



Laura Schneider

Bill Analysis
Legislative Service Commission

H.B. 479

126th General Assembly
(As Introduced)

**Reps. Calvert, C. Evans, Martin, Peterson, Gibbs, Healy, J. McGregor,
D. Evans, Latta, Setzer, Flowers, Hartnett, Buehrer, Brown, Faber**

BILL SUMMARY

- Allows a parent who is called to active military duty to petition the court to temporarily modify a prior decree allocating parental rights and responsibilities to grant reasonable companionship or visitation to a designated relative.
- Requires the court to give the temporary modification case calendar priority and handle the case expeditiously.
- Limits the duration of the temporary modification to the tenure of the parent's active military duty.

CONTENT AND OPERATION

Current law

Modification of a decree allocating parental rights and responsibilities

Generally, the Ohio Revised and Administrative Codes do not address the issue of modification of a decree allocating parental rights and responsibilities¹ or third party visitation specifically with respect to a parent being called to extended military duty. However, a court may modify a decree allocating parental rights and responsibilities if it finds, based on the facts that have arisen since the decree or that were unknown to the court at the time of the decree, that there has been a change of circumstances and modification is necessary to serve the best interest (see "**Best interest of the child**," below) of the child. The court must retain the residential parent designated by the decree, unless a modification is in the best interest of the child and one of the following applies: (1) the residential parent in a

¹ In Ohio, "parental rights and responsibilities" is commonly referred to as "custody."

sole custody situation (or both parents under a shared parenting decree) agrees to change the residential parent designation, (2) the child, with the residential parent's consent (or both parents' consent under a shared parenting decree), has been integrated into the family of the person seeking to become the residential parent, or (3) the advantages of a change in the child's environment outweigh the disadvantages.

Either or both parents under a decree allocating parental rights and responsibilities that is not shared parenting may file a motion requesting that the decree be modified to a shared parenting decree. The court may make the modification if it is authorized because of a change of circumstances, shared parenting is in the best interest of the child, and the shared parenting plan complies with the legal requirements for such plans.

Parents under a shared parenting decree may jointly modify the terms of a shared parenting plan that the court has approved. The parents may make the modifications at any time by jointly filing the modifications with the court. The court must include the modifications in the plan unless they are not in the best interest of the child. If the modifications are not in the best interest of the child, the court may reject the modifications or alter the proposed modifications to the plan. Modifications become effective at the time the court includes them in the shared parenting plan.

Regardless of whether the parents request that the court modify a shared parenting plan, the court may modify the terms of a court approved plan on its own motion at any time if it determines that modifications are in the best interest of the child.

The court may terminate a shared parenting decree that includes a jointly proposed shared parenting plan on the request of one or both parents or whenever it determines that shared parenting is not in the best interest of the child. The court may terminate a decree that includes a plan originally proposed by one of the parents if the court determines, on its own motion or the request of one or both parents, that shared parenting is no longer in the best interest of the child. If the parents attempt to jointly modify a plan that is the basis of a decree and the court rejects the modifications, the court may terminate the decree if the court determines that shared parenting is not in the best interest of the child. If it terminates a shared parenting decree, the court must issue a modified decree allocating parental rights and responsibilities for the care of the child as if the court had not issued a shared parenting decree. (R.C. 3109.04(E).)

Third party companionship or visitation

In addition to parental or court modification of a decree allocating parental rights and responsibilities, a third party may file a motion with the court seeking companionship or visitation rights with the child. The court is permitted to grant visitation rights if the court determines that (1) visitation would be in the best interest of the child, and (2) the third party has an interest in the welfare of the child. The motion generally must be filed during the pendency of the marriage termination or child support proceeding, but it may be made later if the circumstances in the case have changed. (R.C. 3109.051(B).)

Best interest of the child

In determining the best interest of a child in modifying a prior decree allocating parental rights and responsibilities, the court must consider relevant factors. While the court has discretion in determining what is relevant, the Revised Code lists several specific factors that the court must consider depending on the type of custody allocation. These factors include (1) the wishes of the child's parents regarding the child's care, (2) the wishes of the child, (3) the interaction of the child with the parents and any other person that may affect the decision, (4) the child's adjustment to the home, school, and community, (5) the mental and physical health of all persons involved in the modification, (6) the parent more likely to facilitate parenting time and companionship rights, and (7) whether either parent has failed to make required child support payments. (R.C. 3109.04(F)(1).)

The bill

Petition for temporary modification

The bill allows a parent of an unmarried minor child, who is called to active military service,² to petition the court to temporarily modify a prior decree allocating parental rights and responsibilities in order to grant reasonable companionship or visitation to a designated relative.³ The parent must file the

² The bill defines "active military service" as the performance of military duty by a member of the Ohio or United States uniformed services for a period of more than 30 days (R.C. 3109.111(A)(1)).

³ The bill defines "designated relative" as a person related by consanguinity or affinity to both the child and the parent filing a motion for temporary modification of custody and for whom companionship or visitation rights are sought (R.C. 3109.111(A)(2)).

"Consanguinity" is the relationship of persons of the same blood or origin (Black's Law Dictionary 299 (7th ed. 1999)).

petition and a plan for reasonable companionship or visitation in the court of common pleas of the county in which the child resides. The plan must cover certain factors including (but not limited to) physical living arrangements, child support obligations, and medical and dental care. The court must give the case calendar priority and handle the case expeditiously. (R.C. 3109.011(B).)

Factors the court must consider in granting temporary modification

In determining whether to temporarily modify a prior decree, the court must consider the following factors:

- (1) The wishes of the child's parents;
- (2) The best interest of the child;
- (3) The wishes of the child (if the child has sufficient reasoning ability);
- (4) The prior interaction and relationships of the child with a designated relative;
- (5) The type of parenting order in place and whether the parents have honored and facilitated that order;
- (6) The ability of the parents to cooperate and make joint decisions regarding the child;
- (7) The details of the plan for reasonable companionship or visitation;
- (8) The geographic proximity of the parent not called to active military duty with the designated relative;
- (9) Any other relevant factor.

If the court interviews a child to determine if the child has sufficient reasoning ability and to consider the wishes of the child, the court must conduct the interview in chambers with only the child, the child's attorney, the judge, any necessary court personnel, and (if the judge permits) the attorney of each parent, present. Also, no one may obtain or attempt to obtain a written or recorded statement from the child regarding his or her wishes, and the court must not accept any such statement in considering the temporary modification. (R.C. 3109.011(C) and (D)(1).)

"Affinity" is any familial relation resulting from a marriage (Black's Law Dictionary 59 (7th ed. 1999)).

The court must also determine whether the plan for reasonable companionship or visitation is in the best interest of the child. If the plan is not in the best interest of the child, the court may approve all or part of the plan, or reject the plan entirely. If the court rejects part, or all, of the plan, the court may allow the parent to make changes to the plan until the plan is acceptable, but it also may deny the motion for temporary modification of the decree. (R.C. 3109.011(D)(2).)

Granting temporary modification

The bill allows the court to grant temporary modification of the prior decree after consideration of the factors listed above, approval of a plan for reasonable companionship or visitation, and if the modification is in the best interest of the child (R.C. 3109.011(E)).

If the court grants temporary modification of the prior decree, the modification will be in effect only during the tenure of the parent's active military duty and expires 31 days after the parent's release from active military duty. Also, aside from the temporary modification, all other provisions of the prior decree remain in effect. (R.C. 3109.011(F).)

HISTORY

ACTION	DATE
Introduced	01-24-06

H0479-I-126.doc/jc