

# Legislative Analysis

---



## **CUSTODY/PARENTING TIME: ACTIVE DUTY MILITARY DEPLOYMENTS**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4071 as introduced**  
**Sponsor: Rep. Tom Barrett**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4482 as introduced**  
**Sponsor: Rep. Klint Kesto**

**Senate Bill 9 (passed by the Senate as S-2)**  
**Sponsor: Sen. Rick Jones**

**House Committee: Judiciary**  
**Senate Committee: Judiciary (SB 9)**  
**Complete to 4-22-15**

### **SUMMARY:**

Taken together, the bills modify the requirements to file a motion for change of custody or a parenting time order when a parent is called to active military duty.

Under the Child Custody Act, when a child custody dispute is before the circuit court, the court may take certain actions for the best interests of the child. These include awarding custody of the child to one or more of the parties involved or to others, and providing for the payment of child support; providing for reasonable parenting time; and modifying or amending the court's previous judgments or orders for proper cause shown or because of a change of circumstances. The court may not modify or amend its previous judgments or orders or issue a new order changing the child's established custodial environment unless there is clear and convincing evidence that it is in the best interest of the child.

In addition, if a motion for change of custody is filed during the time a parent is in active military duty, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty. The court, however, may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. The bills would delete and re-enact these provisions, as described below.

Together, the bills amend the Child Custody Act to do the following, as provided in the Servicemembers Civil Relief Act (a federal law described below), if a motion for change of custody or change of parenting time were filed during the time a parent was on active duty military deployment:

- ❖ Allow a parent to file an application for a stay of the proceedings, and require the court to entertain the application; and allow a parent to apply for an extension of a stay.

- ❖ Prohibit the court from modifying a previous judgment or order, or issuing a new order, that changed the child's placement or the parenting time that existed when the parent was called to active duty military deployment.
- ❖ Allow the court to enter a temporary custody or parenting time order if there were clear and convincing evidence that it was in the best interest of the child.
- ❖ Require a parent to inform the court of the official active duty end date before or within 30 days after that date. (Under HB 4071, the stay must be adjusted to not less than 90 days after the official active duty end date).

House Bill 4071 and Senate Bill 9 also specify that, in a motion for change of custody, the parent's duration of active duty military deployment could not be considered in a best-interest-of-the-child determination. (Under HB 4071, this would also include prisoner of war status or being missing in action but not declared dead by a court). Upon notification of a parent's active duty end date, the court would have to reinstate the custody order in effect immediately before the deployment. If a subsequent motion for change of custody were filed, the court could not consider a parent's absence due to that military duty, or future deployments, in making a best-interest-of-the-child determination.

Under Senate Bill 9, if a deploying parent and the other parent shared custody, the deploying parent would have to notify the other parent of an upcoming deployment within a reasonable period.

House Bill 4482 and Senate Bill 9 define "deployment" as the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days under temporary or permanent official orders that are designated as unaccompanied, for which dependent travel is not authorized, that otherwise do not permit the movement of family members to that location, and for which the servicemember is restricted from travel.

[The federal Servicemembers Civil Relief Act (50 USC 501 to 597b) provides protections for military members as they enter active duty. Section 522 of that act provides for a stay of proceedings and applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant, at the time of filing an application for a stay, is in military service or is within 90 days after termination of or release from military service, and has received notice of the action or proceeding.

At any stage before final judgment in a civil action or proceeding in which such a servicemember is a party, if certain conditions are met, the court must grant a stay of at least 90 days upon application by the servicemember, and may do so on its own motion. A servicemember may apply for an additional stay based on military duty continuing to affect his or her ability to appear.]

House Bill 4482 and Senate Bill 9 make identical changes to Section 2 of the act.

House Bill 4071 and Senate Bill 9 amend Sections 27 and 27a and are almost identical.

House Bill 4482 is tie-barred to House Bill 4071 and Senate Bill 9. The bills would take effect 90 days after enactment.

MCL 722.22 (HB 4482 and SB 9)

MCL 722.27 and 722.27a (HB 4071 and SB 9)

**FISCAL IMPACT:**

The bills would have no fiscal impact on state or local government.

Legislative Analyst: Susan Stutzky

Fiscal Analyst: Robin Risko

---

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.