

# Legislative Analysis

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## PROTECT CUSTODY RIGHTS OF ACTIVE DUTY NATIONAL GUARD AND RESERVE MEMBERS

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**House Bill 5100 as enrolled**  
**Public Act 328 of 2005**  
**Sponsor: Rep. Rick Jones**  
**House Committee: Family and Children Services**  
**Senate Committee: Judiciary**

**Senate Bill 714 as enrolled**  
**Public Act 327 of 2005**  
**Sponsor: Sen. Patricia L. Birkholz**  
**Senate Committee: Judiciary**  
**House Committee: Family and Children Services**

### Second Analysis (8-15-06)

**BRIEF SUMMARY:** The bills would amend the Child Custody Act to address cases when a parent is a Reserve unit member or a National Guard unit member separated from a child because he or she has been called into active military duty. Generally, it prevents modification of child custody orders while a parent is on active duty and prevents the absence due to active military duty from being subsequently used in a best interest of the child determination.

**FISCAL IMPACT:** The bills would have no fiscal impact.

### **THE APPARENT PROBLEM:**

The Child Custody Act (Public Act 91 of 1970) defines the rights of minor children and establishes the rights and duties of their custody, support and parenting time in disputed actions, and declares the rights and duties to provide support for a child, among other things. The act specifies that, "If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control." The act defines "best interests of the child" as the sum total of twelve factors to be considered, evaluated, and determined by the court. (See [Background Information](#).)

According to committee testimony and accounts in the press, some members of the National Guard or Armed Forces Reserve units who have been called to active duty face the possibility of losing custody rights to their children because of the absence from home caused by their service. In one well-publicized case, a Michigan man who had enjoyed 50-50 custody for five years prior to being called up reportedly lost custody while in Iraq for 15 months. This was due, the soldier said, to his absence while deployed being treated as abandonment. (Others, including the child's mother, reportedly dispute this account of the reasons for the ending of shared custody.) There are said to be a number of other cases where custody disputes have arisen as a result of the active duty deployment of military personnel.

Some people believe that the law should be changed to protect servicemen and servicewomen absent from home because they have been called to active duty from court actions that use that absence as a reason to change custody rights.

### ***THE CONTENT OF THE BILLS:***

The bills would amend the Child Custody Act to address cases when a parent is a Reserve unit member or National Guard unit member separated from a child because he or she has been called into active military duty.

House Bill 5100 would specify that if a motion for change of a child's custody is filed during the time a parent is called to active military duty, the court could not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement existing on the date the parent was called to active military duty. However, the court could enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court must reinstate the custody order in effect immediately before the period of active military duty. If a motion for change of custody is filed after a parent returns from active duty, the court could not consider a parent's absence due to that military duty in a best of interest of the child determination.

Senate Bill 714 would amend the act to specify that "active military duty" means when a Reserve unit member or National Guard unit member is called into active military duty.

MCL 722.22 & 722.27

### ***BACKGROUND INFORMATION:***

In the Child Custody Act, the term "best interests of the child" is defined as the sum total of the following factors to be considered, evaluated, and determined by the court.

- a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

### ***ARGUMENTS:***

#### ***For:***

The sponsor of the bill has said, "This bill is about protecting our servicemen and women while they are protecting our freedoms." The aim is to prevent a parent's separation from a child that results from active military duty from being considered in a child custody dispute when a court is making a best-interest-of-the-child determination. Note that the bill applies to members of the National Guard and Reserves called to active duty; that is, to military personnel who have no choice over their deployment. For the law to allow them to face the possibility of losing custody of children as a result seems radically unfair.

#### ***Against:***

It is a mistake to change the focus of the custody law from the interests of the child to the interests of the parent. The act says explicitly that in custody disputes, the best interests of the child control. In custody cases, all the facts of the case should be considered. Courts should not be prevented from taking other factors into account just because one of the parents is called to active duty. The bill would appear to say that once an active duty parent is involved, the court cannot use other factors to make custody decisions. Some critics also say it is a mistake to pretend the absence due to military service is not happening. There are so many issues involved in these cases that each case needs to be evaluated on its own terms and needs to be looked at comprehensively.

#### ***Response:***

Supporters of the bill say it is not meant to prevent the law from acting in the best interest of the child; it is intended to prevent the fact of a parent's mandatory active duty service from being used against the parent in child custody disputes and to prevent adverse decisions while the parent is absent.

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