Senate Bill 112

By: Senators McKoon of the 29th, Harbison of the 15th, Rogers of the 21st, Carter of the 1st, Gooch of the 51st and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

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

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

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

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

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

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

(E) An allocation of decision-making authority to one or both of the parents with regard to the child's education, health, extracurricular activities, and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution; ~~and~~

(F) What, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity, and religious information regarding the child; and

(G) If a military parent is a party in the case:

(i) How to manage the child's transition into temporary physical custody to the nondeploying parent;

(ii) The manner in which the child will maintain continuing contact with the deployed parent;

(iii) How the noncustodial deployed parent's parenting time may be delegated to his or her extended family;

(iv) How the plan will be resumed once the deployed parent returns from deployment; and

(v) How this arrangement serves the best interest of the child.″

SECTION 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4.

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

″19-9-6.

As used in this article, the term:

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

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

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

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

~~(1)~~(4) 'Joint custody' means joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. In making an order for joint custody, the judge may order joint legal custody without ordering joint physical custody.

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

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

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

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

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

(10) 'Nondeploying parent' means:

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

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

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

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

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

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

SECTION 5.

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

SECTION 6.

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