

Assembly Bill No. 1807

CHAPTER 116

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

[Approved by Governor July 13, 2012. Filed with
Secretary of State July 13, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1807, 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, 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.

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

SECTION 1. Section 3047 of the Family Code is amended to read:

3047. (a) A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or

failure to comply is the party's activation to military duty or temporary duty, mobilization in support of combat or other military operation, or military deployment out of state.

(b) (1) If a party with sole or joint physical custody or visitation receives temporary duty, deployment, or mobilization orders from the military that require the party to move a substantial distance from his or her residence or otherwise has a material effect on the ability of the party to exercise custody or visitation rights, any necessary modification of the existing custody order shall be deemed a temporary custody order made without prejudice, which shall be subject to review and reconsideration upon the return of the party from military deployment, mobilization, or temporary duty.

(2) If the temporary order is reviewed upon return of the party from military deployment, mobilization, or temporary duty, there shall be a presumption that the custody order shall revert to the order that was in place before the modification, unless the court determines that it is not in the best interest of the child. The court shall not, as part of its review of the temporary order upon the return of the deploying party, order a child custody evaluation under Section 3111 of this code or Section 730 of the Evidence Code, unless the party opposing reversion of the order makes a prima facie showing that reversion is not in the best interest of the child.

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

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

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

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

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

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

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

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

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

(2) Upon motion of the party, allow the party to present testimony and evidence and participate in court-ordered child custody mediation by electronic means, including, but not limited to, telephone, video

teleconferencing, or the Internet, to the extent that this technology is reasonably available to the court and protects the due process rights of all parties.

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

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

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

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

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

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

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

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