

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 23, 2008 in Room 313-S of the Capitol.

All members were present except:

Annie Kuether- excused
Jason Watkins - excused
Kay Wolf - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Stacey Adair, Citizen
Colonel Bruce Woolpert, Kansas Army National Guard
Retired Lt. Colonel Craig Beardsley, Kansas Army National Guard
Doug Mulqueen, Soldier
Matthew Shelton, Chief of Legal Assistance, Department of the Army, Ft. Riley
Trip Shawver, Attorney, Wichita

Representative O'Neal requested a bill on behalf of Representative Jene Vickrey that would amend the negligence homicide statute. He made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

The hearing on **HB 2621- child custody & parenting time; service member provisions; military deployment, mobilization or temporary duty**, was opened.

Jerry Ann Donaldson, Legislative Research Department, provided the committee with a brief overview of the recommendations from the Special Committee on Judiciary for this topic. It was recommended that a bill be introduced which would include provisions of a North Carolina statute on custody visitations and military orders. It would include a mandatory parenting plan and would allow for Kansas courts to retain jurisdiction unless both parents agree otherwise.

Stacey Adair, citizen, relayed the details of his sister's problems she encountered once she was called to serve in Iraq. When the divorce was granted, she was given primary custody. Her ex-husband was awarded custody once she was deployed and has caused many problems. He believes that laws need to be changed to ensure soldier's can regain custody of their children once their deployments are over. (Attachment #1)

Colonel Bruce Woolpert, Kansas Army National Guard, suggested that there would probably not be any action taken at the Federal level to help those deployed and urged the committee to pass legislation. He commented that ex-spouses are simply taking advantage of the situation with regard to custody because they know it will be hard for the military parent to regain it once they are back.

He particularly liked the "Delegation of Visitation Rights" provision which keeps all family members involved in the child's life, regardless of who has custody. However, he requested an amendment that would change "to a family member" to "to member(s) of the service member's family". This change would eliminate any doubt that the service member's current family would be considered by the court. (Attachment #2)

Retired Lt. Colonel Craig Beardsley, Kansas Army National Guard, informed the committee that out of 83 recent deployments three had custody issues. (Attachment #3)

Doug Mulqueen, Soldier, shared the details of him losing shared custody of his daughters due to deployment and the struggle he has had in getting the court to re-instate or at least make parenting time more equal. (See Attachment #3)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 23, 2008 in Room 313-S of the Capitol.

Matthew Shelton, Chief of Legal Assistance, Department of the Army, Ft. Riley, commented that it's hard for soldier's to get custody arrangements done between the time they are given notice of deployment and the actual deployment. He likes the portion of the bill that requires a parenting plan if deployment happens. (Attachment #4)

Trip Shawver, Attorney, Wichita, suggested an amendment to add "parents preference doctrine" to allow the court to consider what is in the best interest of the child when determining these types of custody issues. This would allow judges to consider step-parents and other family members when placement is being determined. (Attachment #5)

The hearing on **HB 2621** was closed.

The committee meeting adjourned at 4:30p.m. The next meeting is scheduled for January 28, 2008.

Representative O'Neil, Chairman
Kansas House Committee on Judiciary
300 SW 10th Avenue, 123-S-Statehouse
Topeka, Kansas 66612-1504

Re: Child Care Custody & Military Deployment

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide testimony on the deficiencies in the Service Members Civil Relief Act ("SCRA") as such deficiencies relate to custody of minor children and the need for additional protections for Kansas' deployed service-members.

My sister, First Lieutenant Tira Bolder, is currently deployed with the 325th Combat Support Hospital in Operation Iraqi Freedom. Prior to receiving her deployment orders she was a full-time ICU nurse at the Bob Dole Veterans Administration Hospital, student and primary care provider to her son. Noting her responsibilities to her son, we began to look into what steps needed to be taken to provide for his care while she was deployed. At that time I came across an article on Military.com entitled "Deployed Troops Battle for Custody" which reported on custody issues facing our troops. Though I had a passing familiarity with the SCRA, I, like many others, had no idea that it did not afford parents custody and child support protections upon the call to active-duty and/or deployment. There have been, both prior to and since the commencement of Operation Iraqi Freedom, well documented instances of severe family disruptions caused by service members call to serve our country, including at least two cases in Kansas.

Most people, including SCRA supporters, agree that the federal law should be changed to ensure soldiers can regain custody of their children at the end of their deployment. Enough calls have been made for amending the law that both houses of congress have introduced legislation that would grant service-members such protections.

Mr. Chairmen, this new-found understanding of the SCRA is what compelled me to take on this issue and come before this committee to emphatically request that this body adopt provisions which would secure these protections for Kansas' deployed service-members.

HISTORY

During the civil war, Congress enacted a moratorium on civil actions brought against federal soldiers and sailors. The federal act has been amended a number of times, during World War II and thereafter, to expand its protections and respond to restrictive court decisions. In 2003, the Soldiers and Sailors Civil Relief Act was completely re-written.

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The federal act currently provides that: (1) pre-service consumer debt and mortgage interest rates are reduced to 6 percent if military service materially effects the persons ability to pay; (2) active duty service members, who are unable to appear for a court or administrative proceeding, may request a stay for a mandatory minimum of 90 days; (3) active duty service members, who receive a permanent change of station, are allowed to terminate leases or preservice automobile leases; (4) eviction actions may be stayed if certain requirements are met; (5) some protection is available against default judgments; (6) deferments of certain life insurance premiums may be allowed; (7) some protection from state income taxation is available; and (7) reinstatement of health insurance upon release from service is available.

However, few of these protections extend to family courts and family law. As a result, military personnel's service to their country often creates the conditions under which they can become victims of terrible injustices. This is not a new or developing issue. It has received some attention as far back as the first Gulf War when a service-member was jailed upon his return from duty due to a child support matter which was taken up during his deployment. Still, four years into Operation Iraqi Freedom and almost seven years into the war on terror, both federal and most state governments have failed to address the family law issues which military personnel face.

Some courts are using the subjective theory of the "best interest of the child" prevail against any consideration of the parents "rights".

As noted above, some steps have been taken to provide additional protections to service-members in the area of child custody and support matters. H.R. 1585 and S 1547 have been adopted by the House and Senate and included in the FY2008 Defense Authorization Bill now in conference. However, due to partisan contention it is by no means certain that the provisions related to the SCRA will be included in the final version that will pass. Also a few states such as Michigan, Ohio, California and North Carolina have enacted additional provisions to their state laws to provide military personnel with these protections.

KANSAS MILITARY PERSONNEL

Kansas currently has three active military installations, Fort Riley, Fort Leavenworth and McConnell AFB, with a total personnel count of approximately 33,400, not including reserve personnel. It is estimated that approximately 7.8 percent of all military members are single parents. A quick extrapolation would indicate that there are approximately 2,600 Kansas service-members who are single parents.

In the state of Kansas there are two cases of notes relating to this issue, Bradley v Bradley and "_____". In both these cases the service-member lost custody of their children. Notwithstanding the courts discretionary authority to issue a stay under the SCRA, in the case of Bradley it is widely postulated that his attorney did not do enough and failed to invoke the provisions of the SCRA that would have assisted his client, which is what lead to his lose of custody.

As a nation at a time of war we should do all we can to ensure that our service-members, particularly those deployed to battle zones, can devote all their energy to the mission at hand. This is in the best interest of the service-member, their fellows and the nation.

Glenn Sacks, noted national columnists and commentator, says "states must do more to prevent custodial parents from moving children out of the lives of noncustodial parents, except in cases of abuse or dire economic need. For example, last year the California Supreme Court decided in *LaMusga* that courts should restrain moves that harm children by damaging the loving bonds they share with their noncustodial parents."

REQUEST

The draft legislation attached includes additional protective provisions for service-members:

- It allows expedited hearings upon the request of a service-member.
- It lets the court use electronic testimony when the service-member is unavailable.
- It allows the court to delegate the visitation rights of the service-member to another family member.
- It requires that any temporary custody order entered upon a service-members deployment end within ten days of the member's return, and that the service-member's absence due to deployment may not be used against him in a change of custody hearing.

You will find attached a draft of the proposed legislation as well as copies of national and state bills for comparative purposes. Adoption of this legislation would not cost the state any loss of treasury and would certainly ease the mind of many single-parent service members. Additionally, adoption would truly demonstrate the appreciate the state of Kansas has for the sacrifices of our service members and their families.

CONCLUSION

Whether one agrees with Operation Iraqi Freedom or not the fact is that our military and reserves are stretched beyond bearing, there is a well documented shortage of officers, the Army and National Reserves have faced recruiting issues and concern continues to grow about the physical, mental and spiritual care for returning service members.

Additionally, we should do all we can to ensure that when called to serve, these brave men and women are able to focus their entire energies to the mission in order to return home to their families. They should not be forced to bear the unimaginable worry that while serving their nation they could well be losing their children.

Mr. Chairman, I am hopeful that the Committee will agree that these additional protections are not only warranted but well deserved and enactment is the best way to secure the familial ties and parental rights of active duty and deployed service-members.

Testimony on Child Custody and Visitation Issues

To the House Judiciary Committee

Kansas National Guard

Date: January 23, 2008

Mr. Chairman and members of the Committee:

I am Colonel Bruce Woolpert, Legal Advisor to Major General Tod M. Bunting, the Adjutant General, and a Judge Advocate in the Kansas Army National Guard. Thank you for allowing me to comment on the important topic of child custody and visitation issues for temporary duty, mobilized, and deployed service members, and specifically how these issues will be impacted by HB 2621.

We in the National Guard appreciate the consistent willingness of Kansans to step up and help in time of need. Indeed, it is this spirit which brings many Kansans to service in the Kansas National Guard. I also appreciate the concern shown here today that there may be a need for the legislature to pass measures aimed at preventing injustices when ex-spouses use temporary military duty as *the* material change in circumstances to obtain a permanent change in custody and visitation that they might not otherwise have been able to achieve.

The administrative and legislative branches of government in the State of Kansas have shown strong leadership in supporting the troops. As you are aware, there are three active duty military

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installations in Kansas and thousands of other Kansas residents serve in the Reserves and National Guard. In the Kansas National Guard alone, over 5,000 citizen soldiers and airmen have met the Nation's call to duty and have been mobilized into federal service over the past five years.

We all recognize that temporary military duty, the deployment of an active-duty service member, or the mobilization of a member of the National Guard or Reserves, sometimes with little advance notice, can have a seriously disruptive effect on custody and/or visitation arrangements involving minor children of service members.

Service members should be protected, as should their minor children, from the loss of custodial arrangements and disruption of family contact due to the service member's absence pursuant to military orders for temporary duty, deployment, or mobilization. In my opinion, HB 2621 provides practical solutions to many of these problems.

A federal law called the Servicemembers Civil Relief Act is meant to protect service members by staying civil court actions and administrative proceedings during military activation. For example, they can't be evicted. Creditors can't seize their property. Civilian health benefits, if suspended during deployment, must be reinstated. And yet a service member's child can be taken from them after they are deployed. Then, once the service member returns, they must fight to regain (or attempt to regain) custody. In my job as a military attorney, I have personally witnessed a multitude of such cases.

Why have current laws, both federal and state, failed to adequately protect the interests of service members? Some family court judges say that determining what's best for a child in a custody case is simply not comparable to deciding civil property disputes

and the like; they have ruled that a child's best interests trumps the federal law protecting service members. On the other hand, we acknowledge that delaying a child custody/visitation case for 12-15 months can cause another set of problems. And so, the judge, forced to make a choice, chooses what's right for the child at that moment. Often, when the service member returns home after a deployment, he or she is thrust into an uneven playing field, resulting in such temporary changes becoming permanent.

It is easy to understand the dilemma judges are facing; they recognize the competing interests. On the one hand, they don't want to penalize a parent because they are serving our country. On the other hand, they don't want to penalize the child. When one parent is deployed, the question of who is the most effective parent can almost always be determined to be the non-deployed parent. But again, it is unfair to the service member when those temporary orders caused by the deployment become long lasting.

Hence, military lawyers themselves do not always agree that stays of the process described in the Servicemembers' Civil Relief Act represent the proper course of action. Instead, we submit there are viable alternatives, like the ones in HB 2621 being considered today by this Committee, that will level the playing field and prevent non-service member parents from taking unfair advantage of a deployment or mobilization.

The legislatures in several other states, including Arizona, Michigan, Kentucky and North Carolina, have recognized the problem and have acted. HB 2621 being considered here today is similar to the laws passed in those other states in that it provides for the following key changes:

- Allows for expedited hearings upon the request of the service member;

- Allows the court to delegate the visitation of the service member to another family member;
- Requires that any temporary custody order entered upon or during a service member's deployment end within ten days after the service member returns. The law also clearly states that the service member's absence due to deployment may not be used against him or her in a change of custody hearing;
- Provides that a deployment, mobilization or temporary duty, and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances;
- Requires that parenting plans contain provisions for custody and parenting time upon military deployment, mobilization or temporary duty if one or both of the divorcing parents are service members; and
- Provides that an agreement entered into between the parents is presumed to be in the best interests of the child.

1. Expedited hearings. One of the main reasons for problems in custody and visitation cases involving deployments and mobilizations is the potential lack of time the parties have to resolve issues prior to the service member actually leaving the state to perform the military duty. My sense is that time constraints might be a greater problem for the Guard/Reserve than for those on active duty because National Guard/Reserve service members are often given less notice they will be mobilizing than their active duty counterparts. It is not unusual (although certainly not preferred) that a member of the Guard/Reserve be "command directed" to mobilize with a report date 10-15 days later. The Kansas National Guard submits that adopting this provision in Kansas might eliminate many of the problems.

2. Delegation of Visitation Rights. Perhaps of greatest concern is the current inability on the part of a service member to delegate his or her visitation rights to another family member or members. Sadly, the child's life is about to be significantly disrupted by the 12 to 15 month absence of the service member. Even more, those members of the service member's immediate family who have also played a major role in the child's life may be prevented from visiting the child, without legal recourse. The truth is that once the service member deploys or is mobilized, the remaining parent doesn't feel compelled to allow any of these family members to have visitation with the child at all during the entire deployment. Thus, not only has the child lost his or her physical closeness with the service member, but also with that entire side of the family. Depending on the child and the family, reintegration of the service member and his or her family back into the child's life post-deployment just became needlessly more difficult. HB 2621 permits the court to "...delegate the [deployed] parent's parenting time rights, or a portion thereof, to a family member with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time is in the child's best interest."

This provision presents a fair solution to a serious problem, but I believe it should be slightly modified. I suggest the phrase "to a family member" should be modified to read "to member(s) of the service member's family". This change would eliminate any doubt that the service member's spouse (the stepparent), and even half-brothers and/or sisters, can be considered by the court. Secondly, by stating "to a family member," the original language eliminates the opportunity for the Court to award the parenting time to more than one person, which may not be this group's intent.

3. Automatic Termination of Temporary Custody Orders. This Committee is cognizant of and must take into account that the court's primary concern is the best interest of the child. As

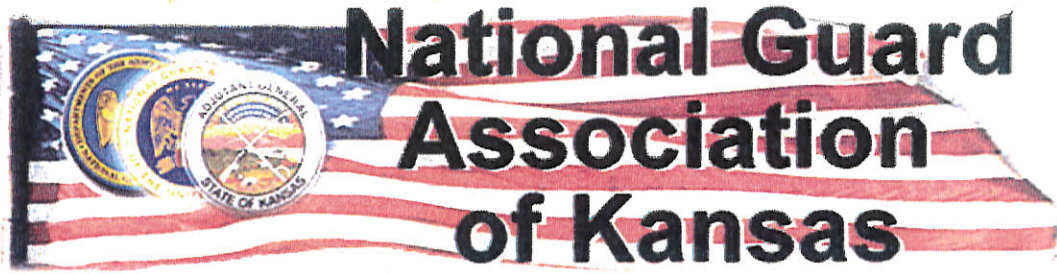
difficult as it may be for the service member to accept, there will be times when the service member must temporarily give up custody to the other parent due to a deployment, but leaves with the expectation that everything will go back to the way it was upon his or her return from deployment. However, it is conceivable that during the service member's 12-15 month absence, the child demonstrated a significant improvement in social behavior or school performance, for example. The changes could be so significant so as to make a compelling case that the new custody arrangement should be continued as in the best interest of the child. The result of such a court making such a finding might be that custody is not returned to the service member.

HB 2621 providing that "Any temporary custody order for the child during the parent's absence shall end no later than 10 days after the parent returns, but shall not impair the discretion of the court to conduct a hearing for emergency custody upon return of the parent and within 10 days of the filing of a verified motion for emergency custody alleging an immediate danger of irreparable harm to the child..." will go a long way to eliminating this type of problem.

4. Deployment, mobilization or temporary duty will not create a change of material circumstances. The Kansas National Guard submits that the child's best interest will not be negatively affected by a law stating that a service member's absence may not be held against him or her in a change of custody hearing after the deployment.

5. Parenting plans and other agreements. The Kansas National Guard submits that these provisions go a long way to helping parents proactively address the problems created by military service. As such, we ardently support both of these provisions.

In conclusion, our service men and women are being called to leave their families, jobs and friends to fight in a very difficult war. The Kansas National Guard believes that these men and women need to know that when we deploy them, they will be treated fairly by our family law court system.



Testimony
to the
House Judiciary Committee
On House Bill 2621

January 23, 2008

Craig Beardsley, LtCol (Ret.)
Kansas Army National Guard
Immediate Past President of the Association

Michele Henry, Executive Director
Box 19031, Topeka, KS 66619
(785) 862-1066 www.ngaks.org

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Good afternoon, Mr. Chairman and members of the committee. I thank you for the opportunity to appear before the House Judiciary Committee today. I am Lieutenant Colonel (Retired) Craig Beardsley, immediate past president of the National Guard Association of Kansas. The National Guard Association of Kansas is made up of officers of the Kansas Army and Air National Guard, past and present numbering over 1,300. The National Guard Association of Kansas's mission is to support and improve the Army and Air National Guard of Kansas, and to promote or undertake activities and programs of benefit to members and their families' well-being. This enhances the ability of all National Guard members to fully perform their federal and state missions. I want to share with you our concern over child support and family issues that returning veterans face, and our support of House Bill 2621.

The Kansas National Guard is made up of young men and women from every area of the State. They are all volunteers, serving both our state and our nation. There are nearly 900 of our 7,500 Kansas National Guardsmen serving in Iraq, Afghanistan, the Balkans and many other places around the world. In fact, since September 11, 2001, more than 5,800 Kansas National Guardsmen have deployed to these and other locations around the world. Each month, as our Kansas Guardsmen deploy, others will return home to Kansas—to their communities, to their families, to their employers and to civilian life.

The Kansas National Guard Association is concerned that our soldiers and airmen, who have volunteered to serve their country and deployed to locations around the world, not be treated inequitably upon return from deployment. Specifically, we support the concept of HB 2621 and believe it would grant deployed soldiers and airmen the same opportunities afforded soldiers and airmen stateside when dealing with child custody issues.

HB 2621 allows that a parenting plan, once in place, would remain in effect until the military member was present for review of that plan. The military requires that any member with children have such a plan in effect—whether married, separated or divorced. The plan is in the best interests of children with military parents, as well as affording peace of mind to parents who are in military service to their country.

Please consider passage of HB 2621 as an added benefit to our military members in the Kansas National Guard. It will bring them peace of mind and allow them the capability to accomplish their mission—whenever and wherever they are called to duty.

Today, we have the privilege of hearing from SGT Doug Mulqueen, Kansas Army National Guard, who is a parent and has deployed in support of Operation Iraqi Freedom. We cannot speak with certainty as to the numbers of soldiers and airman who will be positively impacted by the passage of HB 2621 but do know that from a recent redeployment of an approximately 85 person unit from Iraq, there were 3 soldiers who would have benefited and been part of the child custody process. Being part of the process is much better than coming home to what we would call a "done deal".

Mister Chairman and members of the committee, thank you for the opportunity to give testimony today on House Bill 2621. My name is Doug Mulqueen. I live in Topeka and normally work for the Kansas Department of Revenue. I served on active duty with the Army for 5 years, and then had a break of service for 5 years after which I enlisted in the Kansas Army National Guard. I hold 3 MOS's in the Army: 11B - Infantryman, 13F Forward Observer, and 19K Armor Crewman. I have been mobilized twice while in the Kansas Army National Guard, once for "Operation Noble Eagle" and most recently for "Operation Iraqi Freedom". My normal Kansas Army National Guard Unit is 1-178 FA here in Topeka, but during my Deployment to Iraq I was command directed to 2-137 IN. I am currently a member of the Army's "CBHCO" (Community Based Health Care Organization) Program recovering from injuries sustained while in Iraq.

Before deploying to Iraq my ex-wife and I had a co-parenting schedule that was 50/50 with our children and had neither of us named as "Residential Parent", meaning that my children (Molly 9, and Katy 8) had two homes. They thrived under that schedule, getting maximum exposure to both parents, and though the actual days with each parent changed during the week changed, the amount of time was consistently half with each. As part of my pre-deployment I had to temporarily agree that my ex-wife was the residential parent during my period of deployment as part of my military parenting plan. I was very concerned because that in effect meant

that I would have to fight to get back the parenting time I had before deploying. It was through a long battle that my current wife was ordered visitation with my children during my deployment because my ex-wife refused to allow me any contact with them at her home, deleting emails, destroying mail, etc... The only contact I had with my children was because of the time they spent with my current wife. My ex-wife did not allow my children to even write me or email me when at her house. I was only guaranteed one day a week that I would be able to attempt a phone conversation with the girls when with my current wife. I constantly worried during my deployment about having to fight in court to get my parenting time back to what it was when I returned. When my unit returned from Iraq (11-06) my ex-wife and I returned to our 50/50 schedule with only a change in days to allow her to attend a class. This went fine until my ex-wife decided that my time should be cut with my children (4-07) by several days a month. I had to go back to court to get resolution after unsuccessfully working through a mediator. During our court date (11-07) Judge Joe Johnson commented that a shared schedule like we had been practicing was "ridiculous" before he had even heard one word of testimony, and before he was shown that while practicing this schedule, my children thrived developmentally, socially, and educationally. One of the arguments that was used to reduce my time is that because of my choice to join the Army National Guard I have been away from my children for long periods of time. They went on to say that because of a choice to leave my children, my ex-wife was forced to become the primary care giver and there should be no question where the children belong. It is as if by serving in the military, I am somehow a worse father, or am less interested in my children or do not love my children as much as I would if I did not serve. I will tell you that is not the case at all. Now my ex-wife is the residential parent of my children, and my time with them is much less that I had prior to my deployment, and I have to go a week without seeing them during each two week period. I am incredibly frustrated, and upset that I had my parenting time reduced because I chose to serve.

As any current National Guard Member is aware, overseas deployment is always a strong possibility. I have been home a little over a year and I am still waiting for a final court order on my custody battle. Other soldiers in my unit are already back overseas or on their way back. Once I am released from medical hold I could be slated to go back as well. I am desperately fighting to get back the custody I had prior to my overseas deployment, and I will still face another fight in the very likely event that I am deployed yet again. I will serve again if called upon, deploying again in order to do my duty; I am merely asking to be assured the same parental rights I had when I return.

We, as citizen soldiers have some protection against certain litigation (Soldiers & Sailors Civil Relief Act, and the Servicemembers' Civil Relief Act) while we are deployed, but without this incredibly important protection in House Bill 2621 we are left to the mercy of the courts upon our return to be re-instated as parents as we were before we deployed. It feels to us as though we are being punished for our service. I know, that if this bill had been in place prior to my deployment, my stress would have been lessened considerably, and I would have not had to go to court to try to get back what I time I had with my children only to lose that time due to the whims of an overburdened judge, and at considerable expense to me financially and even more of an expense to my entire family emotionally.

Mr. Chairman and members of the committee, thank you again for the opportunity to speak with you today. I am happy to stand for any questions.



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST INFANTRY DIVISION
OFFICE OF THE STAFF JUDGE ADVOCATE
PATTON HALL, BUILDING 200
FORT RILEY KANSAS 66442

January 23, 2008

Legal Assistance

The Honorable Michael R. O'Neal, Chairman
House Judiciary Committee
300 Southwest 10th Street
Topeka, Kansas 66612-1504

Dear Representative O'Neal and members of the Committee:

Thank you for allowing me to present testimony regarding the military custody legislation under consideration. My name is Matthew S. Shelton. I am the Chief of Legal Assistance at Fort Riley, Kansas. I submit this testimony on behalf of the Soldiers and family members my office represents. My testimony does not constitute an endorsement by the Department of the Army of the proposed legislation.

I hope to help the Committee by quantifying the custody and visitation issues we see in my office. I also will address the impediments to quick resolution of these issues, and the current protections available to Soldiers to deal with deployment custody issues. Finally, I will comment on the how this legislation will help Soldiers and their families.

My office provides legal services to the largest of the three major military installations in Kansas. Fort Riley's Soldier population is currently 19,260. 11,590 Soldiers from Fort Riley are deployed outside of the United States. In the preceding three fiscal years my office provided counsel on 580 family custody cases, with the total increasing each year. Many of these cases involved custody issues brought on by military deployment. We typically see a spike in these cases immediately preceding a unit's deployment.

Several factors contribute to Soldiers' failure to make appropriate custody arrangements prior to deployment. Inevitably, the time before a deployment is the busiest training period for any unit. Training requirements make obtaining leave to resolve custody issues very difficult for Soldiers. In addition, the expenses of obtaining counsel and travelling to hearings limit Soldiers' ability to resolve custody issues. Fear also causes some Soldiers to avoid participation in custody hearings prior to deployment. Soldiers fear they will be unable to regain custody at the end of their deployment.

Soldiers do have important protections when military duties prevent their participation in custody cases. The Servicemembers Civil Relief Act protects Soldiers by providing a stay in any civil proceeding in which a Soldier cannot participate due to military service. However, the Act provides no incentive to resolve issues in advance of deployment. Nor does the Act offer a quick and efficient procedure for resolving issues while taking into account a Soldiers' military obligations. Perhaps the greatest problem with the Act is that it does not account for the best interests of the children involved in

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custody disputes. Unfortunately, many cases are stayed for the duration of a deployment without the Court being able to consider the child's best interests. When faced with the impediments addressed above, often Soldiers consider a Servicemembers Civil Relief Act stay as their only option in custody cases.

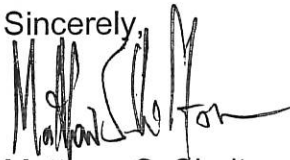
The legislation under consideration addresses many of the impediments Soldiers face in making custody arrangements for deployments. It also minimizes the need to invoke the Servicemembers Civil Relief Act, thereby preventing consideration of the child's best interests. New section 1 of K.S.A. 60-1610 (b) protects Soldiers from having their children removed from Kansas courts' jurisdiction during deployment. Section (c) protects Soldiers' parenting plans addressing deployment custody arrangements by presuming the arrangements are in the child's best interests. Section (d) provides Soldiers the comfort of knowing their residential custody will normally be quickly restored after their return. This section also prohibits absences due to deployments from being used against a custodial Soldier, an additional source of comfort. Section (e) authorizes delegation of parenting time, allowing Soldiers to maintain a strong bond with their children during deployment through their families. Section (f) encourages the quick, efficient, resolution of deployment custody issues by requiring expedited hearings when appropriate. Finally, section (g) makes clear that even with the additional protections for Soldiers the best interests of the child are always paramount.

Equally important is the addition to section 3 K.S.A. 60-1625 (b). Subparagraph (4) will prevent many deployment custody disputes by requiring deployment custody arrangements be addressed in every Kansas parenting plan. Hopefully, by enacting this preventative measure many deployment custody disputes will never arise.

I strongly endorse the enactment of the proposed legislation. I truly believe this legislation will prevent deployment custody controversies. When deployment controversies arise it encourages quick, efficient resolution. Finally, it allows our Soldiers to focus on their vital missions without fear of being at a disadvantage in a custody dispute resulting from a deployment.

Thank you for the opportunity to present this testimony. I can be reached at (785) 239-3117.

Sincerely,



Matthew S. Shelton
Chief, Legal Assistance
Attorney

Written Presentation Re: HB 2621

I am N. Trip Shawver. I am a past Chairman of the Family Law Section of the Kansas Bar Association and also past Chair for many years of the Military Law Section of the Kansas Bar Association. I spent 28 years in the active duty and Reserve forces and retired from the Judge Advocate General Corps in 1995. The majority of my practice involves family law. I have been recognized as an expert in several districts in military law, the Uniform Former Spouse Protection Act, and the Servicemembers Civil Relief Act.

I appreciate the Committee and the House addressing the issue of custody and parenting time, which is affected by military duty. I have personally been involved with many cases in which the fact that an individual is in the military materially affects that individual's ability to have an equal playing field regarding custody and parenting time. This is exacerbated when a military member is required to be deployed. Normally, the non-military spouse comes to the Court and raises the *Parental Preference Doctrine* presumption and then takes the child, leaving the military member to try to regain the child in the future upon her/his return from military duty. This, many times, is difficult if not impossible. It places an undue strain on the military member, having to worry if he/she will ever be back involved with her/his child as she/he was in the past.

Though there are many abuses, there are also cases in which an automatic denial of a change, because a member is in the military and subject to deployment, would also not

be good. I believe that the expedited provisions in the House Bill are good, but they should be allowed for both the military member and the non-military member to approach the Court on an expedited basis. I believe that it would be good to say something in the Bill that the Court may consider the *Parental Preference Doctrine* but, in deciding the temporary placement of the child during deployment, that would be at the Court's discretion.

I believe keeping the child's best interest in focus is the best concept for the Court. In the new Section 1, paragraph (E), I would propose that the Court may delegate the parent's parenting time rights or portion thereof to a family member or stepparent with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time rights is in the best interest of the child. This follows the case of *In Re Marriage of Rayman*, 273 Kan. 996 47 P3d 43, in which the Court allowed the stepmother to parent the child while the father was in Korea for a year.

Along that line, the law does not appear to deal with the 12-18 month unaccompanied tours which require a military person to be away from her/his family for an extended period of time but then return. This was the case *In Re Rayman*. Though there are less remote unaccompanied tours now, they still exist and probably should be dealt with in this Bill.

There are some technical concerns that I have with the Bill. In the new Section B, it indicates that the Court shall retain jurisdiction over any custody or parenting time

matter concerning a parent who receives deployment, mobilization, or temporary duty orders from the military. In many cases, individuals who get divorced in Kansas thereafter relocate to other states. Under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), Kansas may lose jurisdiction if the child has been outside the state for more than six months and both parties have moved from the state. Does this law attempt to pull back jurisdiction from wherever the parties may be and assert Kansas jurisdiction as opposed to the provisions of the UCCJEA?

I also question the requirement that the military member be the one who has to go forward to have the Court decide whether there will be a change or not. Though that may be wise, because the member is the one who knows when and where she/he is going and the duration, that person may not have the money or ability to go forward at that time. There should be some shield provided by the law to prevent the other parent from going forward after the military member has left, if she/he knew of the circumstances and was laying in wait to take advantage of the situation. The Servicemembers Civil Relief Act has Stay provisions, but they are only mandatory for 90 days. I believe that it may be best to not have any hard and fast rules, but to have a declaration that it is in the Court's discretion; the *Parental Preference Doctrine* does not rule; the best interest of the child is to be considered while the military member is gone; and to return the military member to her/his prior status upon return, if that is in the best interest of the child.

As many of the Committee and House may know, many times after a person has

been deployed or gone on a TDY for schooling, the military member has a follow-on assignment at another location. This issue needs to be addressed, as placing the child back with the military person at a new Base may uproot the child when that may not be in the best interest of the child.

This law should also be applied to paternity cases.

I would look forward to working with anyone in the preparation of this law which I believe is beneficial to families and military members.

Suggested Language

If military duty requires a parent to be absent from his / her normal home that fact alone may not be used by the other parent to change or modify custody or residency or parenting time. The court is not required to follow the *parental preference doctrine* if it believes it would be in the child's best interest. The court may have the child or children reside with care givers nominated by the military member. The court will make provisions to reintegrate the military member with the child or children upon return to the home.