

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUB. FOR SENATE BILL NO. 32**

As Agreed to April 4, 2008

Brief*

House Sub. for SB 32 would change current law regarding divorce, child custody, and parenting time when a parent receives military deployment, mobilization, temporary duty orders, or unaccompanied tour. The bill would require permanent parenting plans which would include provisions for custody and parenting time upon deployment, mobilization, temporary duty, or unaccompanied tour. It would be presumed that such an agreement is in the best interest of the child, to be determined by the court.

The bill would define relevant terms, authorize the court to delegate a deploying parent's parenting time if it is in the best interests of the child, and outline the court's protocol in these cases.

The bill would become effective upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee agreed to the House amendment with the following deletions and additions:

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

- Define the terms “deployment,” “mobilization,” “service member,” “temporary duty,” “unaccompanied tour,” and “nondeploying parent;”
- Strike the section authorizing the court to retain jurisdiction over any custody or parenting time matter concerning the deploying parent;
- Strike the section providing that any temporary custody would end no later than 10 days after a deploying parent with joint legal custody returns from deployment;
- Strike the section that provides that deployment would not be a factor in determining a change in circumstance if a motion is filed to transfer custody from the deploying parent to the nondeploying parent;
- Retain the provision regarding the court’s authority to delegate parenting time of a deploying parent to a member of the deploying parent’s family with a close and substantial relationship to the child, if it is in the best interests of the child;
- Provide that deployment, by itself, would not be considered a material change in circumstance which would warrant permanent modification of a custody or visitation order;
- Provide that a court order limiting custodial or parenting time rights of a deploying parent because of the deployment would be required to specify the temporary order was made because of the deployment and would require the nondeploying parent to provide the court with 30 day advance written notice of any change of address or telephone number;

- Provide an expedited process in which the deploying parent returning from deployment would be able to amend or review the custody or visitation order entered into because of the deployment and would place the burden of proof on the nondeploying parent to show that reentry of the custody or parenting time order in effect prior to deployment is no longer in the best interests of the child;
- Provide that a nondeploying parent would be required to reasonably accommodate the leave schedule of the deploying parent, and facilitate communication between the deploying parent or guardian and the child during the deployment period; and
- Provide that the deploying parent would be required to provide timely information regarding the deploying parent or guardian's leave schedule; and
- Provide the penalty for failure to comply with any order of the court would be contempt of court.

Background

The language in the bill as agreed to by the Conference Committee contains language modeled after the Virginia Military Parents Equal Protection Act. The prior provisions of House Sub. for SB 32 were introduced in 2008 HB 2621. The House Committee of the Whole passed the bill as amended. HB 2621 received a hearing in the Senate Committee on Judiciary but was not advanced to final action.

Stacy Adair, citizen, spoke in favor of 2008 HB 2621 in the House Committee on Judiciary on behalf of his sister who is deployed in Iraq. Colonel Bruce Woolpert, Kansas National Guard, addressed the need for the protection of service members. Others who appeared in support of the measure included Lt. Col. (Retired) Craig Beardsley, Kansas National Guard; Sgt. Doug Mulgreen, Kansas National Guard; and Matthew Shelton, Chief of Legal Assistance, Fort Riley, Kansas.

Barry Boswell, returned soldier, cited his personal experience in this area. N. Trip Shawver, attorney, Wichita, also past Chairman of the Family Law Section of the Kansas Bar Association, addressed his concerns with the bill and made recommendations to address these concerns.

The House Committee amended 2008 HB 2621 to do the following:

- Add a provision to include family members (*e.g.*, grandparents) who have parenting rights;
- Make clarifying changes; and
- Make the effective date publication in the *Kansas Register*.

The House Committee of the Whole further amended HB 2621 to add the language regarding “unaccompanied tour.” The bill, as further amended, was passed by the House Committee of the Whole on a vote of 122 yeas to 0 nays.

There were no proponents of the bill in the Senate Committee on Judiciary. Opponents to HB 2621 in the Senate Committee were Ron Nelson, Attorney; Charles F. Harris, Attorney; and Professor Linda Elrod, Washburn University School of Law. The Senate Committee did not take further action on the bill.

The House Committee on Judiciary struck the provisions of SB 32 (regarding medical assistance for trust beneficiaries) and inserted identical language from 2008 HB 2621, as further amended by the House Committee of the Whole. House Sub. for SB 32 was passed by the House Committee of the Whole on a vote of 123 yeas to 0 nays.

It should be noted that 2007 SB 32 (medical assistance for trust beneficiaries) was sent to the 2007 Special Committee on Judiciary for interim study. 2008 SB 412 is the product of that study. That bill was passed by the Legislature and signed by

the Governor on March 26, 2007.

The Senate nonconcurred to the amendments made by the House and requested a Conference Committee. The House acceded to the request to conference. The Conference Committee agreed to a compromise to incorporate language from the Virginia Military Parents Equal Protection Act into the bill. The Conference Committee also specifically agreed to retain the language regarding the court's authority to delegate the deploying parent's parenting time.

The fiscal note on the House Substitute bill, originally HB 2621, indicates that additional cases would be brought before the district courts. The Office of Judicial Administration is unable to estimate the cost involved until after the courts have had an opportunity to operate under the bill's provisions. Any fiscal effect resulting from passage of this bill would be in addition to amounts included in *The FY 2009 Governor's Budget Report*.

Military deployment and child custody