

**ASSEMBLY BILL**

**No. 1807**

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**Introduced by Assembly Member Cook**

February 21, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1807, as introduced, 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, 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.

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, ~~a~~ *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  
18 the party from military deployment, mobilization, or temporary  
19 duty. ~~ff~~

20 (2) *If the temporary order is reviewed upon return of the party*  
21 *from military deployment, mobilization, or temporary duty, there*  
22 *shall be a rebuttable presumption that the custody order shall revert*  
23 *to the order that was in place before the modification, unless the*  
24 *court promptly determines that it is not in the best interest of the*  
25 *child. In determining that reversion is not in the best interest of*  
26 *the child, the party opposing the reversion must make or allege a*  
27 *prima facie case that the court determines may, if timely and*

1 *proven, overcome the rebuttable presumption. If no prima facie*  
2 *case is presented, the court shall reestablish and revert back to*  
3 *the prior orders that were in place before the deployment of a*  
4 *military parent. No evidentiary hearing is required if the facts*  
5 *presented by the opposing party do not raise a significant issue*  
6 *or issues as to the military parent's right to revert back to the prior*  
7 *orders.*

8 (3) *A motion by a military parent to revert back to the prior*  
9 *custody order shall be given priority over all other custody and*  
10 *family law matters except those that are already entitled to priority*  
11 *under existing law. The military parent shall not be penalized or*  
12 *punished upon return from deployment by any delay or dilatory*  
13 *tactics by the other parent or party or by the court.*

14 ~~(2)~~

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

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

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

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

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

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

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

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

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

4 (2) Upon motion of the party, allow the party to present  
 5 testimony and evidence and participate in court-ordered child  
 6 custody mediation by electronic means, including, but not limited  
 7 to, telephone, video teleconferencing, or the Internet, to the extent  
 8 that this technology is reasonably available to the court and protects  
 9 the due process rights of all parties.

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

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

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

24 ~~(g)~~

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

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

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

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

38 ~~(e)~~

39 (h) It is the intent of the Legislature that this section provide a  
 40 fair, efficient, and expeditious process to resolve child custody

- 1 and visitation issues when a party receives temporary duty,
- 2 deployment, or mobilization orders from the military.

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