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## BILL ANALYSIS



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Senate Bill 131 (as introduced 1-31-13)  
Sponsor: Senator Hoon-Yung Hopgood  
Committee: Judiciary

Date Completed: 2-26-13

**CONTENT**

**The bill would amend the Child Custody Act to do the following:**

- **Prohibit a court from granting custody or parenting time to someone who was required to register as a sex offender for an offense in which the victim was a child, or who lived with such a person, absent certain evidence.**
- **Require a court to make findings regarding specific factors, in deciding whether to award custody or parenting time to a party who was required to register, or was living with someone required to register, for an offense in which the victim was a child.**
- **Prohibit a court's order granting custody or parenting time to a person described above from being less restrictive than conditions of parole or other court order governing his or her contact with the child or the other party to the child custody dispute.**
- **Allow the court to review the case periodically, and to modify an order for custody or parenting time.**
- **Require the court to conduct a hearing before ordering mediation or conciliation if a party to a custody dispute were required to register for an offense in which the victim was a child.**

(A person required to register would include someone required to register under the Sex Offender Registration Act or a substantially similar law of another jurisdiction.)

Specifically, subject to provisions of the Child Custody Act that involve a child conceived as the result of a criminal sexual conduct (CSC) offense or a parent convicted of CSC against his or her own child, the court could not grant custody or parenting time to a party to a child custody dispute if the party were required to register as a sex offender for an offense in which the victim was a child, or if the party lived in the same household with a such a person, unless the court found both of the following:

- Clear and convincing evidence demonstrating that custody or parenting time with that party presented no substantial risk to the child.
- A preponderance of evidence demonstrating that denying custody or parenting time created a substantial risk of harm to the child's mental, physical, or emotional health.

A party seeking custody or parenting time who was required to register for an offense in which the victim was a child (the registrant), or who lived in the same household with such a person, would have the burden of proof with respect to those findings.

In deciding whether to award custody or parenting time to a party described above, the court would have to consider and make specific findings, in writing or on the record, regarding the best interest of the child factors delineated in the Act. The factor relating to the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent could not be applied to the detriment of a party who objected to a child having contact with an individual required to register as a sex offender for any offense, or who took action to protect the child or himself or herself from that individual.

The court also would have to make specific findings in writing or on the record regarding all of the following factors:

- Whether there were objections to custody or parenting time with the party required to register, or living with someone required to register, raised by the other party or by the child, if the court considered the child to be old enough to express his or her desires.
- If the party seeking custody or parenting time lived with the registrant, whether custody or parenting time could be exercised in a manner that ensured the child would have no contact with the sex offender.
- Whether feasible safeguards could be put in place to eliminate the risk to the child, including supervision of parenting time by a parent who was not required to register or by a person or agency with expertise in child sexual abuse.
- Whether custody or parenting time would be consistent with existing conditions of parole or other court orders governing contact with the child or the other party by the registrant.
- Whether the registrant had complied with existing conditions of parole or with other court orders governing his or her contact with the child or the other party.
- Any history of domestic violence, other sexual offenses, or other acts or threats of violence against any person by the registrant.
- Any specialized risk assessment performed on the registrant by a person or agency with expertise in child sexual abuse.
- Whether the registrant had successfully completed a program of evaluation and counseling designed specifically for sex offenders and conducted by a public or private agency or a mental health professional and, as a result of completing the program, did not pose a risk to children.
- Whether the registrant had successfully completed a program of substance abuse counseling or batterer intervention, if the court determined that it was appropriate.
- The nature of the existing relationship between the child and the registrant.
- Whether both parties were subject to the bill's requirements regarding clear and convincing evidence or a preponderance of the evidence.

If the court determined that it would grant custody or parenting time to a party who was required to register for an offense in which the victim was a child or who lived in the same household with such a person, the court's order could not be less restrictive than any existing conditions of parole or other court order governing that person's contact with the child or the other party. The court also could provide for periodic judicial review of the case at specified times, in the court's discretion, to determine whether there were grounds to modify the order. An order for custody or parenting time under this provision could be modified as allowed under the Act. Proper cause to modify an order would exist if, after the order was issued, a party to the order or an individual living in a party's household were required to register as a sex offender for an offense in which the victim was a child.

Regardless of any other provision of law to the contrary, if a party to a custody dispute were required to register for an offense in which the victim was a child, before the court ordered mediation or conducted conciliation or a joint meeting as provided under the Support and Parenting Time Enforcement Act, the court would have to conduct a hearing to determine if either of those was appropriate.

**FISCAL IMPACT**

The bill could result in a minor increase in administrative costs for local courts associated with the additional considerations required for cases involving parties who were registered as sex offenders for actions against a child or parties who shared a household with such a person.

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