Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 121

129th General Assembly
(As Passed by the House)

Reps. Rosenberger, Gonzales, O'Brien, Mecklenborg, Beck, Pillich, Johnson, Thompson, Bubp, Martin, Slaby, Fende, Fedor, Yuko, R. Adams, Amstutz, Anielski, Baker, Balderson, Barnes, Blair, Blessing, Boose, Brenner, Buchy, Budish, Burke, Butler, Carey, Carney, Celeste, Clyde, Coley, Combs, Damschroder, DeGeeter, Derickson, Dovilla, Driehaus, Duffey, Foley, Gardner, Garland, Gentile, Gerberry, Goodwin, Goyal, Grossman, Hackett, C. Hagan, Hall, Hayes, Heard, Henne, Hottinger, Huffman, Kozlowski, Landis, Letson, Luckie, Lundy, Maag, Mallory, McClain, McGregor, McKenney, Milkovich, Murray, Newbold, Okey, Patmon, Peterson, Phillips, Reece, Roegner, Ruhl, Schuring, Sears, Sprague, Stautberg, Stinziano, Sykes, Szollosi, Uecker, Wachtmann, Weddington, Williams, Winburn, Young, Batchelder

BILL SUMMARY

- Prohibits a court from finding that past, present, or possible future active military service is a change in circumstances that justifies modifying an existing custody order.

- Provides that a temporary custody order based on a parent's active military service terminates within 10 days of notice that the parent's active military service has ended.

- Authorizes a parent who has court-ordered visitation to apply for a temporary order that: (1) delegates the parent's visitation rights to a relative or to another person with a close and substantial relationship with the child, (2) requires the other parent to make the child available for visitation when the parent is on leave, and (3) requires the other parent to facilitate contact between the parent and child while the parent is on active military service.

- Requires a service member seeking a temporary parenting time order to notify the child's other parent and apply to the court as soon as reasonably possible and include the date active military service begins on the application.

- Provides that an order delegating parenting time does not create standing for a person to claim visitation or companionship rights independent of the order.
- Requires a court to permit a parent who is called to active military service to participate in custody or visitation proceedings and present evidence by electronic means.
- Clarifies what constitutes active military service.
- Adds Ohio organized militia and reserve components of the armed forces to the group of persons classified as "uniformed services."

CONTENT AND OPERATION

Child custody proceedings

In any divorce, legal separation, or annulment proceeding, or in any proceeding regarding the allocation of parental rights and responsibilities, the court is required to allocate parental rights and responsibilities either by (1) designating one parent as the residential parent and legal custodian, or (2) issuing a shared parenting order.[1] These proceedings are referred to in the vernacular as "custody proceedings." The parent designated as the "residential parent and legal custodian" is commonly referred to as the "custodial parent" or the person with "sole custody." Likewise, shared parenting is frequently called "joint custody."

Modification

A court may modify a custody order only if it finds, based on facts that have arisen or that were unknown to the court at the time of the order, that there has been a change in circumstances of the child or a custodial parent and that modification is necessary to serve the child's best interest. The court must retain the custodial parent unless modification is in the child's best interest and one of the following applies:

(1) The custodial parent agrees to a change in custody;

(2) The child, with the custodial parent's consent, has been integrated into the family of the person seeking to become the custodial parent; or

[1] R.C. 3109.04(A).

(3) The advantages of a change in the child's environment outweigh the disadvantages.[2]

Parents with joint custody may jointly modify the terms of a court-approved shared parenting plan. The court must include the modifications in the plan unless they are not in the child's best interest.[3]

When a parent who is subject to a child custody order, or in relation to whom a custody proceeding is pending, is ordered to active military service in the uniformed services, that parent must notify the child's other parent within three days of receiving notice of the activation.[4] Either parent may then apply to the court for a hearing to expedite a custody proceeding. The application must include the date on which the active military service begins. The court must schedule and hold a hearing not later than 30 days after receipt of the application, except under exigent circumstances. The bill provides that the purpose of the expedited proceeding is so that the court can issue an order before the parent's active military service begins.[5]

Active military service and modification

As stated above, the court may not modify an existing custody order unless the court determines that there has been a change in circumstances of the child or the child's custodial parent and that modification is necessary to serve the best interest of the child. Under current law, the court may consider active military service in the uniformed services in determining whether a change in circumstances exists and must make written findings of fact to support a modification. The bill instead prohibits the court from finding that past, present, or possible future active military service constitutes a change in circumstances justifying a custody modification.[6]

Temporary custody orders when a parent is engaged in active military service

Current law permits a court to issue a temporary custody order for the duration of a parent's active military service. Current law also specifies that the court may modify a custody decree when a parent's active military service ends after hearing testimony and making written findings of fact to support the modification. The bill requires a parent who is called to active military service and who is subject to a pending

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[2] R.C. 3109.04(E)(1).

[3] R.C. 3109.04(E)(2).

[4] R.C. 3109.04(I).

[5] R.C. 3109.04(I)(2).

[6] R.C. 3109.04(I)(2).

custody proceeding to notify the court and the child's other parent of the date active service ends. The notice must be provided not later than 30 days after active service ends.[7] The bill also requires that a temporary custody order specify whether a parent's active military service is the basis of the order. Further, the bill requires that the temporary order terminate and the prior custody order be reinstated within ten days after receipt of notice that the parent's active military service has ended, unless the other parent demonstrates that resumption of the prior order is not in the child's best interest.[8] (See **COMMENT**.)

Visitation proceedings

When the parents of a child divorce, have their marriage dissolved or annulled, or legally separate, the court is required to issue an order granting just and reasonable parenting time rights to the noncustodial parent, unless it determines that parenting time would not be in the child's best interest. When a child's parents are unmarried, and the child's father has legally acknowledged the child or has been determined to be the child's father in a parentage action, the court may grant parenting time rights if it determines that doing so is in the child's best interest. In addition, grandparents and other persons may request reasonable companionship rights with the child.[9] "Parenting time" and "companionship rights" are usually referred to as "visitation." While the term "parenting time" refers specifically to time that a child spends with a noncustodial parent, for the purposes of the bill, parenting time also includes time that the child is to be physically located with a parent under a joint custody order.[10]

The bill permits a parent who is called to active military service to apply for the following temporary orders related to parenting time that extend from the date of the parent's departure to the date of return:

(1) An order delegating all or part of the parent's parenting time to a relative or to another person with a close and substantial relationship with the child if the delegation is in the child's best interest;

(2) An order requiring the other parent to make the child reasonably available for parenting time when the parent is on leave from active military service; and

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[7] R.C. 3109.04(I)(5).

[8] R.C. 3109.04(I)(3).

[9] R.C. 3109.051 and 3109.11; R.C. 3109.12, not in the bill.

[10] R.C. 3109.051(O)(4).

(3) An order that the other parent facilitate contact between the parent and child while the parent is on active military service. The contact may include telephone and electronic contact.

A service member who seeks one of the orders described above must notify the child's other parent and apply to the court as soon as reasonably possible after receiving orders for active military service. The application must include the date that active military service begins. The bill requires the court to schedule and hold a hearing on the motion within 30 days, unless exigent circumstances exist. In determining whether delegation of visitation is in the child's best interest (see paragraph (1), above), the bill requires the court to consider all relevant factors, including those a court is already required to consider when determining whether to grant parenting time. The bill specifies that an order delegating parenting time does not create standing for that person to claim a right to visitation independent of the order.[11]

Electronic testimony

Under the bill, the court must permit a parent who is called to active military service to participate in custody or visitation proceedings and present evidence by electronic means, including communication by telephone, video, or internet. The court is required to allow electronic communication upon the request of the parent.[12]

Uniformed services

Under current law, "active military service" refers to the performance of active military duty by a member of the uniformed services for a period of more than 30 days. "Uniformed services" means (1) the United States armed forces, (2) the Army National Guard and Air National Guard when engaged in active duty for training, or (3) the commissioned corps of the United States Public Health Service. The bill makes the following changes to those definitions:

--Adds the Ohio organized militia and reserve components of the armed forces to the definition of "uniformed services";

--Removes the limitation that the Army National Guard and Air National Guard are only uniformed services when engaged in active duty for training; and

--Provides that "active military service" is service in compliance with military orders to report for combat operations, contingency operations, peacekeeping

[11] R.C. 3109.051(M).

[12] R.C. 3109.04(I)(4) and 3109.051(M)(3).

operations, a remote tour of duty, or other active service for which the member is required to report unaccompanied by any family member, including any period of illness, recovery from injury, leave, or other lawful absence during that operation, duty, or service.[13]

COMMENT

Federal law (the Servicemember's Civil Relief Act of 2003 or SCRA[14]) requires all state and federal courts to stay any civil action or proceeding in which a servicemember is a party for at least 90 days upon application by the servicemember or the court's own motion. At the time of filing the application, the servicemember must have received notice of the action or proceeding and be either (1) in active military service, or (2) within 90 days after termination of, or release from, military service. An application for stay must include (1) a letter or other communication from the servicemember stating the reasons why current military duty materially affects the servicemember's ability to appear, and (2) a letter or other communication from the servicemember's commanding officer stating that the servicemember's duties prevent appearance and that military leave is not authorized.[15] The SCRA was amended in 2008 to clarify that it does apply to child custody proceedings.

HISTORY

ACTION	DATE
Introduced	02-23-11
Reported, H. Veterans Affairs	04-14-11
Passed House (96-0)	05-10-11

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[13] R.C. 3109.04(J)(2) and (5) and 3109.051(O)(2).

[14] 50 U.S.C. Appx. §§502 *et seq*.

[15] 50 U.S.C. Appx. §522(b).