

9:2-12.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2013 **CHAPTER:** 7

NJSA: 9:2-12.1 (Concerns child custody and parenting time arrangements related to certain military absences)

BILL NO: S1051 (Substituted for A2164)

SPONSOR(S) Connors and others

DATE INTRODUCED: January 23, 2012

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: December 3, 2012

SENATE: June 28, 2012

DATE OF APPROVAL: January 25, 2013

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Senate Committee Substitute enacted)

S1051

SPONSOR'S STATEMENT: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL NOTE: No

A2164/634

SPONSOR'S STATEMENT A2164: (Begins on page 7 of introduced bill) Yes

SPONSOR'S STATEMENT A634: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

(continued)

VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

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LAW/KR

P.L.2013, CHAPTER 7, *approved January 25, 2013*

Senate Committee Substitute for

Senate, No. 1051

1 AN ACT concerning child custody and parenting time arrangements
2 related to certain military service absences, supplementing
3 chapter 2 of Title 9 of the Revised Statutes and amending
4 P.L.2004, c.147.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) a. As used in this section:

10 “Deployment” means: (1) the assignment of a service member by
11 military order for military combat, or other military operation,
12 mission, or service requiring a prolonged absence of 30 or more
13 days, making the service member unable during that absence to
14 exercise parenting time with a child for whom the service member
15 is a parent or caretaker; or (2) the participation of a service member
16 in full-time training duty, annual training duty, National Guard
17 training, reserve training, or attendance at a military service school
18 designated by law or by the Secretary of the applicable military
19 branch concerned, requiring a prolonged absence of 30 or more
20 days, making the service member unable during that absence to
21 exercise parenting time with a child for whom the service member
22 is a parent or caretaker.

23 “Military” means the armed forces of the United States,
24 including the Army, Navy, Air Force, Marine Corps, and Coast
25 Guard, the National Guard and any other reserve component of the
26 armed forces, and the merchant marine when organized under the
27 federal law as a public military force.

28 “Service member” means a member of the military, as defined
29 herein, who is not retired.

30 “Service-related treatment” means treatment provided to a
31 service member or veteran service member for a service-related
32 injury, illness, or other health condition requiring a prolonged
33 absence of 30 or more days, making the service member unable
34 during that absence to exercise parenting time with a child for
35 whom the service member is the parent or caretaker.

36 b. (1) The court, whenever making a determination concerning
37 child custody or parenting time, shall not consider the absence or
38 potential absence of a military service member by reason of
39 deployment or service-related treatment as a factor in determining

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 the best interest of a child for whom the service member is a parent
2 or caretaker.

3 (2) The court shall, to the extent possible, expedite a
4 determination on an application concerning a child custody or
5 parenting time arrangement by a service member or the other parent
6 or caretaker for a child in any case in which there is no existing
7 child custody or parenting time order and the service member has
8 received official written notice of deployment or service-related
9 treatment from the military.

10 c. (1) Whenever a service member is a party to a child custody
11 or parenting time arrangement and has received an official written
12 notice of deployment or service-related treatment, the service
13 member shall:

14 (a) notify the other parent or caretaker involved in the child
15 custody or parenting time arrangement of the service member's
16 deployment or treatment location and scheduled dates thereat, no
17 later than the day immediately preceding the service member's
18 departure, or the 10th day after receipt of the official written notice
19 for the deployment or treatment, whichever date occurs first, unless
20 the service member's notice to the other parent or caretaker is
21 prohibited by the military; and

22 (b) provide timely information, if not prohibited by the military,
23 regarding the service member's scheduled leave or other
24 availability during the service member's period of deployment or
25 service-related treatment.

26 (2) The other parent or caretaker involved in the child custody
27 or parenting time arrangement with the service member shall:

28 (a) make the child reasonably available to the service member
29 while the service member is on leave or is otherwise available in
30 accordance with the information provided to the other parent or
31 caretaker pursuant to subparagraph (b) of paragraph (1) of this
32 subsection; and

33 (b) facilitate opportunities for communication, including
34 telephonic and electronic mail contact, to the extent feasible,
35 between the service member and the child during the period of the
36 service member's deployment or service-related treatment.

37 d. (1) During the period of the service member's deployment
38 or service-related treatment, the court shall not enter an order
39 modifying any judgment or order concerning child custody or
40 parenting time, or issue a new order that changes an existing child
41 custody arrangement in effect on the day immediately preceding the
42 service member's departure for the deployment or treatment without
43 the consent of all parties, except when the court finds it to be in the
44 best interests of the child. The court may appoint a guardian ad
45 litem, an attorney, or both to represent the child's interests with
46 regard to any pending court determination concerning child custody
47 or parenting time.

1 (2) Whenever the court finds it to be in the best interest of the
2 child to enter an order modifying any judgment or order concerning
3 child custody or parenting time, or to issue a new order that changes
4 the existing child custody arrangement during the period of the
5 service member's deployment or service-related treatment, the court
6 may order parenting time for a family member of the service
7 member who has a close and substantial relationship with the child.
8 This parenting time shall not create a legal entitlement or standing
9 to assert any other right to parenting time with the child.

10 e. During the period of the service member's deployment or
11 service-related treatment and for 90 days following the day the
12 deployment or treatment ended, New Jersey shall retain exclusive,
13 continuing jurisdiction, in accordance with the provisions of the
14 "Uniform Child Custody Jurisdiction and Enforcement Act,"
15 P.L.2004, c.147 (C.2A:34-53 et seq.), over any determination
16 concerning child custody or parenting time.

17 f. Upon the service member's return from deployment or
18 service-related treatment, the child custody or parenting time order
19 in effect on the day immediately preceding the service member's
20 departure for that deployment or treatment shall be resumed, and
21 shall not be subject to modification for 90 days following the day
22 the deployment or treatment ended; however, this provision shall
23 not preclude any application to preserve the health, safety, and
24 welfare of the child.

25 g. Any application pursuant to this section by a service member
26 parent or caretaker during the period of deployment or service-
27 related treatment shall not, without the express consent of the
28 service member, be considered a waiver of any right or protection
29 provided under the "Servicemembers Civil Relief Act," 50 U.S.C.
30 App. s.501 et seq., or the "New Jersey Soldiers' and Sailors' Civil
31 Relief Act of 1979," P.L.1979, c.317 (C.38:23C-1 et seq.).

32 h. Nothing in this section shall prevent a service member
33 parent or caretaker and the other parent or caretaker from agreeing
34 to a care arrangement for a child during the period of deployment or
35 service-related treatment.

36
37 2. Section 13 of P.L.2004, c.147 (C.2A:34-65) is amended to
38 read as follows:

39 13. Initial Child Custody Jurisdiction.

40 a. Except as otherwise provided in section 16 of this act , or
41 section 1 of P.L. , c. (C.) (pending before the Legislature as
42 this bill) concerning a service member's absence due to a
43 deployment or service-related treatment as set forth in that section,
44 a court of this State has jurisdiction to make an initial child custody
45 determination only if:

46 (1) this State is the home state of the child on the date of the
47 commencement of the proceeding, or was the home state of the

1 child within six months before the commencement of the
2 proceeding and the child is absent from this State but a parent or
3 person acting as a parent continues to live in this State;

4 (2) a court of another state does not have jurisdiction under
5 paragraph (1) of this subsection, or a court of the home state of the
6 child has declined to exercise jurisdiction on the ground that this
7 State is the more appropriate forum under section 19 or 20 of this
8 act and:

9 (a) the child and the child's parents, or the child and at least one
10 parent or a person acting as a parent have a significant connection
11 with this State other than mere physical presence; and

12 (b) substantial evidence is available in this State concerning the
13 child's care, protection, training and personal relationships;

14 (3) all courts having jurisdiction under paragraph (1) or (2) of
15 this subsection have declined to exercise jurisdiction on the ground
16 that a court of this State is the more appropriate forum to determine
17 the custody of the child under section 19 or 20 of this act; or

18 (4) no state would have jurisdiction under paragraph (1), (2) or
19 (3) of this subsection.

20 b. Subsection a. of this section is the exclusive jurisdictional
21 basis for making a child custody determination by a court of this
22 State.

23 c. Physical presence of, or personal jurisdiction over, a party or
24 a child is neither necessary nor sufficient to make a child custody
25 determination.

26 d. A court of this State may assume temporary emergency
27 jurisdiction in accordance with section 16 of this act.

28 (cf: P.L.2004, c.147, s.13)

29

30 3. Section 14 of P.L.2004, c.147 (C.2A:34-66) is amended to
31 read as follows:

32 14. Exclusive, Continuing Jurisdiction.

33 a. Except as otherwise provided in section 16 of this act, or
34 section 1 of P.L. , c. (C.) (pending before the Legislature as
35 this bill) concerning a service member's absence due to a
36 deployment or service-related treatment as set forth in that section,
37 a court of this State that has made a child custody determination
38 consistent with section 13 or 15 of this act has exclusive, continuing
39 jurisdiction over the determination until:

40 (1) a court of this State determines that neither the child, the
41 child and one parent, nor the child and a person acting as a parent
42 have a significant connection with this State and that substantial
43 evidence is no longer available in this State concerning the child's
44 care, protection, training, and personal relationships; or

45 (2) a court of this State or a court of another state determines
46 that neither the child, nor a parent, nor any person acting as a parent
47 presently resides in this State.

1 b. A court of this State which has made a child custody
2 determination and does not have exclusive, continuing jurisdiction
3 under this section may modify that determination only if it has
4 jurisdiction to make an initial determination under section 13 of this
5 act.

6 (P.L.2004, c.147, s.14)

7

8 4. This act shall take effect on the 60th day following the date
9 of enactment, and shall apply to any action filed on or after the
10 effective date.

11

12

13

14

15 Concerns child custody and parenting time arrangements related
16 to certain military service absences.

SENATE, No. 1051

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 23, 2012

Sponsored by:

Senator CHRISTOPHER J. CONNORS
District 9 (Atlantic, Burlington and Ocean)
Senator JAMES BEACH
District 6 (Burlington and Camden)

SYNOPSIS

Concerns custody and parenting time for military parents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/16/2012)

1 AN ACT concerning establishment of and changes in child custody
2 during periods of active military duty and supplementing chapter
3 2 of Title 9 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares that currently there are
9 seven military bases in New Jersey, and 64 National Guard
10 armories in 42 communities, with a significant number of New
11 Jersey citizens serving in the military. The Legislature further finds
12 that temporary duty, the deployment of an active-duty
13 servicemember, or the mobilization of a member of the National
14 Guard or Reserve, sometimes with little advance notice, can have a
15 disruptive effect on custody or parenting time arrangements
16 involving minor children of servicemembers.

17 The Legislature further finds that servicemembers should be
18 protected, as should their minor children, from the loss of custodial
19 arrangements and disruption of family contact due to the
20 servicemember's absence in compliance with military orders for
21 temporary duty, deployment, mobilization; and that other members
22 of a servicemember's family, such as grandparents, current spouse,
23 and siblings of the minor, can provide love, support, comfort, care,
24 and continuity to the servicemembers minor child through delegated
25 parenting time when a servicemember is absent due to military
26 orders.

27 Child custody hearings conducted in a servicemember's absence
28 could be harmful to the interest of both the minor child who could
29 be adversely impacted by the loss of parenting time, as well as the
30 parent who has been deployed. The scheduling of hearings
31 affecting the rights and obligations of military personnel may be
32 prohibited or delayed pursuant to the protections of the
33 Servicemembers' Civil Relief Act, 50 United States Code Appendix
34 sec. 501. et seq.

35 The use of expedited hearings and testimony by electronic means,
36 at the request of the servicemember who is absent or about to depart
37 for military service, would, in cases where a hearing is necessary, aid
38 and promote fair, informed, efficient, and prompt judicial processes for
39 the resolution of family law makers.

40

41 2. As used in this act:

42 a. "Military parent" means a natural parent or adoptive parent
43 of a minor child whose parental rights have not been terminated by
44 a court of competent jurisdiction and who is currently enlisted with
45 the United States Army, Navy, Air Force, Marine Corps, Coast
46 Guard, National Guard, or any other reserve component thereof.

47 b. "Deploying parent" means a military parent who is the
48 parent of a child under the age of eighteen whose parental rights

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1 have not been terminated by a court of competent jurisdiction or a
2 guardian of a child under the age of 18 who is deployed or who has
3 received written orders to deploy with the United States Army,
4 Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any
5 other reserve component thereof.

6 c. "Non-deploying parent" means a parent or guardian not
7 subject to an order of deployment whether or not a military parent.

8 d. "Deployment" means military service in compliance with
9 military orders received by a member of the United States Army,
10 Navy, Air Force, Marine Corps, Coast Guard, National Guard or
11 any other reserve component thereof, to report for combat
12 operations, peacekeeping operations, temporary duty (TDY), a
13 remote tour of duty or service upon a vessel or other active service
14 for which the deploying parent is required to report unaccompanied
15 by any family member. Military service includes a period during
16 which a military parent remains subject to deployment orders and
17 remains deployed on account of sickness, wounds, leave, or other
18 lawful cause.

19

20 3. Final Order. No court shall enter a final order modifying the
21 terms of custody or parenting time contained in an existing order; or
22 establishing child custody terms, until 90 days after a deployment
23 ends.

24

25 4. Deployment or the potential for deployment may not be the
26 sole factor serving as a basis for an application for a change in
27 circumstance to support a permanent modification of the custody or
28 parenting time established in an existing order.

29

30 5. Temporary modification. a. An existing order establishing
31 the terms of custody or parenting time in place at the time a military
32 parent is deployed may be temporarily modified to make reasonable
33 accommodation for the parties because of the deployment of the
34 military parent.

35 b. A temporary modification order issued pursuant to this
36 section must provide that the deploying parent is permitted to
37 exercise custody of the child or exercise reasonable parenting time,
38 whichever is applicable pursuant to the original order, during a
39 period of leave granted to the deploying parent.

40 c. Any such custody or parenting time order shall further
41 require the non-deploying parent to provide the court and the
42 deploying parent with 30 days' advance notice of any intended
43 change of address and any change of telephone number.

44 d. Upon the application of a deploying parent, with reasonable
45 advance notice and for good cause shown, the court shall hold an
46 expedited hearing in any custody or parenting time application
47 instituted under this section when the military duties of the
48 deploying parent have a material effect on his ability, or anticipated

1 ability, to appear, fully participate in person at a hearing or
2 evaluative process scheduled in the normal course, or both. Such
3 application, if made, shall be considered to be an application for
4 affirmative relief, consistent with the protections afforded in the
5 Servicemembers' Civil Relief Act 50 United States Code Appendix
6 sec. 591, and shall not be considered as a waiver of any rights or
7 protections contained under law in the Servicemembers' Civil
8 Relief Act, 50 United States Code Appendix sec. 501. et seq. .

9
10 6. Termination of temporary modification.

11 a. A temporary order for custody or parenting time as set forth
12 in section 5 of P.L. c. (C.) (pending before the
13 Legislature as this bill), shall end by operation of law, upon the
14 return of the deploying parent and the original terms of the custody
15 or parenting time order previously in place at the time of
16 deployment shall be reinstated.

17 b. This shall not limit the power of the court to conduct an
18 expedited or emergency hearing regarding the terms and conditions
19 of the exercise of custody or parenting time upon return of the
20 deploying parent, and the court shall do so within ten days of the
21 filing of an application seeking the continuation of the temporary
22 order based upon a showing of immediate danger of irreparable
23 harm to the child.

24 c. The non-deploying parent shall bear the burden of showing
25 that the continuation of the temporary custody or parenting time
26 order is required to prevent irreparable harm and that the
27 reinstatement of any orders in effect before the deployment will no
28 longer be in the child's best interests. The court shall set any non-
29 emergency motion by the non-deploying parent for hearing within
30 30 days of filing of the motion and such an application shall take
31 precedence on the court's docket.

32
33 7. Removal from jurisdiction. Any order permitting removal of
34 the child from the State of New Jersey, during or in connection with
35 a period of deployment, shall be designated a temporary order, and
36 any absence of the child from the State of New Jersey as the result
37 of the application of P.L. 2004, c.147, (C. 2A:34-53 et.seq.), the,
38 "Uniform Child Custody Jurisdiction and Enforcement Act." For
39 the duration of the deployment, New Jersey shall retain exclusive,
40 continuing jurisdiction and deployment may not be used as a basis
41 to assert inconvenience of the forum.

42
43 8. Appointment of a guardian ad litem. In any application for
44 custody or parenting time in which a deployed military parent
45 invokes the protections of Servicemembers' Civil Relief Act, 50
46 United States Code Appendix 521, and the court declines to extend
47 a stay of proceedings beyond the mandatory 90 day stay and
48 proceeds in the absence of the military parent, the court shall

1 appoint at the request of the military parent, or its own motion, a
2 guardian ad litem or an attorney or both to represent the minor
3 child's interests.

4
5 9. Delegation of parenting time. Upon application of a person
6 acting under Military Power of Attorney, as provided for under 10
7 United States Code sec. 1044, the court may temporarily delegate
8 the deployed parent's parenting time to a person who according to a
9 representation made by the deployed parent, maintains a close
10 personal relationship to the deployed parent and the child, for the
11 duration of the deployment if it is determined to be in the child's
12 best interest. Such delegated parenting time or access does not
13 create an entitlement or standing to assert separate rights to
14 parenting time or access for any person other than a parent, and
15 shall terminate by operation of law upon the end of the deployment,
16 as set forth above.

17
18 10. Testimony and evidence. Upon application of a deploying
19 parent, upon a reasonable advance notice and for good cause shown,
20 the court shall allow that parent to present testimony and evidence
21 by affidavit or electronic means in custody and parenting time
22 matters instituted under this section when the military duties of that
23 parent have a material effect on his ability to appear and fully
24 participate in person at a hearing or evaluative process scheduled in
25 the normal course. Such application, if made, shall be considered to
26 be an application for Affirmative Relief Act consistent with the
27 protections afforded in 50 United States Code Appendix Sec. 591,
28 and shall not be considered as a waiver of any rights to protections
29 contained under law in the Servicemembers' Civil Relief Act. The
30 phrase "electronic means" includes communication by telephone,
31 video teleconference or the Internet.

32
33 11. Leave and other accommodations. Any order entered under
34 this section shall require that:

35 a. The non-deploying parent shall make the child or children
36 reasonably available to the deploying parent when the latter parent
37 has leave;

38 b. The non-deploying parent shall facilitate opportunities for
39 telephonic and electronic mail contact between the deploying parent
40 and the child during periods of deployment; and

41 c. The deploying parent shall provide timely information
42 regarding such parent's leave schedule to the non-deploying parent.

43
44 12. No existing order. If there is no existing order establishing
45 the terms of custody or parenting time and deployment is imminent,
46 upon application by either parent or guardian, the court shall
47 expedite a temporary hearing to establish the terms and conditions
48 of custody and parenting time, during the period of deployment.

1 Any initial pleading filed to establish physical or legal custody or
2 parenting time for a child of a deploying parent shall be so
3 identified at the same time of filing by stating the specific facts
4 related to deployment. Such application for affirmative relief,
5 consistent with the protections afforded in 50 United States Code
6 Appendix Sec. 591, and shall not be considered as a waiver of any
7 rights or protections contained under law in the Servicemembers'
8 Civil Relief Act, 50 United States Code Appendix sec. 501. et seq..
9

10 13. Duty to cooperate and disclose information.

11 a. The parties shall cooperate with each other in an effort to
12 reach a resolution of custody and parenting time issues.

13 b. A deploying parent shall promptly provide a copy of
14 deployment orders to the non-deploying parent and to the court,
15 prior to deployment. Notification must be made within 10 days of
16 receipt of deployment orders. If less than 10 days' notice is
17 received by the deploying parent, then notice must be given
18 immediately upon receipt of military orders.
19

20 14. Service of process. Service of process on a non-deploying
21 parent whose whereabouts are not known may be accomplished by
22 certified mail, return receipt requested, to the non-deploying
23 parents' last known address based on an affidavit of the deploying
24 part.
25

26 15. Failure to exercise parenting time. In determining whether a
27 parent has failed to exercise parenting time, the court may not
28 include in its determination any time periods during which the
29 parent was deployed or the parent's military duties had a material
30 effect on the exercise of parenting time.
31

32 16. Attorney fees. In making determinations pursuant to this
33 section, the court may award attorney's fees and costs based on the
34 court's consideration of:

35 a. the failure of either party to reasonably accommodate the
36 other party in custody or parenting time schedules related to a
37 military parent's service;

38 b. unreasonable delay caused by either party to timely provide
39 military orders, income, earnings or payment information, housing
40 or educational information, physical location of the child, to the
41 other party; and

42 c. other factors as the court may consider appropriate and as
43 may be required by law.
44

45 17. This act shall take effect immediately.

STATEMENT

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This bill establishes that in cases involving custody of a minor child, if a motion for a change of custody is filed during a time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or enter a new order that permanently changes the custody arrangement in existence on the date the parent was called to active military duty.

The bill provides that no court shall enter a final order modifying the terms of custody or parenting time contained in an existing order; or establishing child custody terms, until 90 days after a deployment ends. Further, deployment or the potential for deployment may not be the sole factor serving as a basis for an application for a change in circumstance to support a permanent modification of the custody or parenting time established in an existing order.

Under the bill, the court may enter a temporary custody under the guidelines established which include:

-- A temporary modification order must provide that the deploying parent is permitted to exercise custody of the child or exercise reasonable parenting time, whichever is applicable pursuant to the original order, during a period of leave granted to the deploying parent.

-- Any custody or parenting time order shall require the non-deploying parent to provide the court and the deploying parent with 30 days' advance notice of any intended change of address and any change of telephone number.

-- Upon application of a deploying parent, with reasonable advance notice and for good cause shown, the court shall hold an expedited hearing in any custody or parenting time application when the military duties of the deploying parent have a material effect on his ability, or anticipated ability, to appear, fully participate in person at a hearing or evaluative process scheduled in the normal course, or both. Such application, if made, shall be considered to be an application for affirmative relief, consistent with the protections afforded in 50 United States Code Appendix Sec. 591, and shall not be considered as a waiver of any rights or protections contained under law in the Servicemembers' Civil Relief Act, 50 United States Code Appendix sec. 501. et seq.

Provision is made in the bill for the termination of any temporary modification orders by operation of law upon the return of the deploying parent and the reinstatement of the custody or parenting time order in place at the time of the deployment. The bill provides that the non-deploying parent shall bear the burden of showing that the continuation of the temporary custody or parenting time order is required to prevent irreparable harm and that the reinstatement of any orders in effect before the deployment will no longer be in the child's best interests.

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1 The bill provides that New Jersey shall retain home state
2 jurisdiction for purposes of the Uniform Child Custody Jurisdiction
3 and Enforcement Act.

4 The bill also provides that if a motion for a change of custody is
5 filed after a parent returns from active military duty, the court shall
6 not consider a parent's absence due to military duty, by itself, to be
7 sufficient to justify a modification of a child custody or visitation
8 order.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1051**

STATE OF NEW JERSEY

DATED: JUNE 21, 2012

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1051.

This substitute bill addresses child custody and parenting time arrangements concerning prolonged military service absences of 30 or more days by service members, based on (1) deployments for combat or other operations, training duty, or attendance at a military service school, or (2) service-related treatments due to a service injury, illness, or other health condition.

As a general principle, the bill provides that a court must not consider the prolonged, service-related absence or potential absence of a military service member as a factor in determining the best interest of a child whenever making a determination concerning child custody or parenting time involving that service member. Additionally, the court must, to the extent possible, expedite a determination on an application, by a service member or the other parent or caretaker for a child, concerning a child custody or parenting time arrangement in any case in which there is no existing child custody or parenting time order and the service member has received official written notice of deployment or service-related treatment from the military.

Whenever a military service member is a party to a child custody or parenting time arrangement and has received an official written notice of deployment or service-related treatment, the service member must: (1) notify the other parent or caretaker involved in the arrangement of the deployment or treatment location and scheduled dates thereat, no later than the day immediately preceding the service member's departure, or the 10th day after receipt of the official written notice for the deployment or treatment, whichever date occurs first, unless such notice to the other parent or caretaker is prohibited by the military; and (2) provide timely information, if not prohibited by the military, regarding the service member's scheduled leave or other availability during the period of deployment or treatment.

The other parent or caretaker involved in the child custody or parenting time arrangement must: (1) make the child reasonably available to the service member while the service member is on leave or is otherwise available in accordance with the information previously

provided by the service member; and (2) facilitate opportunities for communication, including telephonic and electronic mail contact, to the extent feasible, between the service member and the child during the period of the service member's deployment or treatment.

The court cannot, during the period of deployment or treatment, enter an order modifying any judgment or order concerning child custody or parenting time, or issue a new order that changes an existing child custody arrangement in place prior to the service member's departure without the consent of all parties, except when the court finds it to be in the best interests of the child. The court may appoint a guardian ad litem, an attorney, or both to represent the child's interests with regard to any pending court determination. If the court does make a best interest finding and enters an order modifying a judgment or order or issues a new order, it may also order parenting time for a family member of the absent service member.

During the period of the service member's deployment or treatment and for 90 days following the day that deployment or treatment ends, New Jersey would retain exclusive, continuing jurisdiction over any determination concerning child custody or parenting time. To insure the bill's intent that its provisions are controlling on the issue of such jurisdiction, relevant sections of the "Uniform Child Custody Jurisdiction and Enforcement Act," P.L.2004, c.147 (C.2A:34-53 et seq.), concerning jurisdiction are amended to cross-reference to these provisions.

Upon the military service member's return, the child custody or parenting time order in effect prior to the service member's departure would be resumed, and would not be subject to modification for 90 days following the day the deployment or treatment ended; however, this provision would not preclude any application to preserve the health, safety, and welfare of the child.

The bill further provides that any application made under its provisions by a service member parent or caretaker during any period of deployment or service-related treatment would not, without the express consent of that service member, be considered a waiver of any right or protection provided under the "Servicemembers Civil Relief Act," 50 U.S.C. App. s.501 et seq., or the "New Jersey Soldiers' and Sailors' Civil Relief Act of 1979," P.L.1979, c.317 (C.38:23C-1 et seq.).

Finally, the bill provides that its provisions would not prevent a service member parent or caretaker and the other parent or caretaker from agreeing to a care arrangement for a child during the period of a service member's deployment or service-related treatment.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1051**

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2012

The Assembly Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1051.

This committee substitute addresses child custody and parenting time arrangements concerning prolonged military service absences of 30 or more days by service members, based on (1) deployments for combat or other operations, training duty, or attendance at a military service school, or (2) service-related treatments due to a service injury, illness, or other health condition.

As a general principle, the substitute provides that a court must not consider the prolonged, service-related absence or potential absence of a military service member as a factor in determining the best interest of a child whenever making a determination concerning child custody or parenting time involving that service member. Additionally, the court must, to the extent possible, expedite a determination on an application, by a service member or the other parent or caretaker for a child, concerning a child custody or parenting time arrangement in any case in which there is no existing child custody or parenting time order and the service member has received official written notice of deployment or service-related treatment from the military.

Whenever a military service member is a party to a child custody or parenting time arrangement and has received an official written notice of deployment or service-related treatment, the service member must: (1) notify the other parent or caretaker involved in the arrangement of the deployment or treatment location and scheduled dates thereat, no later than the day immediately preceding the service member's departure, or the 10th day after receipt of the official written notice for the deployment or treatment, whichever date occurs first, unless such notice to the other parent or caretaker is prohibited by the military; and (2) provide timely information, if not prohibited by the military, regarding the service member's scheduled leave or other availability during the period of deployment or treatment.

The other parent or caretaker involved in the child custody or parenting time arrangement must: (1) make the child reasonably available to the service member while the service member is on leave or is otherwise available in accordance with the information previously

provided by the service member; and (2) facilitate opportunities for communication, including telephonic and electronic mail contact, to the extent feasible, between the service member and the child during the period of the service member's deployment or treatment.

The court cannot, during the period of deployment or treatment, enter an order modifying any judgment or order concerning child custody or parenting time, or issue a new order that changes an existing child custody arrangement in place prior to the service member's departure without the consent of all parties, except when the court finds it to be in the best interests of the child. The court may appoint a guardian ad litem, an attorney, or both to represent the child's interests with regard to any pending court determination. If the court does make a best interest finding and enters an order modifying a judgment or order or issues a new order, it may also order parenting time for a family member of the absent service member.

During the period of the service member's deployment or treatment and for 90 days following the day that deployment or treatment ends, New Jersey would retain exclusive, continuing jurisdiction over any determination concerning child custody or parenting time. To insure the substitute's intent that its provisions are controlling on the issue of such jurisdiction, relevant sections of the "Uniform Child Custody Jurisdiction and Enforcement Act," P.L.2004, c.147 (C.2A:34-53 et seq.), concerning jurisdiction are amended to cross-reference to these provisions.

Upon the military service member's return, the child custody or parenting time order in effect prior to the service member's departure would be resumed, and would not be subject to modification for 90 days following the day the deployment or treatment ended; however, this provision would not preclude any application to preserve the health, safety, and welfare of the child.

The substitute further provides that any application made under its provisions by a service member parent or caretaker during any period of deployment or service-related treatment would not, without the express consent of that service member, be considered a waiver of any right or protection provided under the "Servicemembers Civil Relief Act," 50 U.S.C. App. s.501 et seq., or the "New Jersey Soldiers' and Sailors' Civil Relief Act of 1979," P.L.1979, c.317 (C.38:23C-1 et seq.).

Finally, the substitute provides that its provisions would not prevent a service member parent or caretaker and the other parent or caretaker from agreeing to a care arrangement for a child during the period of a service member's deployment or service-related treatment.

As reported by the committee, SCS for Senate Bill No. 1051 is identical to ACS for Assembly Bill Nos. 2164 and 634 which was also reported by the committee on this date.

ASSEMBLY, No. 2164

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 30, 2012

Sponsored by:

Assemblyman **HERB CONAWAY, JR.**

District 7 (Burlington)

Assemblyman **TROY SINGLETON**

District 7 (Burlington)

Co-Sponsored by:

Assemblyman **DeAngelo**

SYNOPSIS

Concerns custody and parenting time issues for military parents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2012)

1 AN ACT concerning certain child custody arrangements during
2 certain periods of military service by a parent and supplementing
3 chapter 2 of Title 9 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares that:

9 Currently there are seven military bases in New Jersey, and 35
10 National Guard armories, and there is a significant presence of
11 citizens serving in the military. Temporary duty, the deployment of
12 a military service member on active duty, or the mobilization of a
13 member of the National Guard or Reserve, sometimes with little
14 advance notice, can have a disruptive effect on custody or parenting
15 time arrangements involving minor children of service members.
16 Service members should be protected, as should their minor
17 children, from the loss of custodial arrangements and disruption of
18 family contact due to the service member's absence pursuant to
19 military orders for temporary duty, deployment, or mobilization.
20 Other members of a service member's family, such as grandparents
21 or current spouses, and minor siblings, can provide love, support,
22 comfort, care, and continuity to the service member's child through
23 delegated parenting time when a service member is absent due to
24 military orders. The scheduling of hearings in the normal course
25 may be prohibited or delayed pursuant to the protections of the
26 federal Servicemembers Civil Relief Act and harmful to the interest
27 of service members who, due to military orders, may need to have
28 an expedited hearing or may need to use electronic means to give
29 testimony when they cannot appear in person in court. The
30 scheduling of hearings conducted in the absence of service
31 members may be harmful to the best interest of minor children who
32 are negatively impacted and disrupted by the loss of parenting time
33 and contact with the military parent. The use of expedited hearings
34 and testimony by electronic means, at the request of the service
35 member who is absent or about to depart, would aid and promote
36 fair, informed, efficient, and prompt judicial processes for the
37 resolution of family law matters.

38
39 2. As used in this act:

40 a. "Parent" means natural parent or adoptive parent of a child
41 under the age of 18 years whose parental rights have not been
42 terminated by a court of competent jurisdiction, or a guardian of a
43 child under the age of 18 years.

44 b. "Deployed parent" means a parent who has been mobilized
45 and is subject to deployment, or who has been deployed, or who has
46 received written orders to deploy, as a member of the United States
47 Army, Navy, Air Force, Marine Corps, or a Coast Guard, or any
48 reserve component thereof, or a National Guard.

1 c. “Non-deployed parent” means a parent not subject to
2 deployment.

3 d. “Deployment” means military service in compliance with
4 military orders received by a member of the United States Army,
5 Navy, Air Force, Marine Corps, or Coast Guard, or any other
6 reserve component thereof, or a National Guard, to report for
7 combat operations, contingency operations, peacekeeping
8 operations, mobilization, temporary duty, a remote tour of duty, or
9 service upon a vessel, or other active service for which the member
10 is required to report unaccompanied by any family member,
11 including a period during which a member remains subject to
12 deployment orders or remains deployed due to illness, injury, leave,
13 or other lawful cause.

14

15 3. If a parent is required to be separated from a child due to
16 deployment, a court shall not enter a final order modifying the
17 terms of the parenting time contained in an existing order, or enter a
18 final order establishing custodial terms, until 90 days after the
19 deployment ends.

20

21 4. Deployment or the potential for future deployment may not
22 be the sole factor serving as a basis for an application for a change
23 in circumstance to support a permanent modification of the custody
24 or parenting time established in an existing order.

25

26 5. a. An existing order establishing the terms of custody or
27 parenting time in place at the time a parent is deployed may be
28 temporarily modified to make reasonable accommodation for the
29 parties because of the deployment of the parent.

30 b. A temporary modification order issued pursuant to this
31 section shall provide that the deployed parent shall exercise custody
32 of the child or exercise reasonable parenting time, whichever is
33 applicable pursuant to the original order, during a period of leave
34 granted to the deployed parent.

35 c. Any court modifying a previously ordered custody or
36 parenting time order due to the deployment of a parent shall specify
37 that the deployment is the basis for the order and shall be entered by
38 the court as a temporary order. Any such custody or parenting time
39 order shall further require the non-deployed parent and the legal
40 representative to provide the court and the deployed parent with 30
41 days’ advance written notice of any intended change of address and
42 any change of telephone number.

43 d. Upon the affirmative application of a deployed parent, upon
44 reasonable advance notice, and for good cause shown, the court
45 shall hold an expedited hearing in any custody or parenting time
46 application instituted under this section when the military duties of
47 the deployed parent have a material effect on his or her ability, or
48 anticipated ability, to appear or fully participate in person at a

1 hearing or evaluative process scheduled in the normal course. Such
2 application, if made, shall be considered to be an application for
3 affirmative relief, consistent with the protections afforded in the
4 Servicemembers Civil Relief Act, 50 U.S.C. appendix sec. 591, and
5 shall not be considered as a waiver of any rights or protections
6 contained under law in the Servicemembers Civil Relief Act.

7
8 6. a. A temporary order for custody or parenting time as set
9 forth in section 5 of P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall end by operation of law upon the
11 return of the deployed parent no later than 30 days after the return
12 of the deployed parent and the original terms of the custody or
13 parenting time order previously in place at the time of deployment
14 shall be considered reinstated.

15 b. Subsection a. of this section shall not limit the power of the
16 court to conduct an expedited or emergency hearing regarding the
17 terms and conditions of the exercise of custody or parenting time
18 upon return of the deployed parent, and the court shall do so within
19 10 days of the filing of an application seeking the continuation of
20 the temporary order based upon a showing of immediate danger of
21 irreparable harm to the child.

22 c. The non-deployed parent shall bear the burden of showing
23 that the continuation of the temporary custody or parenting time
24 order is required to prevent irreparable harm and that the
25 reinstatement of any orders in effect before the deployment of the
26 parent will no longer be in the child's best interests. The court shall
27 set any motion by the non-deployed parent that is not an emergency
28 for hearing within 30 days of filing of the motion and such an
29 application shall take precedence on the court's docket.

30
31 7. Any order permitting removal of the child from the State of
32 New Jersey during or due to deployment of a parent, shall be
33 denominated a temporary order, and any absence of the child from
34 the State of New Jersey as the result of P.L.2004, c.147 (C.2A:34-
35 53 et seq.), the Uniform Child Custody Jurisdiction and
36 Enforcement Act, shall be considered a temporary absence. For the
37 duration of the deployment of the parent, New Jersey shall retain
38 the exclusive, continuing jurisdiction under section 14 of P.L.2004,
39 c.147 (C.2A:34-66) and deployment of the parent may not be used
40 as a basis to assert inconvenience of the forum under section 19 of
41 P.L.2004, c.147 (C.2A:34-71).

42
43 8. In any application of custody or parenting time in which the
44 deployed parent invokes the protections of the Servicemembers
45 Civil Relief Act, 50 U.S.C. appendix 521, and the court declines to
46 extend a stay of proceedings beyond the mandatory 90 days
47 required by federal law and proceeds in the absence of the deployed
48 parent, the court shall appoint at the request of the deployed parent,

1 or its own motion, a guardian ad litem or an attorney or both to
2 represent the minor child's interests.

3
4 9. Upon affirmative application of the deployed parent, or upon
5 affirmative application of a person acting under military power of
6 attorney, as provided for under 10 U.S.C. 1044, the court may
7 temporarily delegate the deployed parent's parenting time, or a
8 portion of their parenting time, to persons with a close personal
9 relationship to the deployed parent and the child, for the duration of
10 the deployment if it is determined to be in the child's best interest.
11 Such delegated parenting time or access does not create an
12 entitlement or standing to assert separate rights to parenting time or
13 access for any person other than a parent, and shall terminate by
14 operation of law upon the end of the deployment, as set forth in this
15 act.

16
17 10. Upon affirmative application of a deployed parent, upon
18 reasonable advance notice, and for good cause shown, the court
19 shall allow that parent to present testimony and evidence by
20 affidavit or electronic means in family support, custody, and
21 parenting time matters instituted under this act when the military
22 duties of that parent have a material effect on his or her ability, or
23 anticipated ability, to appear or fully participate in person at a
24 hearing or evaluative process scheduled in the normal course. Such
25 application, if made, shall be considered to be an application for
26 affirmative relief consistent with the protections afforded in the
27 Servicemembers Civil Relief Act, 50 U.S.C. appendix sec. 591, and
28 shall not be considered as a waiver of any rights or protections
29 contained under law in the Servicemembers Civil Relief Act.
30 "Electronic means" shall include communication by telephone,
31 video teleconference, or the Internet.

32
33 11. Any order entered under this act shall require that:

34 a. The non-deployed parent shall make the child reasonably
35 available to the deployed parent when the deployed parent has
36 leave;

37 b. The non-deployed parent shall facilitate opportunities for
38 telephonic and electronic mail contact between the deployed parent
39 and the child during periods of deployment; and

40 c. The deployed parent shall provide timely information
41 regarding such parent's leave schedule to the non-deployed parent.

42
43 12. If there is no existing order establishing the terms of custody
44 or parenting time and it appears that deployment is imminent, upon
45 affirmative application by a parent, the court shall expedite a
46 temporary hearing to establish the terms and conditions of
47 temporary custody or parenting time, during the time period of
48 deployment. Any initial pleading filed to establish physical or legal

1 custody or parenting time for a child of a deployed parent shall be
2 so identified at the time of filing by stating in the text of the
3 pleading the specific facts related to deployment. Such application,
4 if made by the deployed parent, shall be considered to be an
5 application for affirmative relief, consistent with the protections
6 afforded in the Servicemembers Civil Relief Act, 50 U.S.C.
7 appendix sec. 591, and shall not be considered as a waiver of any
8 rights or protections contained under law in the Servicemembers
9 Civil Relief Act.

10
11 13. a. If military necessity precludes court adjudication before
12 deployment, the parties shall cooperate with each other in an effort
13 to reach a mutually agreeable resolution of custody, parenting time,
14 and child support.

15 b. A deployed parent shall provide a copy of his or her orders
16 to the non-deployed parent promptly and without delay before
17 deployment. Notification shall be made within 10 days of receipt of
18 orders for deployment. If less than 10 days' notice is received by
19 the deployed parent, then notice shall be given immediately upon
20 receipt of orders for deployment.

21
22 14. Service of process on a non-deployed parent whose
23 whereabouts are unknown may be accomplished by certified mail,
24 return receipt requested, to the non-deployed parent's last known
25 address based on an affidavit of the deployed parent.

26
27 15. In determining whether a parent has failed to exercise
28 parenting time, the court may not include in its determination any
29 time periods during which the parent did not exercise parenting
30 time due to the parent's deployment or due to the material effect of
31 that parent's military duties on the exercise of parenting time.

32
33 16. In making determinations pursuant to this act, the court may
34 award attorney's fees and costs based on the court's consideration
35 of:

36 a. the failure of either party to reasonably accommodate the
37 other party in custody or parenting time schedules related to a
38 parent's military service;

39 b. unreasonable delay caused by either party in resolving
40 custody or parenting time disputes related to a parent's military
41 service;

42 c. failure of either party to provide in a timely manner to the
43 other party military orders, income, earnings or payment
44 information, housing or educational information, or physical
45 location of the child; and

46 d. other factors as the court may consider appropriate and as
47 may be required by law.

1 17. This act shall take effect immediately for all applications
2 that are filed on or after that date.

3

4

5

STATEMENT

6

7 This bill establishes that in cases involving custody of a minor
8 child, if a motion for a change of custody is filed during a time a
9 parent is in active military duty, the court shall not enter an order
10 modifying or amending a previous judgment or order, or enter a
11 new order that permanently changes the custody arrangement in
12 existence on the date the parent was called to active military duty.

13 The bill provides that no court shall enter a final order modifying
14 the terms of custody or parenting time contained in an existing
15 order, or establishing child custody terms, until 90 days after a
16 deployment ends. Further, mobilization or deployment or the
17 potential for deployment may not be the sole factor serving as a
18 basis for an application for a change in circumstance to support a
19 permanent modification of the custody or parenting time established
20 in an existing order.

21 Under the bill, the court may enter a temporary custody under the
22 guidelines established which include:

23 -- A temporary modification order must provide that the deployed
24 parent is permitted to exercise custody of the child or exercise
25 reasonable parenting time, whichever is applicable pursuant to the
26 original order, during a period of leave granted to the deployed
27 parent.

28 -- Any custody or parenting time order shall require the non-
29 deployed parent to provide the court and the deployed parent with
30 30 days' advance notice of any intended change of address and any
31 change of telephone number.

32 -- Upon application of a mobilized or deployed parent, with
33 reasonable advance notice and for good cause shown, the court shall
34 hold an expedited hearing in any custody or parenting time
35 application when the military duties of the deployed parent have a
36 material effect on his or her ability, or anticipated ability, to appear,
37 fully participate in person at a hearing or evaluative process
38 scheduled in the normal course, or both. Such application, if made,
39 shall be considered to be an application for Affirmative Relief,
40 consistent with the protections afforded in the Servicemembers'
41 Civil Relief Act, and shall not be considered as a waiver of any
42 rights or protections contained under law in the Servicemembers'
43 Civil Relief Act.

44 Provision is made in the bill for the termination of any temporary
45 modification orders by operation of law upon the return of the
46 mobilized or deployed parent and the reinstatement of the custody or
47 parenting time order in place at the time of the mobilization or
48 deployment. The bill provides that the non-deployed parent shall

1 bear the burden of showing that the continuation of the temporary
2 custody or parenting time order is required to prevent irreparable
3 harm and that the reinstatement of any orders in effect before the
4 mobilization or deployment will no longer be in the child's best
5 interests.

6 The bill provides that New Jersey shall retain home state
7 jurisdiction for purposes of the Uniform Child Custody Jurisdiction
8 and Enforcement Act.

9 The bill also provides that if a motion for a change of custody is
10 filed after a parent returns from active military duty, the court shall
11 not consider a parent's absence due to military duty, by itself, to be
12 sufficient to justify a modification of a child custody or visitation
13 order.

ASSEMBLY, No. 634

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman DIANNE C. GOVE

District 9 (Atlantic, Burlington and Ocean)

Assemblyman BRIAN E. RUMPF

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Concerns custody and parenting time for military parents.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning establishment of and changes in child custody
2 during periods of active military duty and supplementing chapter
3 2 of Title 9 of the Revised Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. The Legislature finds and declares that currently there are
9 seven military bases in New Jersey, and 64 National Guard armories
10 in 42 communities, with a significant number of New Jersey
11 citizens serving in the military. The Legislature further finds that
12 temporary duty, the deployment of an active-duty servicemember,
13 or the mobilization of a member of the National Guard or Reserve,
14 sometimes with little advance notice, can have a disruptive effect
15 on custody or parenting time arrangements involving minor children
16 of servicemembers.

17 The Legislature further finds that servicemembers should be
18 protected, as should their minor children, from the loss of custodial
19 arrangements and disruption of family contact due to the
20 servicemember's absence in compliance with military orders for
21 temporary duty, deployment, mobilization; and that other members
22 of a servicemember's family, such as grandparents, current spouse,
23 and siblings of the minor, can provide love, support, comfort, care,
24 and continuity to the servicemembers minor child through delegated
25 parenting time when a servicemember is absent due to military
26 orders.

27 Child custody hearings conducted in a servicemember's absence
28 could be harmful to the interest of both the minor child who could
29 be adversely impacted by the loss of parenting time, as well as the
30 parent who has been deployed. The scheduling of hearings
31 affecting the rights and obligations of military personnel may be
32 prohibited or delayed pursuant to the protections of the
33 Servicemembers' Civil Relief Act, 50 United States Code Appendix
34 sec. 501. et seq.

35 The use of expedited hearings and testimony by electronic means,
36 at the request of the servicemember who is absent or about to depart
37 for military service, would, in cases where a hearing is necessary, aid
38 and promote fair, informed, efficient, and prompt judicial processes for
39 the resolution of family law makers.
40

41 2. As used in this act:

42 a. "Military parent" means a natural parent or adoptive parent
43 of a minor child whose parental rights have not been terminated by
44 a court of competent jurisdiction and who is currently enlisted with
45 the United States Army, Navy, Air Force, Marine Corps, Coast
46 Guard, National Guard, or any other reserve component thereof.

1 b. “Deploying parent” means a military parent who is the
2 parent of a child under the age of eighteen whose parental rights
3 have not been terminated by a court of competent jurisdiction or a
4 guardian of a child under the age of 18 who is deployed or who has
5 received written orders to deploy with the United States Army,
6 Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any
7 other reserve component thereof.

8 c. “Non-deploying parent” means a parent or guardian not
9 subject to an order of deployment whether or not a military parent.

10 d. “Deployment” means military service in compliance with
11 military orders received by a member of the United States Army,
12 Navy, Air Force, Marine Corps, Coast Guard, National Guard or
13 any other reserve component thereof, to report for combat
14 operations, peacekeeping operations, temporary duty (TDY), a
15 remote tour of duty or service upon a vessel or other active service
16 for which the deploying parent is required to report unaccompanied
17 by any family member. Military service includes a period during
18 which a military parent remains subject to deployment orders and
19 remains deployed on account of sickness, wounds, leave, or other
20 lawful cause.

21

22 3. Final Order. No court shall enter a final order modifying the
23 terms of custody or parenting time contained in an existing order; or
24 establishing child custody terms, until 90 days after a deployment
25 ends.

26

27 4. Deployment or the potential for deployment may not be the
28 sole factor serving as a basis for an application for a change in
29 circumstance to support a permanent modification of the custody or
30 parenting time established in an existing order.

31

32 5. Temporary modification. a. An existing order establishing
33 the terms of custody or parenting time in place at the time a military
34 parent is deployed may be temporarily modified to make reasonable
35 accommodation for the parties because of the deployment of the
36 military parent.

37 b. A temporary modification order issued pursuant to this
38 section must provide that the deploying parent is permitted to
39 exercise custody of the child or exercise reasonable parenting time,
40 whichever is applicable pursuant to the original order, during a
41 period of leave granted to the deploying parent.

42 c. Any such custody or parenting time order shall further
43 require the non-deploying parent to provide the court and the
44 deploying parent with 30 days’ advance notice of any intended
45 change of address and any change of telephone number.

46 d. Upon the application of a deploying parent, with reasonable
47 advance notice and for good cause shown, the court shall hold an

1 expedited hearing in any custody or parenting time application
2 instituted under this section when the military duties of the
3 deploying parent have a material effect on his ability, or anticipated
4 ability, to appear, fully participate in person at a hearing or
5 evaluative process scheduled in the normal course, or both. Such
6 application, if made, shall be considered to be an application for
7 affirmative relief, consistent with the protections afforded in the
8 Servicemembers' Civil Relief Act 50 United States Code Appendix
9 sec. 591, and shall not be considered as a waiver of any rights or
10 protections contained under law in the Servicemembers' Civil
11 Relief Act, 50 United States Code Appendix sec. 501. et seq. .

12

13 6. Termination of temporary modification.

14 a. A temporary order for custody or parenting time as set forth
15 in section 5 of P.L. c. (C.) (pending before the Legislature as
16 this bill), shall end by operation of law, upon the return of the
17 deploying parent and the original terms of the custody or parenting
18 time order previously in place at the time of deployment shall be
19 reinstated.

20 b. This shall not limit the power of the court to conduct an
21 expedited or emergency hearing regarding the terms and conditions
22 of the exercise of custody or parenting time upon return of the
23 deploying parent, and the court shall do so within ten days of the
24 filing of an application seeking the continuation of the temporary
25 order based upon a showing of immediate danger of irreparable
26 harm to the child.

27 c. The non-deploying parent shall bear the burden of showing
28 that the continuation of the temporary custody or parenting time
29 order is required to prevent irreparable harm and that the
30 reinstatement of any orders in effect before the deployment will no
31 longer be in the child's best interests. The court shall set any non-
32 emergency motion by the non-deploying parent for hearing within
33 30 days of filing of the motion and such an application shall take
34 precedence on the court's docket.

35

36 7. Removal from jurisdiction. Any order permitting removal of
37 the child from the State of New Jersey, during or in connection with
38 a period of deployment, shall be designated a temporary order, and
39 any absence of the child from the State of New Jersey as the result
40 of the application of P.L. 2004, c.147, (C. 2A:34-53 et.seq.), the,
41 "Uniform Child Custody Jurisdiction and Enforcement Act." For
42 the duration of the deployment, New Jersey shall retain exclusive,
43 continuing jurisdiction and deployment may not be used as a basis
44 to assert inconvenience of the forum.

45

46 8. Appointment of a guardian ad litem. In any application for
47 custody or parenting time in which a deployed military parent

1 invokes the protections of Servicemembers' Civil Relief Act, 50
2 United States Code Appendix 521, and the court declines to extend
3 a stay of proceedings beyond the mandatory 90 day stay and
4 proceeds in the absence of the military parent, the court shall
5 appoint at the request of the military parent, or its own motion, a
6 guardian ad litem or an attorney or both to represent the minor
7 child's interests.

8
9 9. Delegation of parenting time. Upon application of a person
10 acting under Military Power of Attorney, as provided for under 10
11 United States Code sec. 1044, the court may temporarily delegate
12 the deployed parent's parenting time to a person who according to a
13 representation made by the deployed parent, maintains a close
14 personal relationship to the deployed parent and the child, for the
15 duration of the deployment if it is determined to be in the child's
16 best interest. Such delegated parenting time or access does not
17 create an entitlement or standing to assert separate rights to
18 parenting time or access for any person other than a parent, and
19 shall terminate by operation of law upon the end of the deployment,
20 as set forth above.

21
22 10. Testimony and evidence. Upon application of a deploying
23 parent, upon a reasonable advance notice and for good cause shown,
24 the court shall allow that parent to present testimony and evidence
25 by affidavit or electronic means in custody and parenting time
26 matters instituted under this section when the military duties of that
27 parent have a material effect on his ability to appear and fully
28 participate in person at a hearing or evaluative process scheduled in
29 the normal course. Such application, if made, shall be considered to
30 be an application for Affirmative Relief Act consistent with the
31 protections afforded in 50 United States Code Appendix Sec. 591,
32 and shall not be considered as a waiver of any rights to protections
33 contained under law in the Servicemembers' Civil Relief Act. The
34 phrase "electronic means" includes communication by telephone,
35 video teleconference or the Internet.

36
37 11. Leave and other accommodations. Any order entered under
38 this section shall require that:

39 a. The non-deploying parent shall make the child or children
40 reasonably available to the deploying parent when the latter parent
41 has leave;

42 b. The non-deploying parent shall facilitate opportunities for
43 telephonic and electronic mail contact between the deploying parent
44 and the child during periods of deployment; and

45 c. The deploying parent shall provide timely information
46 regarding such parent's leave schedule to the non-deploying parent.

1 12. No existing order. If there is no existing order establishing
2 the terms of custody or parenting time and deployment is imminent,
3 upon application by either parent or guardian, the court shall
4 expedite a temporary hearing to establish the terms and conditions
5 of custody and parenting time, during the period of deployment.
6 Any initial pleading filed to establish physical or legal custody or
7 parenting time for a child of a deploying parent shall be so
8 identified at the same time of filing by stating the specific facts
9 related to deployment. Such application for affirmative relief,
10 consistent with the protections afforded in 50 United States Code
11 Appendix Sec. 591, and shall not be considered as a waiver of any
12 rights or protections contained under law in the Servicemembers'
13 Civil Relief Act, 50 United States Code Appendix sec. 501. et seq..
14

15 13. Duty to cooperate and disclose information.

16 a. The parties shall cooperate with each other in an effort to
17 reach a resolution of custody and parenting time issues.

18 b. A deploying parent shall promptly provide a copy of
19 deployment orders to the non-deploying parent and to the court,
20 prior to deployment. Notification must be made within 10 days of
21 receipt of deployment orders. If less than 10 days' notice is
22 received by the deploying parent, then notice must be given
23 immediately upon receipt of military orders.
24

25 14. Service of process. Service of process on a non-deploying
26 parent whose whereabouts are not known may be accomplished by
27 certified mail, return receipt requested, to the non-deploying
28 parents' last known address based on an affidavit of the deploying
29 part.
30

31 15. Failure to exercise parenting time. In determining whether a
32 parent has failed to exercise parenting time, the court may not
33 include in its determination any time periods during which the
34 parent was deployed or the parent's military duties had a material
35 effect on the exercise of parenting time.
36

37 16. Attorney fees. In making determinations pursuant to this
38 section, the court may award attorney's fees and costs based on the
39 court's consideration of:

40 a. the failure of either party to reasonably accommodate the
41 other party in custody or parenting time schedules related to a
42 military parent's service;

43 b. unreasonable delay caused by either party to timely provide
44 military orders, income, earnings or payment information, housing
45 or educational information, physical location of the child, to the
46 other party; and

1 c. other factors as the court may consider appropriate and as
2 may be required by law.

3
4 17. This act shall take effect immediately.

5
6
7 STATEMENT

8
9 This bill establishes that in cases involving custody of a minor
10 child, if a motion for a change of custody is filed during a time a
11 parent is in active military duty, the court shall not enter an order
12 modifying or amending a previous judgment or order, or enter a
13 new order that permanently changes the custody arrangement in
14 existence on the date the parent was called to active military duty.

15 The bill provides that no court shall enter a final order modifying
16 the terms of custody or parenting time contained in an existing
17 order; or establishing child custody terms, until 90 days after a
18 deployment ends. Further, deployment or the potential for
19 deployment may not be the sole factor serving as a basis for an
20 application for a change in circumstance to support a permanent
21 modification of the custody or parenting time established in an
22 existing order.

23 Under the bill, the court may enter a temporary custody under the
24 guidelines established which include:

25 -- A temporary modification order must provide that the deploying
26 parent is permitted to exercise custody of the child or exercise
27 reasonable parenting time, whichever is applicable pursuant to the
28 original order, during a period of leave granted to the deploying
29 parent.

30 -- Any custody or parenting time order shall require the non-
31 deploying parent to provide the court and the deploying parent with
32 30 days' advance notice of any intended change of address and any
33 change of telephone number.

34 -- Upon application of a deploying parent, with reasonable advance
35 notice and for good cause shown, the court shall hold an expedited
36 hearing in any custody or parenting time application when the
37 military duties of the deploying parent have a material effect on his
38 ability, or anticipated ability, to appear, fully participate in person
39 at a hearing or evaluative process scheduled in the normal course,
40 or both. Such application, if made, shall be considered to be an
41 application for affirmative relief, consistent with the protections
42 afforded in 50 United States Code Appendix Sec. 591, and shall not
43 be considered as a waiver of any rights or protections contained
44 under law in the Servicemembers' Civil Relief Act, 50 United
45 States Code Appendix sec. 501. et seq.

46 Provision is made in the bill for the termination of any temporary
47 modification orders by operation of law upon the return of the

1 deploying parent and the reinstatement of the custody or parenting
2 time order in place at the time of the deployment. The bill provides
3 that the non-deploying parent shall bear the burden of showing that
4 the continuation of the temporary custody or parenting time order is
5 required to prevent irreparable harm and that the reinstatement of
6 any orders in effect before the deployment will no longer be in the
7 child's best interests.

8 The bill provides that New Jersey shall retain home state
9 jurisdiction for purposes of the Uniform Child Custody Jurisdiction
10 and Enforcement Act.

11 The bill also provides that if a motion for a change of custody is
12 filed after a parent returns from active military duty, the court shall
13 not consider a parent's absence due to military duty, by itself, to be
14 sufficient to justify a modification of a child custody or visitation
15 order.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 2164 and 634**

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2012

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 2164 and 634.

This committee substitute addresses child custody and parenting time arrangements concerning prolonged military service absences of 30 or more days by service members, based on (1) deployments for combat or other operations, training duty, or attendance at a military service school, or (2) service-related treatments due to a service injury, illness, or other health condition.

As a general principle, the substitute provides that a court must not consider the prolonged, service-related absence or potential absence of a military service member as a factor in determining the best interest of a child whenever making a determination concerning child custody or parenting time involving that service member. Additionally, the court must, to the extent possible, expedite a determination on an application, by a service member or the other parent or caretaker for a child, concerning a child custody or parenting time arrangement in any case in which there is no existing child custody or parenting time order and the service member has received official written notice of deployment or service-related treatment from the military.

Whenever a military service member is a party to a child custody or parenting time arrangement and has received an official written notice of deployment or service-related treatment, the service member must: (1) notify the other parent or caretaker involved in the arrangement of the deployment or treatment location and scheduled dates thereat, no later than the day immediately preceding the service member's departure, or the 10th day after receipt of the official written notice for the deployment or treatment, whichever date occurs first, unless such notice to the other parent or caretaker is prohibited by the military; and (2) provide timely information, if not prohibited by the military, regarding the service member's scheduled leave or other availability during the period of deployment or treatment.

The other parent or caretaker involved in the child custody or parenting time arrangement must: (1) make the child reasonably available to the service member while the service member is on leave or is otherwise available in accordance with the information previously

provided by the service member; and (2) facilitate opportunities for communication, including telephonic and electronic mail contact, to the extent feasible, between the service member and the child during the period of the service member's deployment or treatment.

The court cannot, during the period of deployment or treatment, enter an order modifying any judgment or order concerning child custody or parenting time, or issue a new order that changes an existing child custody arrangement in place prior to the service member's departure without the consent of all parties, except when the court finds it to be in the best interests of the child. The court may appoint a guardian ad litem, an attorney, or both to represent the child's interests with regard to any pending court determination. If the court does make a best interest finding and enters an order modifying a judgment or order or issues a new order, it may also order parenting time for a family member of the absent service member.

During the period of the service member's deployment or treatment and for 90 days following the day that deployment or treatment ends, New Jersey would retain exclusive, continuing jurisdiction over any determination concerning child custody or parenting time. To insure the substitute's intent that its provisions are controlling on the issue of such jurisdiction, relevant sections of the "Uniform Child Custody Jurisdiction and Enforcement Act," P.L.2004, c.147 (C.2A:34-53 et seq.), concerning jurisdiction are amended to cross-reference to these provisions.

Upon the military service member's return, the child custody or parenting time order in effect prior to the service member's departure would be resumed, and would not be subject to modification for 90 days following the day the deployment or treatment ended; however, this provision would not preclude any application to preserve the health, safety, and welfare of the child.

The substitute further provides that any application made under its provisions by a service member parent or caretaker during any period of deployment or service-related treatment would not, without the express consent of that service member, be considered a waiver of any right or protection provided under the "Servicemembers Civil Relief Act," 50 U.S.C. App. s.501 et seq., or the "New Jersey Soldiers' and Sailors' Civil Relief Act of 1979," P.L.1979, c.317 (C.38:23C-1 et seq.).

Finally, the substitute provides that its provisions would not prevent a service member parent or caretaker and the other parent or caretaker from agreeing to a care arrangement for a child during the period of a service member's deployment or service-related treatment.

As reported by the committee, ACS for Assembly Bill Nos. 2164 and 634 is identical to SCS for Senate Bill No. 1051 which was also reported by the committee on this date.