone such as Iraq or Afghanistan. As the Department of Defense noted, this introduces

another arbitrarily created distinction between those involved in a contingency operation and those who must be absent from their child for other military-directed reasons. Why should the deployment of a servicemember in support of a humanitarian operation, as opposed to a peacekeeping operation, be forced to operate under different laws and perhaps different courts? Few other provisions of the SCRA turn on such arbitrarily imposed distinctions.

Likewise, no protections would be afforded servicemembers who are called up to replace those mobilized and who take their places, yet are not on a humanitarian mission, and those who face military absence due to the nature of the mission – an “unaccompanied tour.” There is no reason why these members of the military should face disparate treatment.

On a separate point, all of the service branches (Army, Navy, Air Force, Coast Guard and Marine Corps) have been developing new Family Care Plan instructions designed to encourage servicemembers to create explicit plans for the handling of child custody issues and other family matters in the event of deployment. Going forward, the revised Family Care Plan instructions, once completed by all the services, should prevent a number of these custody disputes from arising, further obviating a statutory fix that would be far worse than the problem.

Respectfully submitted by:

Anita M. Ventrelli, Chair, Section of Family Law

Donald J. Guter, Chair, Standing Committee on Legal Assistance for Military Personnel

February 2009

GENERAL INFORMATION FORM

Submitting Entities: ABA Section of Family Law
ABA Standing Committee on Legal Assistance for Military Personnel

Submitted By: Anita M. Ventrelli, Chair, Section of Family Law
Donald J. Guter, Chair, Standing Committee on Legal Assistance for
Military Personnel

1. Summary of Recommendation(s).

The Section of Family Law and the Standing Committee on Legal Assistance for Military Personnel (LAMP) of the American Bar Association recommend to the ABA House of Delegates that the ABA urge Congress to oppose any federal legislation that would create a new federal law of child custody controlling resolution of child-custody disputes involving the custodial rights of servicemember-parents. They recommend opposition to such legislation to the extent that it would: create federal-question jurisdiction over these child custody cases; threaten existing procedural protections for American servicemembers found in the Servicemembers Civil Relief Act; co-opt the growing body of state laws that comprehensively address the domestic relations interests of servicemembers; and legislatively dictate outcomes and evidentiary burdens in child-custody cases, while compromising the best-interests-of-the-child standard.

2. Approval by Submitting Entity.

This Recommendation was approved by the Council of the Section of Family Law on October 2, 2008 and by the LAMP Committee on November 14, 2008.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This Recommendation is consistent with the American Bar Association's 1984 policy urging the legal profession to direct attention to issues affecting children, including the preservation of children's legal rights; the 1995 policy urging respect of the rights of all children in the United States; and the 1993 policy urging amendment of the former Soldiers' and Sailors' Civil Relief Act to clarify and modernize the Act's protections of American servicemembers.

5. What urgency exists which requires action at this meeting of the House?
 The latest iteration of the opposed legislation was introduced as part of the Fiscal Year 2009 National Defense Authorization Act. Only at the eleventh hour was this bill, along with other bills amending the Servicemembers Civil Relief Act, purged from the Defense Authorization Act. Congressional staff and observers who closely follow this subject expect the bill to be reintroduced in 2009. Action by the House at this time is necessary to have an influence on Senate and Congressional action.
6. Status of Legislation. (If applicable.)
 The opposed bill, section 4510 of H.R. 5658, would have amended 50 U.S.C. App. § 521, the Servicemembers Civil Relief Act. It was introduced in the 110th Congress in 2008. It was not adopted as part of the final FY 2009 National Defense Authorization Act. It is not a currently pending bill, but is expected to be reintroduced.
7. Cost to the Association. (Both direct and indirect costs.)
 None.
8. Disclosure of Interest. (If applicable.)
 None.
9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)
 The Resolution and Report were distributed to the following ABA entities on Nov. 13, 2008, with the request for their co-sponsorship:
 Standing Committee on Armed Forces Law,
 Standing Committee on Legal Aid and Indigent Defense (SLCAID),
 Section of Litigation,
 Center for Children and the Law,
 General Practice, Solo, and Small Firm Division (Military Committee),
 Government and Public Sector Lawyers Division,
 Judicial Division,
 Section of Individual Rights and Responsibilities, and
 Young Lawyers Division.
- Government and Public Sector Lawyers Division is reviewing the recommendation;
 SLCAID will vote on co-sponsorship on Nov. 22, 2008.

10. Contact Persons. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Persons. (Who will present the report to the House. Please include email address and cell phone number.)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Recommendation calls for the American Bar Association to urge Congress to oppose legislation that would create a federal law of child custody controlling state custody cases involving servicemember-parents. The Recommendation urges that the legislation be stopped because it would dictate court outcomes in child custody cases, even where the child's best interests do not support that outcome; create federal-question jurisdiction over child custody cases, long the province of state courts; impose federally-mandated evidentiary burdens on state courts; co-opt the growing body of state laws that comprehensively and appropriately address domestic relations matters affecting servicemembers; and cast doubt on existing servicemember protections found in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501-596.

2. Summary of the Issue that the Resolution Addresses

The issue arises from strong concern among child advocates, military legal assistance experts and others that the opposed legislation would inappropriately employ federal fiat to invade the province of the states by dictating court outcomes in child custody cases affecting deployed servicemembers. The opposed legislation provides that deployed servicemembers who had child custody at the time of their deployment would automatically have that custody restored upon their return, irrespective of other considerations affecting the best interests of the child. The opposed legislation would provide that custody could be denied to the returning servicemember in such a case only by a showing of "clear and convincing" evidence that it was not in the child's best interests. The opposed legislation improperly creates federal substantive law and evidentiary rules for custody determinations historically left to state courts. The opposed legislation would misuse the Servicemembers Civil Relief Act, the source of important procedural protections for servicemembers in litigation, to dictate substantive outcomes in custody cases. The legislation would cast doubt of the ample and adequate servicemember protections already found in the SCRA. The opposed legislation would create federal-question jurisdiction over these child custody cases, a role federal courts are ill-equipped to fulfill. The opposed legislation would pre-empt the emerging body of state laws that comprehensively and organically address servicemember domestic relations interests. The essence of the issue is that the opposed legislation is not in the interest of children or servicemembers.

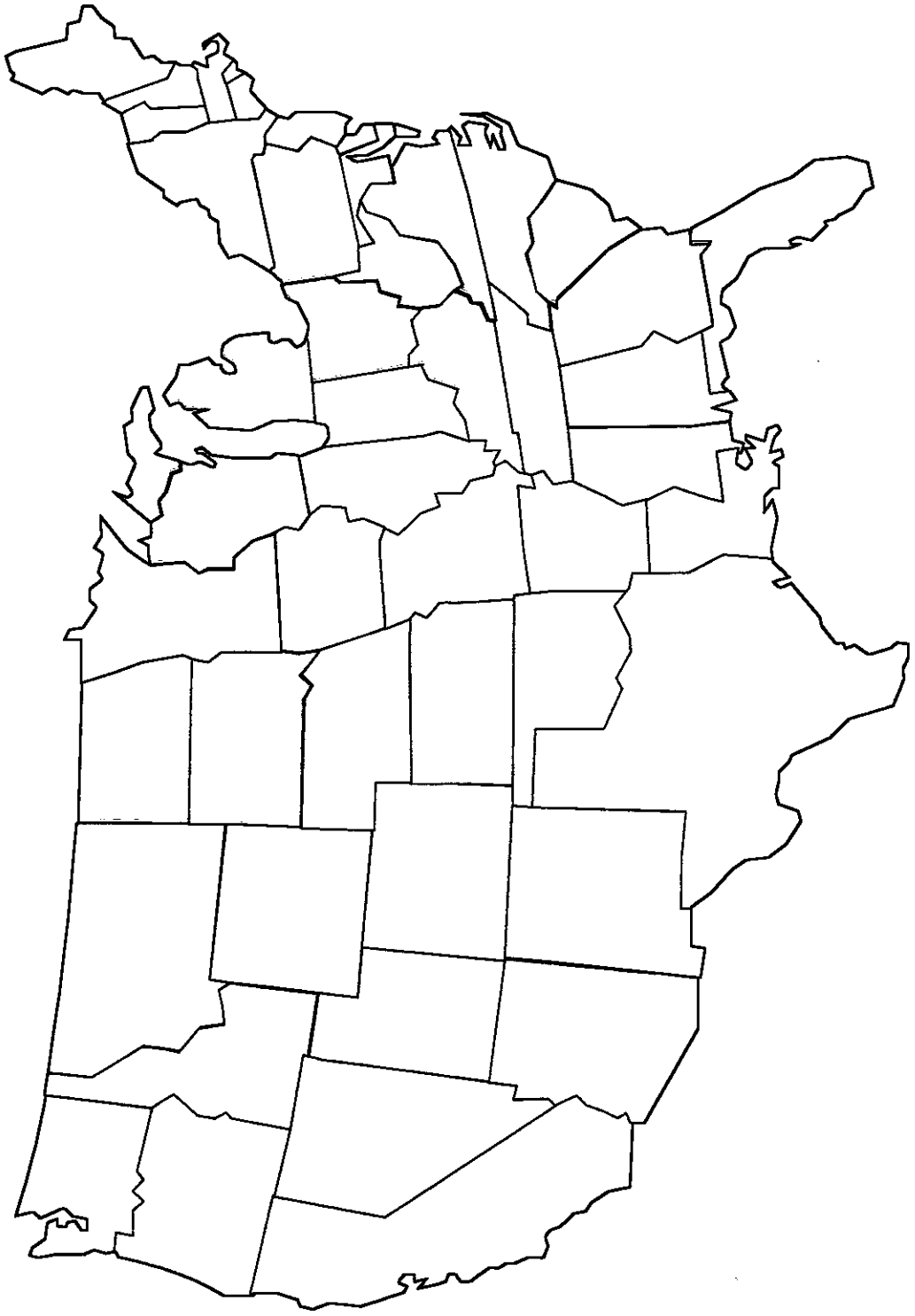
3. Please Explain How the Proposed Policy Position will Address the Issue

The Proposed Policy would influence the United States Senate and the House of Representatives to oppose the legislation and thereby remove the threat to the interests of children and servicemembers posed thereby.

4. Summary of Minority Views

We are aware of no minority views within the ABA.

Child Custody



ALASKA STATE LEGISLATURE

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Charlie Huggins Senator

February 4, 2010

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Senator Charlie Huggins

Subject: Request to Schedule SB 210 for a Hearing

I respectfully request the scheduling of SB 210, "An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure," for a hearing before the Senate Judiciary Committee at your earliest convenience.

Please contact Josh Tempel, staff person for the Joint Alaska State Legislative Veterans' Caucus, with any questions on the details of this bill. Josh's phone number is 465-4066.

Please find attached pertinent information for the committee.

Thank you.

Attachments