

The Senate Judiciary Committee offered the following substitute to SB 112:

A BILL TO BE ENTITLED  
AN ACT

1 To provide for a short title; to amend Article 1 of Chapter 9 of Title 19 of the Official Code  
2 of Georgia Annotated, relating to general provisions for child custody proceedings, so as to  
3 provide protection in child custody disputes to members of the armed forces; to change  
4 provisions relating to parenting plans; to change provisions relating to the discretion of the  
5 judge in custody disputes; to provide for definitions; to provide for related matters; to provide  
6 for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Military Parents Rights Act."

10 **SECTION 2.**

11 Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to  
12 general provisions for child custody proceedings, is amended by revising paragraph (2) of  
13 subsection (b) of Code Section 19-9-1, relating to parenting plans, as follows:

14 "(2) Unless otherwise ordered by the judge, or agreed upon by the parties, a parenting  
15 plan shall include, but not be limited to:

16 (A) Where and when a child will be in each parent's physical care, designating where  
17 the child will spend each day of the year;

18 (B) How holidays, birthdays, vacations, school breaks, and other special occasions will  
19 be spent with each parent including the time of day that each event will begin and end;

20 (C) Transportation arrangements including how the child will be exchanged between  
21 the parents, the location of the exchange, how the transportation costs will be paid, and  
22 any other matter relating to the child spending time with each parent;

23 (D) Whether supervision will be needed for any parenting time and, if so, the  
24 particulars of the supervision;

- 25 (E) An allocation of decision-making authority to one or both of the parents with  
 26 regard to the child's education, health, extracurricular activities, and religious  
 27 upbringing, and if the parents agree the matters should be jointly decided, how to  
 28 resolve a situation in which the parents disagree on resolution; and
- 29 (F) What, if any, limitations will exist while one parent has physical custody of the  
 30 child in terms of the other parent contacting the child and the other parent's right to  
 31 access education, health, extracurricular activity, and religious information regarding  
 32 the child; and
- 33 (G) If a military parent is a party in the case:
- 34 (i) How to manage the child's transition into temporary physical custody to the  
 35 nondeploying parent;
- 36 (ii) The manner in which the child will maintain continuing contact with the deployed  
 37 parent;
- 38 (iii) How the noncustodial deployed parent's parenting time may be delegated to his  
 39 or her extended family;
- 40 (iv) How the plan will be resumed once the deployed parent returns from  
 41 deployment; and
- 42 (v) How this arrangement serves the best interest of the child."

43

### SECTION 3.

44 Said article is further amended in Code Section 19-9-3, relating to the discretion of the judge  
 45 in custody disputes, by revising subsection (b) and by adding a new subsection to read as  
 46 follows:

47 "(b) In any case in which a judgment awarding the custody of a child has been entered, on  
 48 the motion of any party or on the motion of the judge, that portion of the judgment  
 49 effecting visitation rights between the parties and their child or parenting time may be  
 50 subject to review and modification or alteration without the necessity of any showing of  
 51 a change in any material conditions and circumstances of either party or the child, provided  
 52 that the review and modification or alteration shall not be had more often than once in each  
 53 two-year period following the date of entry of the judgment. However, this subsection  
 54 shall not limit or restrict the power of the judge to enter a judgment relating to the custody  
 55 of a child in any new proceeding based upon a showing of a change in any material  
 56 conditions or circumstances of a party or the child. A military parent's absences caused by  
 57 the performance of his or her deployments, or the potential for future deployments, shall  
 58 not be the sole factor considered in supporting a claim of any change in material conditions  
 59 and circumstances of either party or the child."

60 "(i) Notwithstanding other provisions of this article, whenever a military parent is deployed  
61 to a location away from his or her child, the following shall apply:

62 (1) If such parent's duties require him or her to be separated from his or her child, a court  
63 shall not enter a final order modifying parental rights and responsibilities under an  
64 established parenting plan earlier than 90 days after the deployment ends, unless such  
65 modification is agreed to by the deployed parent;

66 (2) Upon a petition filed by a deploying parent or nondeploying parent, the court shall  
67 enter an order temporarily establishing or modifying an existing parenting plan to ensure  
68 contact during the period of deployment when:

69 (A) A military parent receives notice from military leadership that he or she will  
70 deploy in the near future, and such parent has primary physical custody, joint physical  
71 custody, or sole physical custody of a child, or otherwise has parenting time with a  
72 child under an existing parenting plan; and

73 (B) The deployment would have a material effect upon a deploying parent's ability to  
74 exercise parental rights and responsibilities toward his or her child either in the existing  
75 relationship with the other parent or under an established parenting plan;

76 (3) Petitions for modification because of deployment shall be heard by the court as  
77 expeditiously as possible and shall be a priority on the court's calendar;

78 (4)(A) All temporary modification orders shall include a reasonable and specific  
79 transition schedule to facilitate a return to the predeployment parenting plan over the  
80 shortest reasonable time period after the deployment ends, taking into consideration the  
81 child's best interest;

82 (B) A temporary modification order shall set a date certain for the anticipated end of  
83 the deployment and the start of the transition period back to the permanent parenting  
84 plan. If the deployment is extended, the temporary modification order shall remain in  
85 effect, and the transition schedule shall take effect at the end of the extension of the  
86 deployment. In such case, the nondeploying parent shall notify the court in accordance  
87 with this paragraph of the extension of the deployment. Failure of the nondeploying  
88 parent to notify the court in accordance with this paragraph shall not prejudice the  
89 deploying parent's right to return to the permanent parenting plan once the temporary  
90 modification order expires as provided in subparagraph (C) of this paragraph; and

91 (C) A temporary modification order shall expire upon the completion of the transition  
92 period and the prior permanent parenting plan shall then establish the rights and  
93 responsibilities between parents for the child;

94 (5) Upon a petition filed by the deploying parent and upon a finding that it serves the  
95 best interest of the child, the court may delegate for the duration of the deployment any  
96 portion of the deploying parent's parenting time with the child to anyone in his or her

97 extended family, including but not limited to an immediate family member, a person with  
98 whom the deploying parent cohabits, or another person having a close and substantial  
99 relationship to the child. Such delegated parenting time shall not create any separate  
100 rights to such person once the period of deployment has ended;

101 (6) If the court finds it to be in the child's best interest, a temporary modification order  
102 issued under this subsection may require any of the following:

103 (A) The nondeploying parent shall make the child reasonably available to the  
104 deploying parent to exercise his or her parenting time immediately before and after the  
105 deploying parent departs for deployment and whenever the deploying parent returns to  
106 or from leave or furlough from his or her duties;

107 (B) The nondeploying parent shall facilitate opportunities for the deployed parent to  
108 have regular and continuing contact with his or her child by telephone, e-mail  
109 exchanges, virtual video parenting time through the Internet, or any other similar  
110 means;

111 (C) A nondeploying parent shall not interfere with the delivery of correspondence or  
112 packages between the deployed parent and child of such parent; and

113 (D) The deploying parent shall provide timely information regarding his or her leave  
114 and departure schedule to the nondeploying parent. Since actual leave and departure  
115 dates are subject to change with little notice due to military necessity, such changes  
116 shall not be used by the nondeploying parent to prevent contact between the deployed  
117 parent and his or her child;

118 (7) A court order temporarily modifying a previous parenting plan or other order  
119 governing parent-child rights and responsibilities shall specify that the deployment is the  
120 basis for the order and it shall be entered by the court only as a temporary modification  
121 order or interlocutory order.

122 (8) A court order temporarily modifying a previous order shall require the nondeploying  
123 parent to provide the court and the deploying parent with no less than 30 days' advance  
124 written notice of any intended change of residence address, telephone numbers, or e-mail  
125 address;

126 (9) A relocation by the nondeploying parent during a period of the deployed parent's  
127 absence and occurring during the period a temporary modification order is entered shall  
128 not act to terminate the exclusive and continuing jurisdiction of the court for purposes of  
129 later determining custody or parenting time under this title;

130 (10) Upon the deployed parent's final return from deployment, either parent may file a  
131 petition to modify the temporary modification order on the grounds that compliance with  
132 the temporary modification order will result in immediate danger of irreparable harm to  
133 the child, and may further request that the court issue an ex parte order. The deployed

134 parent may file such a petition prior to his or her return. The petition shall be  
135 accompanied by an affidavit in support of the requested order. Upon a finding of  
136 irreparable harm based on the facts set forth in the affidavit, the court may issue an ex  
137 parte order modifying the temporary parenting plan or other parent-child contact in order  
138 to prevent the irreparable harm. If the court issues an ex parte order, the court shall set  
139 the matter for hearing within ten days from the issuance of the ex parte order;

140 (11) Nothing in this subsection shall preclude either party from filing a petition for  
141 permanent modification of an existing parenting plan under subsection (b) of this Code  
142 section; provided, however, that the court shall not conduct a final hearing on such  
143 petition until at least 90 days after the final return of the deploying parent. There shall  
144 exist a presumption favoring the parenting plan or custody order in place prior to the  
145 deployment as one that still serves the best interest of the child, and the party seeking to  
146 permanently modify such prior order shall have the burden to prove that it no longer  
147 serves the best interest of the child. In all cases, the court shall not consider the mere  
148 absence or disruption to a child created by a parent's deployment as the sole factor in  
149 determining any change in material conditions or circumstances;

150 (12) When the deployment of a military parent has a material effect upon his or her  
151 ability to appear in person at a scheduled hearing, then upon request by the deploying  
152 parent and provided reasonable advance notice is given to other interested parties, the  
153 court shall allow a deployed parent to present testimony and other evidence by electronic  
154 means for any matter considered by the court under this subsection. For purposes of this  
155 paragraph, the term 'electronic means' shall include, but not be limited to,  
156 communications by telephone, video teleconference, Internet connection, or  
157 electronically stored affidavits or documents sent from the deployment location or  
158 elsewhere;

159 (13) When deployment of a military parent appears imminent and there is no existing  
160 parenting plan or other order setting forth the parent's rights and responsibilities, then  
161 upon a petition filed by either parent the court shall:

162 (A) Expedite a hearing to establish a temporary parenting plan;

163 (B) Require that the deploying parent shall have continued access to the child;

164 (C) Ensure the disclosure of financial information pertaining to both parties;

165 (D) Determine the child support responsibilities under Code Section 19-6-15 of both  
166 parents during the deployment; and

167 (E) Determine the child's best interest and consider delegating to any third parties with  
168 close contacts to the child any reasonable parenting time during the deployment. In  
169 deciding such request the court shall consider the reasonable requests of the deployed  
170 parent.

171 Any pleading filed to establish a parenting plan or child support order under this  
 172 paragraph shall be identified at the time of filing by stating in the text of the pleading the  
 173 specific facts related to the deployment and by referencing this subsection of this Code  
 174 section;

175 (14) When an impending deployment precludes court expedited adjudication before  
 176 deployment, the court may agree to allow the parties to arbitrate any issues as allowed  
 177 under Code Section 19-9-1.1, or order the parties to mediation under any court  
 178 established alternative dispute resolution program. Each party shall be under a duty to  
 179 provide to the other party information relevant to any parenting plan or support issues  
 180 pertaining to the children or the parties;

181 (15) Each military parent shall be under a continuing duty to provide written notice to  
 182 the nondeploying parent within 14 days of the military parent's receipt of oral or written  
 183 orders requiring deployment or any other absences due to military service that will impact  
 184 the military parent's ability to exercise his or her parenting time with a child. If  
 185 deployment orders do not allow for 14 days' advance notice, then the military parent shall  
 186 provide written notice to the other parent immediately upon receiving such notice; and

187 (16) A military parent shall ensure that any military family care plan that he or she has  
 188 filed with his or her commander is consistent with any existing court orders for his or her  
 189 child. In all instances any court order will be the first course of action for the care of a  
 190 child during the absence of a military parent, and the military family care plan will be the  
 191 alternative plan if the nondeploying parent either refuses to provide care for the child or  
 192 acknowledges an inability to provide reasonable care for the child. A military parent  
 193 shall not be considered in willful contempt of any court order or parenting plan when he  
 194 or she in good faith implements his or her military family care plan based upon the  
 195 refusal or claimed inability of a nondeploying parent to provide reasonable care for a  
 196 child during a deployment."

197 **SECTION 4.**

198 Said article is further amended by revising Code Section 19-9-6, relating to definitions for  
 199 the article, as follows:

200 "19-9-6.

201 As used in this article, the term:

202 (1) 'Armed forces' means the national guard and the reserve components of the armed  
 203 forces, the United States army, navy, marine corps, coast guard, and air force.

204 (2) 'Deploy' or 'deployment' means military service in compliance with the military  
 205 orders received by a member of the armed forces to report for combat operations,  
 206 contingency operations, peacekeeping operations, a remote tour of duty, temporary duty,

207 or other such military service for which a parent is required to report unaccompanied by  
 208 family members. Deployment shall include the period during which a military parent  
 209 remains subject to deployment orders and remains deployed on account of sickness,  
 210 wounds, leave, or other lawful cause. Such term shall include mobilization.

211 (3) 'Deploying parent' or 'deployed parent' means a military parent who has been notified  
 212 by military leadership that he or she will deploy or mobilize or who is currently deployed  
 213 or mobilized.

214 ~~(4)~~(4) 'Joint custody' means joint legal custody, joint physical custody, or both joint legal  
 215 custody and joint physical custody. In making an order for joint custody, the judge may  
 216 order joint legal custody without ordering joint physical custody.

217 ~~(2)~~(5) 'Joint legal custody' means both parents have equal rights and responsibilities for  
 218 major decisions concerning the child, including the child's education, health care,  
 219 extracurricular activities, and religious training; provided, however, that the judge may  
 220 designate one parent to have sole power to make certain decisions while both parents  
 221 retain equal rights and responsibilities for other decisions.

222 ~~(3)~~(6) 'Joint physical custody' means that physical custody is shared by the parents in  
 223 such a way as to assure the child of substantially equal time and contact with both  
 224 parents.

225 (7) 'Military family care plan' means a plan that is periodically reviewed by a military  
 226 parent's commander that provides for care of a military parent's child whenever his or her  
 227 military duties prevent such parent from providing care to his or her child and ensures  
 228 that a military parent has made adequate and reasonable arrangements to provide for the  
 229 needs and supervision of his or her child whenever a nondeploying parent is unable or  
 230 unavailable to provide care in the military parent's absence.

231 (8) 'Military parent' means a member of the armed forces who is a legal parent, adoptive  
 232 parent, or guardian of a child under the age of 18, whose parental rights are established  
 233 either by operation of law or the process of legitimation, and who has not had his or her  
 234 parental rights terminated by a court of competent jurisdiction.

235 (9) 'Mobilization' or 'mobilize' means the call-up of the national guard and the reserve  
 236 components of the armed forces to extended active duty service. Such term shall not  
 237 include National Guard or Reserves component annual training, inactive duty days, drill  
 238 weekends, or state active duty performed within the boundaries this state.

239 (10) 'Nondeploying parent' means:

240 (A) A parent who is not a member of the armed forces; or

241 (B) A military parent who is currently not also a deploying parent.

242 ~~(4)~~(11) 'Sole custody' means a person, including, but not limited to, a parent, has been  
 243 awarded permanent custody of a child by a court order. Unless otherwise provided by

244 court order, the person awarded sole custody of a child shall have the rights and  
245 responsibilities for major decisions concerning the child, including the child's education,  
246 health care, extracurricular activities, and religious training, and the noncustodial parent  
247 shall have the right to visitation or parenting time. A person who has not been awarded  
248 custody of a child by court order shall not be considered as the sole legal custodian while  
249 exercising visitation rights or parenting time.

250 (12) 'State active duty' means the call-up by a governor for the performance of any  
251 military duty while serving within the boundaries of that state.

252 (13) 'Temporary duty' means the assignment of a military parent to a geographic location  
253 outside of this state for a limited period of time to accomplish training or to assist in the  
254 performance of a military mission."

255 **SECTION 5.**

256 This Act shall become effective upon its approval by the Governor or upon its becoming law  
257 without such approval.

258 **SECTION 6.**

259 All laws and parts of laws in conflict with this Act are repealed.