

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2064

2007 SENATE JUDICIARY

SB 2064

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2064**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 8, 2007

Recorder Job Number: 737

Committee Clerk Signature *Monica L. Salberg*

Minutes: Relating to awarding of custody and modification of custody of a child with a service member parent.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Lt. Col. David Theile, ND National Guard (meter :20) Introduced the bill. Attachment #1.

Sen. Fiebiger (meter 5:19) referred to page 3, paragraph 3 and how it relates to Section M. He discussed the structure of the bill in regards to "best welfare of the child" verses the "best welfare of a parent"

Lt. Col Thiele discussed how this would be the only exemptions and how the servicemen currently are loosing out.

Sen. Lyson asked if was common for a service person to loose their parenting rights.

Discussion on how current law is working (meter 9:47).

Sen. Fiebiger (meter 11:37) asked about the new language containing "shall" and it must mandate the court thus giving them no choices. The Senator asked if any other states had adopted this legislation? WI is the only state that the Lt. Col. Was aware of and they had not had it in there books for very long, it hasn't any history.

Mr. John Jacobson, Chairman, NDUCC (meter 17:22) Spoke in favor from there council.

Testimony in Opposition of the Bill:

Susan Beehler, Mother (meter 33:45) Married to a non-custodial parent sited her nightmare.

How important it is for the child's opinion to be the number one factor. "Joint" custody is a better solution. It allows both parents more of an equal status.

Testimony Neutral to the Bill:

Sherry Mills Moor, Family Law Attorney – (meter 18:39) Gave Testimony – Attachment #2

Discussed how current process is working by addressing all issues with permanent and temporary custody. If a parent seemed wronged – two wrongs don't make a right, we need to think of the child foremost.

Sen. Lyson stated that this bill only pertains to the "Reserves" not all of the services. He discussed with Ms. Moor (meter 27:1) how could this be hurting the child? Isn't this a "guide for a judge? Ms. Moor replied that it is a mandate-it is a "handcuff" for the judge.

Sen. Nething stated (meter 31:28) that this is indeed a dilemma, what can we do to make it a better law.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2064

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1290

Committee Clerk Signature *Maria L. Selberg*

Minutes: Relating to awarding of custody and modification of custody of a child with a service member parent.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Testimony In Support of Bill:

Sen. Fiebiger opened with a review of an amendment and reviewed the history of his meetings with Lt. Col. Thiele and Ms. Sherry Mills Moore – Att. #1a-1e.

Sharry Mills Moore on behalf of the Bar Assoc. spoke in favor of the amendment along with the Lt. Col. Discussion of "Hog Housing" the bill with the amendment.

Senator David Nething, Chairman closed the hearing.

Sen. Fiebiger made the motion to Do Pass "Hog House" amendment and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Sen. Fiebiger made the motion to Do Pass SB 2064 as amended and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Date: 1-17-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2064

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass "Hog House" Amendment.

Motion Made By Sen. Fiebiger Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1-17-07
Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2064

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number 78077.0101

Action Taken Do Pass as Amended

Motion Made By Sen. Fiebiger Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Fiebiger

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2064: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2064 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 14-09-06.6 of the North Dakota Century Code, relating to the modification of custody of a child with a service member parent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 14-09-06.6 of the North Dakota Century Code is created and enacted as follows:

If a motion for change of custody is filed during the time a parent is in active duty service, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service, except the court may enter a temporary custody order that is in the best interest of the child. The temporary custody order must explicitly provide that custody must be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of custody would not be in the best interest of the child. If an original custody decision is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent custody order until the return of the service member from active duty. The court may issue a temporary custody order in the best interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification of custody that continues past discharge or release from active duty service or to agreeing to a permanent custody order before release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2064

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2064

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3792

Committee Clerk Signature

W. Emrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2064.

Lt. Col. Dave Thiele, Office of Adjutant General: (see attached testimony).

Rep. Delmore: What are the numbers of people who are affected by this?

Lt. Col. Dave Thiele: No hard numbers. I can tell you that earlier this year, one of those rare times when a group of lawyers actually got together and we were discussing this bill. We each had stories that we had personally spoken to or dealt with in our capacity as Judge Advocates that we're dealing with this situation. It probably isn't more than 20, but certainly impacted 5-10, but I will tell you that our other concern is the fear alone, is such a burden. If we can alleviate the fear. I think most judges are sensitive to the idea that that isn't the right thing to do. But we need to assure our service members that being a member of the National Guard or reserve component is not going to be a negative detriment to their status as a custodial parent.

Chairman DeKrey: Do you want to go through for the committee on the Family Care package, how we're required to have that completed.

Lt. Col. Dave Thiele: One thing we require, if you are a service member, and you are a custodial parent, in order to remain in the National Guard, you have to create a Family Care Plan that means that you have specifically designated someone who's going to care for your

child or children, if you are mobilized. That includes ensuring that you have the proper powers of attorney in place, that's been communicated, the Commander reviews that document to ensure that everything is ready because the last thing we need to do, is to have somebody say, we're alerting you and you have two weeks to go to Iraq, which for the 142nd back in 2003, they had five days. We don't have time to do that, but yet the care of the children is critical. Certainly, it is something that we would never ship somebody off if there was something pending. We had a couple of people, who've had family care plans and something blew up at the last minute. We've had to adjust, we worked through that. I think the process works very well.

Rep. Klemin: First of all, the standard of proof on line 14, is that a stricter standard than the normal custody determination is now.

Lt. Col. Dave Thiele: That is correct. The normal standard would simply be a preponderance of the evidence, and this would escalate that standard to clear and convincing.

Rep. Klemin: So what is the reason for having higher standards of proof in this case rather than in any other case.

Lt. Col. Dave Thiele: Again, the key was the ensure that the service members mobilization was not a factor. When we originally worked through this, the language was much more specific and basically said you cannot consider the mobilization. We included in the criteria language, and this was actually suggested by the Family Bar, that this would be a good compromise that would still address our needs, and we agreed.

Rep. Klemin: On active duty, I've been aware of situations where people have been called to active duty but they've not actually had to leave ND. This would apparently apply in those situations too.

Lt. Col. Dave Thiele: It could, but typically the court is going to look to about availability in the situation. We haven't had anybody that was mobilized and stayed in ND, in probably 4 or 5 years, the last time we had it, it was on the NW border; and the airports were post-911. We had one unit mobilized and ended up in Ft. Riley, KS. They didn't know they were going to be in Ft. Riley, KS for a year, they thought they were going to Iraq. It's rare that somebody is actually is mobilized and stays within the state, but it could happen.

Rep. Klemin: I know of somebody that had to be a guard at the Air Force Base in Grand Forks.

Lt. Col. Dave Thiele: Yes, that was post-911 security function.

Rep. Klemin: Under that particular situation, this person could come back and if he wasn't on guard duty that this would apply all the time he's on active duty at the Air Base in Grand Forks.

Lt. Col. Dave Thiele: Yes, those were a one year tour, and he could exert his right to say that you can't issue a permanent custody decision until I'm off my tour of service, but the court can issue a temporary order. I would suggest, that certainly if I were advising that service member, I would tell him that it's in your best interest to work through this now, because what will likely happen is that the custodial parent would be the other spouse and he's probably better off participating in the current process and getting it addressed. The intent certainly isn't to use it in that manner, but it certainly could be.

Rep. Klemin: Is it likely to be a situation where the person is called to active duty and decide to stay in the military for the next 20 years and all that time, you could have a temporary custody order.

Lt. Col. Dave Thiele: It is only for mobilizations. So if they remained on active duty, they took an AGR tour, which would be if I was a traditional Guard member and wanted to go on active duty and it wasn't a mobilization scenario, that's not covered through here. This is

mobilizations. The current DOD policy, is mobilizations will be no longer than 1 year, we'll still see if they can make that work. But the longest period of mobilization that we've seen in ND, has been 18 months.

Rep. Klemin: Where does it say mobilizations.

Lt. Col. Dave Thiele: That's the specific "ordered to active duty under Title X", under AGR's it's under a different scenario, and it only applies to the Guard and reserves. This doesn't cover active component members.

Rep. Kretschmar: On line 10 and 11, it talks about the best interests and welfare of the child and then again on line 18 it talks about the same thing. Is it necessary in both places or is it duplication.

Lt. Col. Dave Thiele: Because we were dealing with motion for change of custody in the first part and the second part dealt with if there were already a custodial decision made, that's why we felt it best to put it in both places.

Chairman DeKrey: Thank you. Further testimony in support.

Sherry Mills Moore, State Bar Association, ND: Support. In regard to the question about the higher standard, it is a higher standard except in this situation you are talking about someone who has already had custody placed with them, and it is being restored to them, unless. It is sort of a hybrid of a change of custody, and it's for that reason it's a higher standard of proof to have the custody not restored to them.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2064

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3871

Committee Clerk Signature *APenrose*

Minutes:

Chairman DeKrey: We will take a look at SB 2064. What are the committee's wishes in regard to SB 2064.

Rep. Griffin: I move a Do Pass.

Rep. Meyer: Second.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Kingsbury

Date: 2/26/07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2064

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Guffin Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning			Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Kingsbury

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2064, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2064 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2064

Att # 1
1/8

TESTIMONY OF
LIEUTENANT COLONEL DAVID THIELE
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
SENATE JUDICIARY COMMITTEE
JANUARY 8, 2007
SENATE BILL 2064

Mr. Chairman, Members of the Committee,

In a recent letter to Congress, the parent of a deployed North Dakota Guardsman wrote, "As a result of our President ordering our daughter deployed, our grandson lost his mother." The mother was neither killed nor injured during the deployment. She returned safely, after honorably serving her country in combat in Iraq. The mother, who for five years had primary physical custody of the child, lost custody when the child's father became the primary custodian during the mother's deployment. The mother and father had never married. Custody was never restored to the mother because of the "change of circumstances" that resulted from the mother's deployment. This case, and others, demonstrates that the threat of losing custody simply from answering our country's call to service is more than a fear—it is a reality.

Currently, our courts consider mobilization—or even the possibility of mobilization—in making a determination of physical custody. Of course, no parent ever desires to lose custody of a child. Nothing is more adverse to volunteer military service than the reality that such service could result in the loss of custody of one's child. Members who have been called to service must be permitted to focus on their mission, without fear that their custodial status will be forever changed simply because they are ordered to active service.

The proposed bill is based on legislation, which was adopted by the Wisconsin Legislature in 2005 by a vote of 93-0. (2005 Wisconsin Act 471). Wisconsin law states that if a parent is a service member, a court may not consider a service-related absence or potential absence as a factor in determining legal custody of a child. Further, if a court modifies an order of physical placement as a result of a parent's mobilization, the court must reinstate the physical placement schedule that was in effect before the modification upon the service member's discharge or release from active duty.

The proposed legislation is narrow and is limited to the children of guard and reserve members. This legislation protects the parent-child relationship of families only in circumstances in which the military member has been, or may be, ordered to active duty service (mobilized).

The proposed legislation is not intended to favor the wishes of a military parent over the well-established best-interests-of-the-child analysis used by our courts. The proposed legislation is simply designed to prevent a child from losing his or her parent because the parent is ordered, or may be ordered, to active service. The fear and stress that parents and children face with mobilization should not include fear that the courts will not restore the parent-child relationship upon a parent's return from mobilization. The proposed legislation does not prohibit a temporary change of physical custody during mobilization; parents remain free to agree to any modifications. The court also remains free to consider any recognized factors other than mobilization or the possibility of mobilization.

On behalf of members of the National Guard and Reserve, we ask for the support of the committee in protecting children from adverse custody decisions based on the mobilization, or possible mobilization, of the child's parent.

Thank you Mr. Chairman. I would be pleased to respond to any questions.

Yg

#2

TESTIMONY ON SB 2064
SHERRY MILLS MOORE

I am Sherry Mills Moore, a family law attorney here in Bismarck, and speaking on my own behalf. Usually I am here as a volunteer lobbyist for the State Bar Association of North Dakota. I suspect SBAND may have a position on this bill but you are ahead of us. SBAND will not be considering their position until today and tomorrow. In the meantime, I would like to tell you my thoughts.

Before doing so, however, I think it would be helpful for you to know that I am and have been an attorney in private practice in Bismarck for the last 28 years. While my practice is varied, the vast majority of my time is spent handling family law cases, and I do so by preference. Family law is an extremely important area of the law that allows me the opportunity to work with all kinds of people, with all kinds of problems, and to influence a branch of the law that deals with that which is most dear to us all -- our families. I am also the Past President of the Family Law Section of the Bar Association and, chair of the Family Law Task Force.

Let me first say that I am not in anyway diminishing the role of those who serve in the military nor do I relish even the appearance of doing so.

My concern is this -- SB2064 places the rights of the parents ahead of the best interest of the child. This legislature and the courts have worked very hard to assure that the question in a custody case is what is best for the children. Not what promotes a parent, or pleases a parent, or even seems fair to a parent. Rather, it is solely, what is best for the child.

This bill inserts an entirely different factor into the consideration. This bill, if passed, might lessen the hardship of deployment on the military parent, but it does so on the back of the military child.

Where will we stop in promoting policy over the needs of a child? What about a law enforcement officer harmed in the line of duty or a victim of crime medically unable to parent for a period of time? Once we allow for the best interest of the child to be eroded, even for the most noble of purpose, we stop doing what is right, what is best for the children.

Now let's get specific and practical. There are two times this will come into play -- when custody is being determined just before deployment and after the return. On the first of those -- before deployment -- how can this work? If mom and dad are in a custody dispute and mom is activated and deployed, is the court to ignore that? How, because certainly the child cannot go with her? If mom is the better

parent, but will not be here for 18 months, is the court really being asked to simply ignore that and grant her custody? Please understand this section of the Century Code applies for both temporary and permanent custody. With SB2064, the court can't even think about or speak of the deployment.

The court can already grant a military parent permanent custody with temporary custody to go to the nonmilitary parent, but to ban them from thinking about it, directly or indirectly limits necessary court's options.

And, then there is custody on the return of the military parent. Under this bill, if a child is with the military parent, the parent is deployed, the child's custody is changed to the non-military parent, automatically on return the child is transferred back immediately. I can understand if the return of the military custodial parent allows the court to transfer the child back, but to make it automatic in all cases? Most pragmatically, what if the military parent is unable to do so because that parent has been injured? This bill does not accommodate that. It says, the "court shall" require reinstatement of physical custody.

Beyond that, again, what about the child? The child may be in a different community, a different school system and thriving. Should that child be immediately moved from that situation without any other consideration?

How unfortunate that some children must lose a parent for months, if not years, as that parent goes to war. Should we add to that loss by giving those same military children, a lesser standard in determining their custody, while all other children have their best interest as the measure?

Again, my concerns are not intended in any way to lessen the appreciation I have for the sacrifices made by these military parents for our country. We cannot lose the children, however, in the desire to mitigate the parent's loss.

I thank you for the opportunity to speak to this bill. If you have any questions, I would be happy to try to answer them. If any arise in the future you may contact me by telephone at 222-4777 or e-mail address of esther@btinet.net Thank you.

Nething, David E.

From: rpm@bis.midco.net
Sent: Tuesday, January 09, 2007 9:28 AM
To: Nething, David E.; Fiebiger, Tom D.; Cook, Dwight C.; Heitkamp, Joel C.

Hi! My testimony for SB2064. Susan Beehler 701 663-4728 220-2297

SB 2064 Testimony Judiciary Hearing Monday January 8 2006

My name is Susan Beehler, residing in Mandan ND. I am the mother of 5 children, 14 to 26 years old. I am a custodial parent (my child is 24, I am still receiving child support as his dad had been in arrears for years) and married to a non-custodial parent. I am a former lobbyist for RKIDS Remembering Kids In Divorce Settlements, a group of concerned parents that was active in the legislature from 1994 to about 2001, most of the parents that were involved their children who were directly affected by the system have grown. It has been a battle to fight for the best interests of the children that have been affected not only by divorce but by choices parents have been force to make or have made.

I am opposed to SB 2064 as written because it has now taken the emphasis away from the best interest of the child and places a parent's right in the fore front. It fails to address all the issues that arise with child custody when a parent is deployed to serve during times of war. The number one issue it has not addressed is who will care for the child if a custodial parent is called to serve our country? A custodial parent should not be forced or threatened to lose custody of a child but the reality is someone needs to care for the child. Whether we like to admit it or not; the deployment can have an adverse

affect, some parents may not want their child to be subjected to. In the real world parents that "share" their children between two homes do not always choose the other parent to care for the child. Example: a custodial parent is called to duty by the National Guard or Reserve, the parent asks grandparents or a step parent or a friend to care for the child while they are deployed.

The non-custodial parent was not considered by the custodial parent not because he or she is not able or fit to take the physical custody of the child but based on that is the choice the custodial parent can make. If the option of the non-custodial parent is disregarded out of spite; or just because they don't like the other parent or for whatever their reason, the only choice for the non-custodial parent if they can't work it out with the custodial parent is going to court. There are three distinct problems when a custodial parent needs to have someone even the non-custodial parent take physical custody:

1. The legalities of legal custody (simple things like taking a child to the doctor can become a nightmare)
2. The money; child support
3. The timeliness of deciding these matters to go in front of the judge for the legal orders necessary (it takes months to get into court) This same issue arises when a custodial parent has an illness that requires physical custody to transfer or they are jailed or for any other reason they may not be able to care for the child they have custody of.

SB 2064 only addresses one component of the problem and that is threat of losing custody of your child if you are deployed. Not only is the service person giving of themselves to fight for the freedom of our nation but they may be threatened on the home front with a custody battle.

It is not an easy solution for you, the lawmaker to face either. I believe that this situation and other situations similar to this can be addressed.

A statue could be as broad as every parent has the right to joint physical custody or a law could be written that through a judicial administrative procedure through the clerk of courts that would allow the custodial parent in these instances to transfer temporary custody. This procedure would be much like the procedure in place for when a child turns but is not finished with school. I will be sending a copy of the form that is currently used for the child turning 18 to your committee's clerk. The procedure could be

initiated by either parent, but their would have to be a triggering event, such as the parent having physical care of the child for more than the 28 days or upon the custodial parent being incarcerated, etc 1. Giving the non-custodial parent preferred placement (as long as they are not more than a predetermine amount arrears in support, the child has a relationship with the non-custodial parent and they are capable of caring for the child for an extended period of time, the non-custodial residence is within the same state as the child or whatever stipulations you, the lawmaker says should be addressed) when a custodial parent is temporarily unable to care for the child for a period of 28 consecutive days or more (outside the scope of their visitation agreement). The agreement could allow through both parents agreement; or signing that the child is to be physically cared for by a third party such as a step-parent or blood relative.

2. This procedure would list the duration of this time period and one extension could be filed for an additional 60 days (or whatever time period the law would specify) if the need would warrant it

3. Only if the custodial parent would not want the non-custodial parent to have physical custody, then the custodial parent could remedy through the courts and then the burden should be on the custodial parent to prove the non-custodial not fit to take physical custody.

4. This procedure could also address child support; the simplest way would be suspending it during the duration of this temporary transfer and have a procedure that the physical custody caregiver could seek support from other parent if needed. (Of course if our state would be an income shares model the prorated support could be shifted, making issues like this easier) 5. Upon the custodial returning from their deployment or the time period is ended, the child is returned to the physical custody of the custodial parent, (the non-custodial parent could still seek permanent custody; it would be based on the laws in place) This all could be done with or without an attorney. The court house and the National Guard or Reserve could have these forms available to be filled out just like all the other affairs they get in order, before deploying.

This procedure would also help if a custodial parent would need to give temporary care to the other parent because of being jailed or sick (such as surgeries or long term illness, alcohol and drug treatment).

Let's take the battle out of this and solve the issue with an easy, family friendly procedure to use. SB 2064 insures one parents right over another and fails to address the best interest of the child. I urged do not pass unless the true problems of this situation are addressed through amending.

A separate bill outlining the procedure would be better. The procedure I have suggested would let parents decide together and if not, they could still be allowed for a judicial remedy to the situation.

Susan Beehler
702 14th ST NW
Mandan ND 58554
701 663-4728
701 220-2297
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1a
2064**Fiebiger, Tom D.**

From: Sherry Mills Moore [esther@btinet.net]
Sent: Wednesday, January 17, 2007 7:35 AM
To: Fiebiger, Tom D.; Thiele, David L.
Cc: Nething, David E.; Sprynczynatyk, General David A.; 'Udland, Robert BG NGND'
Subject: SB 2064

Senator Fiebiger and Lt. Colonel Thiele,

In his response yesterday, David said he had not received my response, although I had sent it a few hours earlier. Our respective emails being what they have been this week, I will repeat what I said, and add a bit.

First, thank you for your drafting efforts and work on compromise. I sent this out to the experienced family law practitioners with whom I have been corresponding, and while they see the improvement of the latter drafts, when it comes to changing the best interest factors the high level of concern remains. The needs of the military child will be subordinated to the needs of the military parent. Our system has always promoted the needs of the child above all else. It should not be changed now, even for this worthy group of parents.

On paragraph 9, the modification, language, I think you have done a good job and could support that provision. The State Bar Association of North Dakota remains very concerned about the consequences of the changes to the best interest factors, particularly as originally drafted.

The information on the importance of this bill to the guard was interesting, but I have never suggested that you thought this a minor measure. Do you know if any of the people with whom you consulted have ever worked in the area of family law? I would note that while your members have a vested interest in having their parental needs paramount in the best interest measure, the family law bar does not.

To sum up, the last draft you did eliminates many of the problems of the language of the original bill, but I believe you are inserting a slippery slope into a very steady product.

Again, thank you both.

Sherry Mills Moore

AH #1a
1-17-07

SB 2064

A **BILL** for an Act to amend and reenact sections 14-09-06.2 and 14-09-06.6 of the North Dakota Century Code, relating to awarding of custody and modification of a child with a service member parent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.2. Best interests and welfare of child--Court consideration--
Factors**

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

- a. The love, affection, and other emotional ties existing between the parents and child.
- b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
- c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- d. The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.
- e. The permanence, as a family unit, of the existing or proposed custodial home.
- f. The moral fitness of the parents.
- g. The mental and physical health of the parents.
- h. The home, school, and community record of the child.
- i. The reasonable preference of the child, if the court deems the child to be

of sufficient intelligence, understanding, and experience to express a preference.

j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other

persons.

l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.

m. Any other factors considered by the court to be relevant to a particular child custody dispute.

2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

SECTION 1. AMENDMENT. Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.6. Limitations on postjudgment custody modifications.

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing

affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date for an evidentiary hearing.

5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:
 - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
 - b. The modification is necessary to serve the best interest of the child.
7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.
8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.
9. If a motion for change of custody is filed during the time a parent is in active duty service, the court shall 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 duty service,

except the court may enter a temporary custody order that is in the best interest of the child. Any such temporary custody order shall explicitly provide that custody shall be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of custody would not be in the best interest of the child. If an original custody decision is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent custody order until the return of the service member from active duty. The court may issue a temporary custody order in the best interest of the child for the time period of the active duty service. Nothing in this section shall prevent a service member from consenting to a modification of custody that continues past discharge or release from active duty service or to agreeing to a permanent custody order prior to release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and active duty service means an order to active duty under title 10 of the United States Code.

Fiebiger, Tom D.

From: Thiele, David LTC NGND [david.thiele@us.army.mil]
Sent: Tuesday, January 16, 2007 6:27 PM
To: Fiebiger, Tom D.; Sherry Mills Moore
Cc: Sprynczynatyk, General David A.; Nething, David E.; Udland, Robert BG NGND
Subject: RE: SB 2064

Sen. Fiebinger: I haven't heard from Sherry but I will respond to your comment that paragraph "m" as we proposed should or could be eliminated. Our position is that we have moved significantly to address the concerns raised by Sherry from our original proposal which is, for all intents, the same language approved by the Wisconsin Legislature 93-0. We do not believe that removal of that paragraph will allow us to accomplish our original goal and would therefore request the committee approve the bill either as drafted or with our recent proposed amendment, which we believe is a more than fair compromise.

There seems to be confusion that this issue is not one of great importance. We created a 15 member committee to review possible legislation in 2005 and the end result was some 30+ ideas that we believed had merit. We reduced that list to only those items that were "necessities" and the child custody legislation is one of only seven remaining issues on both our agenda and the Governor's.

The case story I provided to the committee was only one of many we have had since 2001. In fact, the case referenced in my testimony occurred well after this legislation was proposed. The bottom line is that we have 4,500 members of the National Guard and all the reserve members in North Dakota who believe this issue is extremely important and should be passed. I would suggest that the vast majority of the public would also support the initiative based on our conversations with people around the state when we presented our legislative agenda in November.

On behalf of MG Sprynczynatyk and all our reserve and guard members, I would respectfully request the committee's favorable consideration. If you or the committee needs any further information please let me know. Dave

-----Original Message-----

From: Fiebiger, Tom D. [mailto:tdfiebiger@nd.gov]
 Sent: Tuesday, January 16, 2007 3:33 PM
 To: Thiele, David LTC NGND; Sherry Mills Moore
 Subject: RE: SB 2064

Chairman Nething has advised me that the Senate Judiciary Committee will take action on SB 2064 tomorrow at 1 pm in the Fort Lincoln Room. We will either take action on any agreed upon revision that you have put together, or on SB 2064 as originally introduced. Please let me know by email by 8:30 am tomorrow, January 17th, whether you have an agreement or not. I'm inclined to think that using LTC Thiele's revised paragraph nine language on modification and getting rid of the new "m" altogether would be the preferable and most workable option. Tom Fiebiger, Senator, District 45.

-----Original Message-----

From: Thiele, David LTC NGND [mailto:david.thiele@us.army.mil]
 Sent: Tuesday, January 16, 2007 11:20 AM
 To: Fiebiger, Tom D.; Sherry Mills Moore
 Subject: RE: SB 2064

OK we have wrestled with this and here is our compromise that we believe addresses the concerns of both sides. We took some additional language from Michigan and put it in at para 9. I also added the language that allows for the service member to agree to modification that extends the temporary order. I did feel strongly that "m." needs to stay in but we agreed to take out the "contravene" language and instead used the "clear and convincing" standard which is arguably more restrictive to the service member's interests than just leaving it at "shall

not be grounds for denying that parent custody."

This will allow the court to use any of the factors it sees fit in the custody determination, just with a higher standard. We also took out the specific title 10 citations. This has no impact other than if the mobilization statutes in Title 10 change in the future we don't need to also change the law (Title 10 is active duty federal service and Title 32 is related to the National Guard in a non-federal status). We also changed "may not" to "shall not" in the first sentence.

It would appear that if this doesn't work we are at a stalemate and the committee will need to address the original language which we will strongly support. My preference is that we both somewhat hold our noses and agree to the current draft. Give me a call if you have any questions or additional concerns. Dave

1c

Fiebiger, Tom D.

From: Thiele, David LTC NGND [david.thiele@us.army.mil]
Sent: Tuesday, January 16, 2007 11:20 AM
To: Fiebiger, Tom D.; Sherry Mills Moore
Subject: RE: SB 2064

Attachments: 16 Jan Guard edits-child custody.doc

*Lt Col. Thiele
- final
version*



16 Jan Guard
its-child custo

OK we have wrestled with this and here is our compromise that we believe addresses the concerns of both sides. We took some additional language from Michigan and put it in at para 9. I also added the language that allows for the service member to agree to modification that extends the temporary order. We did feel strongly that "m." needs to stay in but we agreed to take out the "contravene" language and instead used the "clear and convincing" standard which is arguably more restrictive to the service member's interests than just leaving it at "shall not be grounds for denying that parent custody." This will allow the court to use any of the factors it sees fit in the custody determination, just with a higher standard. We also took out the specific title 10 citations. This has no impact other than if the mobilization statutes in Title 10 change in the future we don't need to also change the law (Title 10 is active duty federal service and Title 32 is related to the National Guard in a non-federal status). We also changed "may not" to "shall not" in the first sentence.

It would appear that if this doesn't work we are at a stalemate and the committee will need to address the original language which we will strongly support. My preference is that we both somewhat hold our noses and agree to the current draft. Give me a call if you have any questions or additional concerns. Dave

-----Original Message-----

From: Fiebiger, Tom D. [mailto:tdfiebiger@nd.gov]
Sent: Thursday, January 11, 2007 10:56 AM
To: Sherry Mills Moore; Thiele, David LTC NGND
Subject: RE: SB 2064

Thanks for the email and attachments. I have not yet heard back from Lt. Col. Thiele. Thanks for the heads up on the email address. Senator Tom Fiebiger, District 45.

From: Sherry Mills Moore [mailto:esther@btinet.net]
Sent: Thursday, January 11, 2007 10:04 AM
To: Fiebiger, Tom D.; Thiele, David L.
Subject: RE: SB 2064

I have had some and most are in the range of not liking the basic concept. One person, however, suggested that we amend the last paragraph and would not need the others so I am attaching that, and the original draft I gave you on Tuesday. As Connie probably told you, I have emailed you several times and had it bounce back so I am crossing my fingers. (aha, I see the problem, your card and the book say your address is "tfiebiger" no "d"). Have you had any feedback?

Sherry Mills Moore

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-----Original Message-----

From: Fiebiger, Tom D. [mailto:tdfiebiger@nd.gov]
Sent: Thursday, January 11, 2007 8:49 AM
To: esther@btinet.net; david.thiele@nd.ngb.army.mil
Subject: SB 2064

Greetings. Have you had an opportunity to get input on the revisions?
Thanks.

Tom Fiebiger
Senator - District 45

1e

Sherry Dells Moore
Reviewed
11/16/07 - see changes -
w/ no out
there?
OK?

SB2064 01/16/07

A BILL for an Act to amend and reenact section 14-09-06.6 of the North Dakota Century Code, relating to modification of custody of a child with a service member parent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-06.6 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.6. Limitations on postjudgment custody modifications.

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date

for an evidentiary hearing.

5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.
6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:
 - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
 - b. The modification is necessary to serve the best interest of the child.
7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.
8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.
9. Nothing in this section prohibits a court from issuing a custody order to change the primary physical custody of a child because the parent who has primary physical custody will be or has been absent from the home for active duty service. Any order transferring physical custody of a child due to service-related absence shall explicitly provide that custody shall be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that to restore the custody would not be in the best interest of

the child. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and active duty service means an order to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 of the United States Code.

1d

SB 2064

A **BILL** for an Act to amend and reenact sections 14-09-06.2 and 14-09-06.6 of the North Dakota Century Code, relating to awarding of custody and modification of a child with a service member parent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.2. Best interests and welfare of child--Court consideration--
Factors**

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

- a. The love, affection, and other emotional ties existing between the parents and child.
- b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
- c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- d. The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.
- e. The permanence, as a family unit, of the existing or proposed custodial home.
- f. The moral fitness of the parents.
- g. The mental and physical health of the parents.
- h. The home, school, and community record of the child.
- i. The reasonable preference of the child, if the court deems the child to be

of sufficient intelligence, understanding, and experience to express a preference.

j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other

persons.

l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.

m. The fact that a parent is a service member who has been or will be absent from the home for active duty service may shall not be grounds for denying that parent custody, unless the court finds by clear and convincing evidence that other factors outlined in this section support a contrary determination. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and active duty service means an order to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 of the United States Code.

n. Any other factors considered by the court to be relevant to a particular child custody dispute.

2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

SECTION 1. AMENDMENT. Section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.6. Limitations on postjudgment custody modifications.

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:

- a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.

4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date for an evidentiary hearing.

5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.

6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:
 - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
 - b. The modification is necessary to serve the best interest of the child.

7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.
8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.
9. If a motion for change of custody is filed during the time a parent is in active duty service, the court shall 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 duty service, except the court may enter a temporary custody order that is in the best interest of the child. Any temporary custody order shall explicitly provide that custody shall be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of custody would not be in the best interest of the child. Nothing in this section shall prevent a service member from consenting to a modification of custody that continues past discharge or release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and active duty service means an order to active duty under section 12301(a), 12301(g), 12302, 12304, or 12306 of title 10 of the United States Code.

TESTIMONY OF
LIEUTENANT COLONEL DAVID THIELE
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
SENATE JUDICIARY COMMITTEE
FEBRUARY 26, 2007
ENGROSSED SENATE BILL 2064

Mr. Chairman, Members of the Committee,

In a recent letter to Congress, the parent of a deployed North Dakota Guardsman wrote, "As a result of our President ordering our daughter deployed, our grandson lost his mother." The mother was neither killed nor injured during the deployment. She returned safely, after honorably serving her country in combat in Iraq. The mother, who for five years had primary physical custody of the child, lost custody when the child's father became the primary custodian during the mother's deployment. The mother and father had never married. Custody was never restored to the mother because of the "change of circumstances" that resulted from the mother's deployment. This case, and others, demonstrates that the threat of losing custody simply from answering our country's call to service is more than a fear—it is a reality.

Currently, our courts consider mobilization—or even the possibility of mobilization—in making a determination of physical custody. Of course, no parent ever desires to lose custody of a child. Nothing is more adverse to volunteer military service than the reality that such service could result in the loss of custody of one's child. Members who have been called to service must be permitted to focus on their mission, without fear that their custodial status will be forever changed simply because they are ordered to active service.

The engrossed bill is the result of discussions between family practice and National Guard lawyers who have all experience with service member custody issues. The current bill provides that if final custody has not been determined or a change of custody is requested, the court may not issue a final decision until the service member has returned from his or her mobilization. If the service member has physical custody and is mobilized, the court must return the physical custody to the service member unless the court finds by clear and convincing evidence it is not in the best interests of the child.

The proposed legislation is narrow and is limited to the children of guard and reserve members. This legislation protects the parent-child relationship of families only in circumstances in which the military member has been, or may be, ordered to active duty service (mobilized).

The proposed legislation is not intended to favor the wishes of a military parent over the well-established best-interests-of-the-child analysis used by our courts. The proposed legislation is simply designed to prevent a child from losing his or her parent because the parent is ordered, or may be ordered, to active service. The fear and stress that parents and children face with mobilization should not include fear that the courts will not restore the parent-child relationship upon a parent's return from mobilization. The proposed legislation does not prohibit a temporary change of physical custody during mobilization and parents remain free to agree to any modifications.

On behalf of members of the National Guard and Reserve, we ask for the support of the committee in protecting children from adverse custody decisions based on the mobilization, or possible mobilization, of the child's parent.

Thank you Mr. Chairman. I would be pleased to respond to any questions.