White Paper on Federal Military Custody

Background

In Section 573 of the House National Defense Authorization Act (H.R. 1540), Rep. Mike Turner of Ohio has proposed amendments to the Servicemembers Civil Relief Act (SCRA), 50 U.S. Code Appx. 501 *et seq*. which would federalize child custody cases in which the custodian is in military service. A copy of Mr. Turner's 2010 effort is at Tab 1. The bill has passed the House in each of the last three years.

The amendment of Mr. Turner would require:

a) If a judge orders temporary custody based on military deployment, then at the end of deployment the previous custody order must be reinstated, unless the court finds that this is not in the best interest of the child.

b) Deployment may not be a factor in deciding on the child's best interest in setting or modifying custody rights, and

Opposing this bill are the National Governors Association, the Adjutants General Association of the United States (resolution at Tab 2), the National Council of Juvenile and Family Court judges, the Conference of Chief Justices and State Court Administrators, the National Conference of State Legislatures, the Uniform Law Commission (ULC letter and fact sheet at Tab 3) and the National Military Family Association.

The American Bar Association is on record opposing this misguided bill through Resolution 106, passed in 2009 (resolution at Tab 4). Resolution 106 argues against Congressional action to place into federal law a set of protections for military members who have custody and are being deployed or returning from deployment. It points out that this is the responsibility of the states, and about 40 of them have already stepped up to the challenge and passed such legislation. Until February of this year the Department of Defense also was on record as being against the Turner bill.

Department of Defense About-Face

The opposition of Defense Department ended earlier this year. On February 15, in an unexplained about-face, former Secretary Robert Gates sent a letter to Rep. Turner withdrawing the Department's objections to legislation which would bar the courts from modifying custody when the sole factor for such a change is the custodial parent's deployment.

In the past, those opposed to "federal military custody" have been counting upon the Defense Department's opposition to Rep. Turner's perennial submission. It was one of the major pillars of support for the lawmakers, lawyers and citizens who believe that the rules for custody are best handled by the states. No specific reason was cited by Secretary Gates for his change of position and the judge advocates in the Pentagon who had consistently opposed the Turner-proposed SCRA amendment were not consulted before the letter was sent to Rep. Turner by Dr. Gates. It is noted, however, that in the current Congress, Rep. Turner became the Chairman of the Strategic Forces Subcommittee of the House Armed Services Committee and his support for various DoD basing and force structure matters is essential to certain DoD initiatives. No more need be said: nothing has changed and the fact that the Secretary removed his opposition to this proposed legislation does not make it any better legislation.

Now that the Defense Department will be cooperating with Mr. Turner, the bill has already made its way into the National Defense Authorization Act for Fiscal Year 2012 (see Tab 1). Letters, resolutions and state bar statements of opposition are needed to convince members of Congress to stop this bill.

A federal law of military custody would lead to unnecessary harm and expense for servicemembers. Passage of a federal military custody bill would create serious and expensive trouble for troops, for children, for non-military parents – all in the name of a principle to which all subscribe, namely, protecting the rights of servicemembers and their children during deployment, mobilization and other military absences. Here are the primary reasons for opposition.

A Solution in Search of a Problem

There is no reported case in which a servicemember has being denied custody initially due to deployment or has lost his or her custody rights upon return from deployment for that reason. The bill is a solution in search of a problem. For the past three years, whenever Rep. Mike Turner gets ready to introduce his favorite bill, critics have asked, "Where's the beef?" Where are the problems which would purportedly be solved by such legislation? In the spring of 2010 the Defense Department, after an exhaustive survey of reported cases, issued a report to Congress finding that there are NO cases where a SM lost custody solely due to deployment.

State Expertise vs. "A National Standard"

The states have the background and expertise to write, pass and enforce such legislation. Rather than encouraging states to pass laws, this bill would federalize the area of child custody, removing any incentive for states to pass custody laws protecting troops. The states are rapidly passing laws to protect servicemembers and their children. Already there are substantial protections in about 40 states, with bills pending in several others. These prevent loss of custody due to any form of military absence (e.g., temporary duty and remote assignments), not just deployments. Many of them allow delegated visitation for family members while the servicemember is absent, electronic testimony and expedited hearings, and access to children for visitation during periods of leave.

There is "no single national standard" for the return of custody after a deployment, nor should there be. Throughout the area of family law the states have been preeminent, as against the concept of "single standards," whether in the area of military pension division, grounds for divorce for military personnel, or establishment of family support. Each case is unique, and a single national standard would tie up military cases involving custody into a federal straightjacket. Throughout our history, matters such as division of military pensions upon divorce, grounds for divorce and military child support have been left to the states, which have vastly more expertise than do the various committees in Congress. It is not the province of federal law to provide detailed and specific instructions on how to handle child custody cases, whether these involve custodial parents who are members of the armed forces, the State Department, the Central Intelligence Agency or the federal civil service. Congress should not interject itself into writing rules for custody and visitation; this is the responsibility of state courts.

State Initiatives

It is not just state primacy in the field of family law which is at stake here. Congressional intrusion into the significant protections and creativity demonstrated by the states would stifle the unique initiatives that they have enacted for the protection of parents in uniform. And the protections offered by state legislation are significantly better for military personnel than the terms of Turner's bill.

For example, many state statutes provide for the use of electronic means of testimony for servicemembers. This is wholly absent from Mr. Turner's bill. They allow expedited dockets for those who wish to put their affairs in order before deployment. Many of these state statutes mandate the availability of the child or children for visitation during periods of leave for servicemembers. All of this is missing in the Turner bill. That's why we need to leave the responsibility in this area to the states, rather than try to usurp their initiatives and trample on their laws.

Most significantly, the statutes passed in a majority of the states deal with the issue of visitation for servicemembers who *do not have custody*. This is an issue on which the Turner bill is silent – visitation or access rights of military parents. It's completely left out of the bill, as if the drafters were not even aware that - of those servicemembers who have minor children – most are *not* custodial parents. The demands of military life generally require release of custody into the hands of the non-military parent. By an overwhelming majority, the usual arrangement for single parents in the armed forces is secondary custody, access or visitation rights, *not primary physical custody*. According to Defense Department regulations, first-term single enlisted parents cannot have legal custody of a minor child. The states are well aware of these facts. In addition to statutes allowing compensatory visitation for time lost due to military duties, many states have enacted or are passing bills which let the judge delegate the visitation rights of a parent in uniform to a close family member if this is in the best interest of the child. There are no protections for military parents with visitation rights in Mr. Turner's bill.

"Tighten Up" – The Federal Straightjacket

The passage of an overarching gridwork of federal law intrudes in a field which has always been reserved for the states. It will destroy the initiative of those states which are considering initial legislation or thinking about improving their current laws to protect military members and their children. Why should *any state* participate in developing new bills and creative concepts (such as delegated visitation rights, visitation rights during mid-term leave, protections against waiver of visitation rights, and advance notice of military absence), as is occurring right now, when Uncle Sam can take over and just dictate the outcome? Congress should not place a roadblock in the path of states' abilities to craft strong and creative protections.

Congress Says NO

On three occasions since 2007, a bill has been introduced which would add custody terms for military parents into the U.S. Code. And on three occasions Congress said NO. Who is in favor of custody protections for military personnel but opposes this bill? Senator John McCain has led the way. In a letter of July 28, 2009 to Rep. Turner, Senator McCain noted that:

> **Child custody laws and litigation, as you know, have traditionally been the province of the States. I suggest that we need to proceed with care in considering federal legislation that would preempt the States in their approaches to the child custody issues you have identified. I have been informed, for example, that 29 States have enacted laws providing guidance and direction to their own State courts about what standards to apply in cases involving military parents. I'm not convinced at this point that there needs to be a nationwide standard in view of the historical federal deference to the State legislatures and the obvious concern that the States have shown about this issue.**
>
> **I also have some concerns about the opposition that has been raised to your proposal from Associations with expertise in this area. The Senate Veterans' Committee, the committee with jurisdiction over the Servicemembers' Civil Relief Act, has opposed the legislation you have advanced. In addition, the American Bar Association, led by its Standing Committee on Legal Assistance for Military Personnel, issued a resolution in February 2009 that opposed modifying the SCRA in the way you have suggested.**

American Bar Association Opposition

As was mentioned earlier, also opposed to Mr. Turner's bill is the American Bar Association. In Resolution 106, passed in February 2009, the ABA went on record as rejecting the ill-conceived ideas previous set out in the Turner bill, because it would –

- allow federal courts to exercise jurisdiction in child custody cases, including matters which involve military parents;
- dictate case outcomes in state child-custody cases; and

- run roughshod over the powers of state courts in custody cases involving servicemember-parents.

The National Military Family Association's Position

The Turner bill is opposed by the National Military Family Association. For over 40 years, the NMFA has been the only national military organization that has represented officers, enlisted personnel and their family members from all branches of the armed forces. Its sole focus is the military family, and its goal is to create and support policies that will improve the lives of families in the military services. Why has amending the SCRA in this way generated opposition from even the NMFA, if its purpose is *purely beneficial*? The NMFA, in a letter dated July 21, 2009 to Senators Benjamin Nelson and Lindsey Graham of the Senate Armed Services Committee, stated that:

> We would also like to urge your support of the American Bar Association's (ABA) Resolution 106 concerning child custody and servicemember-parents. Based on our experience, we agree with the ABA that federal intervention in what has traditionally been a state matter would be burdensome to the states and stifle the efforts they have already made to address this issue. Educating state and local judges would also go a long way in alleviating confusion and misconceptions about the Servicemembers Civil Relief Act.

A Visit to Federal Court

The worst of dire consequences is litigation of military custody in federal court. Imagine what would happen if litigants in military custody cases had *another door* open to them, namely, federal courts. All of a sudden, *making a federal case out of it* becomes a real option, not a mere throw-away phrase.

Should federal judges be trying custody cases? Or federal marshals sent to retrieve children from school to testify in court? What kind of budget would a servicemember (or a former spouse) need for federal custody litigation? The increased cost for military single parents is obvious.

Federal Rights, Federal Remedies

Where there is a specific remedy enumerated and prescribed by federal statute, the litigant has the right to have that issue determined in the federal courts. *Puerto Rico v. Russell & Co.*, 288 U.S. 476, 53 S.Ct. 477, 77 L.Ed. 903 (1933): "Federal jurisdiction may be invoked to vindicate a right or privilege claimed under federal statute." *Id.* at 483. The federal rights set out in the Turner bill will lead directly to federal court involvement in military custody cases. Despite a clause claiming that "Nothing in this section shall create a Federal right of action," it says nothing about presently existing rights of action, and there are several ways that creative counsel can get a case involving *federal rights* into the *federal courts*. No one in the House has really thought through the issue of federal court jurisdiction and the enhanced litigation that this bill would create throughout the nation in military custody cases.

Whenever counsel wants to avoid unpleasant results in state court, the procedure of removal to federal court is the logical next step. This is what we can expect if one party loses in state court and perceives the loss to be caused by noncompliance with a federal custody rule in the SCRA. Mr. Turner's bill, while not *creating* a federal right of action, says nothing about the existing remedy for a servicemember-defendant of removal under 28 U.S.C. § 1442a. Nor does it mention a declaratory judgment action in federal court under 28 U.S.C. §§ 2201-2202

For example, if counsel wants to avoid unpleasant results in state court, the procedure of removal to federal court is the logical next step. While Mr. Turner's bill doesn't *create* a federal right of action, it says nothing about the existing remedy of *removal* under 28 U.S.C. § 1442a if the defendant is a servicemember-parent.. Such a transfer will add months and months onto the custody litigation, while a federal judge decides whether to take the case or send it back to state court. This is not a hypothetical situation: the number of servicemembers married to other servicemembers is substantial. If one servicemember sues another servicemember in a custody

battle, 28 U.S.C. § 1442a is going to create a potential removal situation. That translates into months and months of time ticking against the servicemember who thought that Mr. Turner's bill was there to *help* him or her; now it's the sole reason why counsel fees are spiraling out of control at the rate of several thousand dollars a month. Is this the kind of protection that we want for Sergeant Jane Doe's custody rights when she returns from deployment? Will she afford litigation in two courts instead of just one? Should we open the door of *federal rights* when it's clear that a federal remedy must be given to those who are protected by this law? It's simple: there's nothing in the proposed legislation which bars *removal to federal court*.

Removal under 28 U.S.C. § 1442a

When discussing removal, one might want to look into a specific basis for removal jurisdiction? It's found in Title 28 of the U.S. Code, Section 1442a. The statute provides:

> A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

Does this apply where a servicemember is sued for a change of custody? Here are the elements and the analysis:

- Sergeant Jane Doe, U.S. Army, has been sued in "a court of a State" regarding custody.
- She is "a member of the armed forces of the United States."
- There is a case against her and it is a "civil prosecution."
- And she would be relying on the rights prescribed for her; those rights, if Turner's bill were passed, would be in the Servicemembers Civil Relief Act.
- These rights are "under a law of the United States respecting the armed forces thereof," since the Servicemembers Civil Relief Act is, of course, such a law.
- And thus the state court case may be removed into federal district court, where the federal judge would have full power to hear and determine the cause.
- In the case of a two-servicemember lawsuit (both parents are active duty military), the plaintiff servicemember – who may well have thought the Turner amendment was there to protect him or her – may find themselves on the losing end of the fight when the servicemember-defendant removes the case to federal court.

So, regardless of the language in the proposed Turner amendment (that the amendment would not *create* a federal cause of action), the case could still wind up in federal court!

When a servicemember's case may be decided contrary to the proposed legislation, there is another potential remedy – a declaratory judgment suit in federal court. Such an action is brought under 28 U.S.C. § 2201-2202. It involves these elements: 1) a contested case, 2) within the jurisdiction of the federal district court, 3) involving a declaration of the rights and other legal relations of any interest party, and 4) whether or not further relief is sought. This is another pathway to federal court which the bill would not limit.

Helping (and Hindering) the Servicemember

These problems and omissions in Mr. Turner's bill show clearly the error in trying to insert into the U.S. Code a set of rules for state custody cases when these issues should properly be left for state decisions; state lawmakers have far more knowledge about these matters than members of Congress, who have never before

enacted substantive custody rules and placed them into federal law. This bill is a significant and radical departure from the long-standing case authority and congressional history against involvement of federal courts and Congress in domestic relations matters. It represents a huge expansion of the limited grant of authority to Article III courts under the Constitution, which restricts federal judicial power to specified subjects such as interstate commerce, national defense and international matters. This is a respectful acknowledgment of state laws and courts, which have preeminent powers and expertise in the remaining areas of litigation.

With no defined problem as the reason for this bill, one has to wonder why we would want to visit dire consequences on those troops who have children and custody issues. The proposed legislation would not have the desired effect on servicemember custody disputes but would create unfortunate, costly and easily foreseeable new consequences in these cases.

State and National Initiatives

The states have already taken this matter in hand by the rapid-fire enactment of strong and creative legislation to protect military personnel who have custody. They continue to do so. The bill would disrupt the carefully crafted state custody laws which are in place and which already provide a fair and even-handed system of handling child custody cases. We want to encourage the states to continue the prompt passage of legislation providing fully for the protection of servicemembers with custody, rather than to ride roughshod over their efforts by passage of preemptive federal legislation in an area which is inappropriate for federal legislation. The progress outside Congress thus far includes the following:

- The Military Committee of the ABA's Family Law Section is working closely with legislatures and bar associations in those states which are still considering such legislation. In 2009 the Committee posted a guide on how to write a military custody statute on the Committee's website, www.abanet.org/family/military. This is an open web resource available to anyone, regardless of membership in the ABA.

- The Uniform Laws Commission is drafting a new model statute, The Uniform Deployed Parent Custody Act, to send out to the states for military custody and visitation protections. The issues covered include all three terms in Mr. Turner's bill, as well as numerous other protections for the troops and their children, as outlined above in this testimony.

- Significant steps have been taken by the states, with at least 40 responding to the call already.

- The American Bar Association and the Uniform Law Commission are also leading the way in creating legislation to protect military personnel, and opposing the Turner bill.

Conclusion

The Turner bill contains major flaws and would lead to a major intrusion into federal court for troops and ex-spouses, difficulties which would cost them dearly in time and money. Family Law Section members should contact their representatives in the House and the Senate. State bars and bar associations should let their voices be known regarding this a radical revision of federal law, by means of clear and strong resolutions and statements on the record. If enough voices are heard in Washington, this unnecessary and harmful bill will never become a federal custody law.

TAB 1

11 **SEC. 573. [LOG #451-CHILD-CUSTODY]PROTECTION OF**
12 **CHILD CUSTODY ARRANGEMENTS FOR PAR-**
13 **ENTS WHO ARE MEMBERS OF THE ARMED**
14 **FORCES.**

15 (a) CHILD CUSTODY PROTECTION.—Title II of the
16 Servicemembers Civil Relief Act (50 U.S.C. App. 521 et
17 seq.) is amended by adding at the end the following new
18 section:

19 **"SEC. 208. CHILD CUSTODY PROTECTION.**

20 "(a) RESTRICTION ON TEMPORARY CUSTODY
21 ORDER.—If a court renders a temporary order for custo-
22 dial responsibility for a child based solely on a deployment
23 or anticipated deployment of a parent who is
24 servicemember, then the court shall require that upon the
25 return of the servicemember from deployment, the custody

1 order that was in effect immediately preceding the tem-
2 porary order shall be reinstated, unless the court finds
3 that such a reinstatement is not in the best interest of
4 the child, except that any such finding shall be subject
5 to subsection (b).

6 "(b) EXCLUSION OF MILITARY SERVICE FROM DE-
7 TERMINATION OF CHILD'S BEST INTEREST.—If a motion
8 or a petition is filed seeking a permanent order to modify
9 the custody of the child of a servicemember, no court may
10 consider the absence of the servicemember by reason of
11 deployment, or the possibility of deployment, in deter-
12 mining the best interest of the child.

13 "(c) NO FEDERAL RIGHT OF ACTION.—Nothing in
14 this section shall create a Federal right of action.

15 "(d) PREEMPTION.—Preemption- In any case where
16 State law applicable to a child custody proceeding involv-
17 ing a temporary order as contemplated in this section pro-
18 vides a higher standard of protection to the rights of the
19 parent who is a deploying servicemember than the rights
20 provided under this section with respect to such temporary
21 order, the appropriate court shall apply the higher State
22 standard.

23 "(e) DEPLOYMENT DEFINED.—In this section, the
24 term 'deployment' means the movement or mobilization of
25 a servicemember to a location for a period of longer than

1 60 days and not longer than 18 months pursuant to tem-
2 porary or permanent official orders—
3 "(1) that are designated as unaccompanied;
4 "(2) for which dependent travel is not author-
5 ized; or
6 "(3) that otherwise do not permit the move-
7 ment of family members to that location.".
8 (b) CLERICAL AMENDMENT.—The table of contents
9 in section 1(b) of such Act is amended by adding at the
10 end of the items relating to title II the following new item:

"208. Child custody protection.".

Tab 2

ADJUTANTS GENERAL ASSOCIATION OF THE UNITED STATES (AGAUS)

ADOPTED MAY 19, 2010

WHEREAS the Adjutants General Association of the United States (AGAUS) believes domestic relations matters involving National Guard and other service component members are best adjudicated through the existing framework of state laws and court-integrated social services and the existing safeguards built into the federal Servicemembers Civil Relief Act (SCRA),

NOW THEREFORE, BE IT RESOLVED that the nation's Adjutants General oppose enactment of federal legislation that would:

(a) Create federal-question jurisdiction in child custody cases, including cases involving National Guard and other service component member-parents; or

(b) Dictate case outcomes or impose evidentiary burdens in state child-custody matters involving National Guard or other service component member-parents; or

(c) Infringe upon the sovereign authority of states to enact state laws, applied and enforced in state courts, to determine family law matters including child custody and to award custody based on a state court assessment of the best interests of the child; or

(d) Preempt state laws that address child custody and other domestic relations matters so long as such laws do not discriminate against National Guard and other service component members based upon their military status or the performance of their military duties.

AND BE IT FURTHER RESOLVED that AGAUS urges states to enact legislation prohibiting a change of custody or denial of child custody to a National Guard or other service component member based solely on the service member's status or absence due to military deployment.

Tab 3

March 17, 2011

The Chairman Hon. Marlin Stutzman
Chairman
Subcommittee on Economic Opportunity
House Committee on Veterans' Affairs
335 Cannon House Office Building
United States House of Representatives
Washington, D.C. 20510

The Hon. Bruce L. Braley
Ranking Member
Subcommittee on Economic Opportunity
House Committee on Veterans' Affairs
335 Cannon House Office Building
United States House of Representatives
Washington, D.C. 20510

RE: Child Custody Legislation for Military Parents

Dear Chairman Stutzman and Ranking Member Braley:

I am writing to express serious concerns about legislation that may come before your subcommittee relating to military families and child custody. Legislation on this subject was sponsored by Representative Michael Turner (R-OH) in the 111th Congress. Such legislation, if enacted, would ultimately have a negative impact on military families and disrupt the traditional balance of state and federal jurisdiction over child custody matters.

Federal legislation will undermine the powers of state courts in child custody cases, and depart from the long-standing history of deference to state laws in matters involving child custody and domestic relations. Complex family matters are best reserved to the state courts, which over the course of time have developed appropriate expertise and mechanisms to make fact-driven determinations regarding military parents and their minor children.

States are already taking action to protect the rights of deployed service members and their children. Laws in over 30 states provide some level of protection for service members facing custody issues. Furthermore, because of heightened state interest in these issues, the Uniform Law Commission is spearheading a project to draft a uniform statute that states may adopt to govern child custody and visitation rights when a service member is deployed for military service. The uniform act will be completed in July 2012, and will include provisions that go well beyond the federal legislation, will establish a comprehensive set of procedures and protections for the custody issues that military families face.

Enclosed please find a fact sheet that outlines, in more detail, reasons for our opposition to federal legislation. If you have any questions or wish additional information, please contact Uniform Law Commission Executive Director John Sebert [john.sebert@nccusl.org; 312-450-6603].

Sincerely,

Robert A. Stein
President
Uniform Law Commission

……………………………………

WHY YOU SHOULD OPPOSE FEDERALIZATION OF CHILD CUSTODY MATTERS INVOLVING MILITARY FAMILIES

The Uniform Law Commission is concerned that federal legislation addressing child custody matters faced by service members disrupts the balance of state and federal law in child custody matters and departs from the long-standing history of deference to state laws in matters involving domestic relations. Last Congress, Rep. Michael Turner (R-OH) introduced H.R. 4469, a bill which would have amended the Servicemembers Civil

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Relief Act to include provisions restricting modification of child custody orders for military parents.

The Uniform Law Commission opposes this legislation because:

States Deal Better with Family Law Issues

Complex family matters are best reserved to the states, which over the course of time have developed appropriate expertise and mechanisms to make fact-driven determinations regarding military parents and their minor children. Federal efforts to legislate the custody rights of military members depart from the long-standing history of deference to state laws in matters involving child custody and domestic relations and undermines the powers of state courts in child custody cases.

States Are Already Working Toward Solving These Issues

Federal legislation would interfere and possibly preempt state efforts that are currently under way to enact broader and more helpful state laws for military families.

- The Uniform Law Commission is spearheading a drafting project of a uniform act for states to adopt. That act provides far more comprehensive protections and procedures for dealing with custody and visitation issues that arise in military families than does proposed federal legislation. The uniform act is being created in a process that involves family court judges, practicing lawyers, and observers from the military and will completed in 2012.
- More than 30 states have already adopted legislation to deal with custody issues facing military families. Legislation more comprehensive than the proposed federal language is pending in several other states this year.

There Is Signification Opposition to Federalization of Custody for Military Families

The Uniform Law Commission is joined by a number of national organizations that have expressed similar concerns about and opposition to federal legislation in this area:

- National Governors Association
- American Bar Association
- National Center for State Courts
- Conference of Chief Justices
- Adjutants General Association of the United States
- National Military Family Association
- National Council of Juvenile and Family Court Judges

Loss of Custody Solely Because of Military Service is Rare

Proposed federal legislation is targeted at cases in which service members lose custody *solely* because of deployment. Yet the Department of Defense surveyed the cases in which custody orders for service members were modified. The report released in Spring 2010 demonstrated that in *NO case did a Servicemember lose custody SOLELY because of deployment.* Federalization of these complicated matters of state law may further exacerbate the legal issues faced by families of deployed servicemembers.

Tab 4

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AMERICAN BAR ASSOCIATION

SECTION OF FAMILY LAW
STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL
STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS
STANDING COMMITTEE ON ARMED FORCES LAW
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
JUDICIAL DIVISION
YOUNG LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association opposes the enactment of federal legislation that would:
2 (a) create federal-question jurisdiction in child custody cases, including cases involving servicemember-
3 parents,
4
5
6 (b) dictate case
7 outcomes or impose evidentiary burdens in state child-custody matters involving
8 servicemember-parents,
9
10 (c) co-opt the discretionary authority of state courts, in cases involving servicemember-
11 parents, to determine the best interests of the child and award custody accordingly,
12
13
14 (d) pre-empt the growing body of state laws that comprehensively address
15 servicemember domestic relations matters, including child custody,
16
17 FURTHER RESOLVED, That the American Bar Association urges the states to enact legislation prohibiting
18 denial of child custody to a servicemember based solely on absence due to military
19 deployment.