

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1807

Introduced by Assembly Member Cook

February 21, 2012

An act to amend Section 3047 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1807, as amended, Cook. Family law: child custody.

Existing law provides that a party's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify modifying a custody or visitation order if the party's absence, relocation, or failure is due to his or her activation to military service, mobilization in support of combat or other military operation, or military deployment out of state, as defined. Existing law authorizes a court to issue a temporary order for custody and visitation for the period in which the party will be deployed, mobilized, or on temporary duty. Under existing law, there is a presumption that, upon the return of that party, the order shall revert back to the custody order that was in place before the modification unless the reversion is not in the best interest of the child.

~~This bill would require a military parent's motion to revert back to a prior custody order to be given priority over other custody or family law cases, except those cases that are already entitled to priority. Additionally, this bill would permit the presumption of reversion to the prior custody order to be rebutted. This bill would require a party opposing reversion to the prior custody order to make or allege a prima facie case that the reversion would not be in the child's best interest. If~~

~~the opposing party does not present a prima facie case, this bill would require the court to reestablish and revert to the prior custody order in place before the deployment. Under this bill, after the deploying party returns from deployment, prohibit the court from ordering a child custody evaluation as part of its review of a temporary order unless the party opposing reversion to the prior custody order makes a prima facie showing that reversion would not be in the child's best interest. Further, the bill would provide that neither a child's absence from the state during a parent's deployment nor a nondeploying parent's relocation during a parent's deployment while a temporary modification order is in effect would terminate the family court's jurisdiction for later custody modifications. This bill would also prohibit a parent's deployment from being used as a basis for asserting that the state court is an inconvenient forum for custody orders. The bill would additionally express the intent of the Legislature that family courts, to the extent feasible given existing resources and court practices, prioritize and expedite child custody cases when a military parent is deployed or returns from deployment.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3047 of the Family Code is amended to
- 2 read:
- 3 3047. (a) A party's absence, relocation, or failure to comply
- 4 with custody and visitation orders shall not, by itself, be sufficient
- 5 to justify a modification of a custody or visitation order if the
- 6 reason for the absence, relocation, or failure to comply is the party's
- 7 activation to military duty or temporary duty, mobilization in
- 8 support of combat or other military operation, or military
- 9 deployment out of state.
- 10 (b) (1) If a party with sole or joint physical custody or visitation
- 11 receives temporary duty, deployment, or mobilization orders from
- 12 the military that require the party to move a substantial distance
- 13 from his or her residence or otherwise has a material effect on the
- 14 ability of the party to exercise custody or visitation rights, any
- 15 necessary modification of the existing custody order shall be
- 16 deemed a temporary custody order made without prejudice, which
- 17 shall be subject to review and reconsideration upon the return of

1 the party from military deployment, mobilization, or temporary
2 duty.

3 (2) If the temporary order is reviewed upon return of the party
4 from military deployment, mobilization, or temporary duty, there
5 shall be a rebuttable presumption that the custody order shall revert
6 to the order that was in place before the modification, unless the
7 court promptly determines that it is not in the best interest of the
8 child. ~~In determining that reversion is not in the best interest of~~
9 ~~the child, the party opposing the reversion must make or allege a~~
10 ~~prima facie case that the court determines may, if timely and~~
11 ~~proven, overcome the rebuttable presumption. If no prima facie~~
12 ~~case is presented, the court shall reestablish and revert back to the~~
13 ~~prior orders that were in place before the deployment of a military~~
14 ~~parent. No evidentiary hearing is required if the facts presented~~
15 ~~by the opposing party do not raise a significant issue or issues as~~
16 ~~to the military parent's right to revert back to the prior orders. *The*~~
17 ~~*court shall not, as part of its review of the temporary order upon*~~
18 ~~*return of the deploying party, order a child custody evaluation*~~
19 ~~*under Section 3111 of this code or Section 730 of the Evidence*~~
20 ~~*Code, unless the party opposing reversion of the order makes a*~~
21 ~~*prima facie showing that reversion is not in the best interest of the*~~
22 ~~*child.*~~

23 ~~(3) A motion by a military parent to revert back to the prior~~
24 ~~eustody order shall be given priority over all other custody and~~
25 ~~family law matters except those that are already entitled to priority~~
26 ~~under existing law. The military parent shall not be penalized or~~
27 ~~punished upon return from deployment by any delay or dilatory~~
28 ~~tactics by the other parent or party or by the court.~~

29 ~~(4)~~

30 (3) (A) If the court makes a temporary custody order, it shall
31 consider any appropriate orders to ensure that the relocating party
32 can maintain frequent and continuing contact with the child by
33 means that are reasonably available.

34 (B) Upon a motion by the relocating party, the court may grant
35 reasonable visitation rights to a stepparent, grandparent, or other
36 family member if the court does all of the following:

37 (i) Finds that there is a preexisting relationship between the
38 family member and the child that has engendered a bond such that
39 visitation is in the best interest of the child.

1 (ii) Finds that the visitation will facilitate the child’s contact
2 with the relocating party.

3 (iii) Balances the interest of the child in having visitation with
4 the family member against the right of the parents to exercise
5 parental authority.

6 (C) Nothing in this paragraph shall increase the authority of the
7 persons described in subparagraph (B) to seek visitation orders
8 independently.

9 (D) The granting of visitation rights to a nonparent pursuant to
10 subparagraph (B) shall not impact the calculation of child support.

11 (c) If a party’s deployment, mobilization, or temporary duty
12 will have a material effect on his or her ability, or anticipated
13 ability, to appear in person at a regularly scheduled hearing, the
14 court shall do either of the following:

15 (1) Upon motion of the party, hold an expedited hearing to
16 determine custody and visitation issues prior to the departure of
17 the party.

18 (2) Upon motion of the party, allow the party to present
19 testimony and evidence and participate in court-ordered child
20 custody mediation by electronic means, including, but not limited
21 to, telephone, video conferencing, or the Internet, to the extent
22 that this technology is reasonably available to the court and protects
23 the due process rights of all parties.

24 (d) A relocation by a nondeploying parent during a period of a
25 deployed parent’s absence while a temporary modification order
26 for a parenting plan is in effect shall not, *by itself*, terminate the
27 exclusive and continuing jurisdiction of the court for purposes of
28 later determining custody or parenting time under this chapter.

29 (e) When a court of this state has issued a custody or visitation
30 order, the absence of a child from this state during the deployment
31 of a parent shall be considered a “temporary absence” for purposes
32 of the Uniform Child Custody Jurisdiction and Enforcement Act
33 (Part 3 (commencing with Section 3400)), and the court shall retain
34 exclusive continuing jurisdiction under Section 3422.

35 (f) The deployment of a parent shall not be used as a basis to
36 assert inconvenience of the forum under Section 3247.

37 (g) For purposes of this section, the following terms have the
38 following meanings:

1 (1) “Deployment” means the temporary transfer of a member
2 of the Armed Forces in active-duty status in support of combat or
3 some other military operation.

4 (2) “Mobilization” means the transfer of a member of the
5 National Guard or Military Reserve to extended active-duty status,
6 but does not include National Guard or Military Reserve annual
7 training.

8 (3) “Temporary duty” means the transfer of a service member
9 from one military base to a different location, usually another base,
10 for a limited period of time to accomplish training or to assist in
11 the performance of a noncombat mission.

12 (h) It is the intent of the Legislature that this section provide a
13 fair, efficient, and expeditious process to resolve child custody
14 and visitation issues when a party receives temporary duty,
15 deployment, or mobilization orders from the military, *as well as*
16 *at the time that the party returns from service and files a motion*
17 *to revert back to the custody order in place before the deployment.*
18 *The Legislature intends that family courts shall, to the extent*
19 *feasible within existing resources and court practices, prioritize*
20 *the calendaring of these cases, avoid unnecessary delay or*
21 *continuances, and ensure that parties who serve in the military*
22 *are not penalized for their service by a delay in appropriate access*
23 *to their children.*