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*Bill Analysis*  
Legislative Service Commission

## **H.B. 61**

127th General Assembly  
(As Introduced)

**Reps. Ujvagi, Dodd, Brown, J. McGregor, Skindell, Stebelton, Strahorn,  
Yuko, Koziura**

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### **BILL SUMMARY**

- Requires the court to stay any proceeding regarding the allocation or modification of parental rights and responsibilities if a parent involved in such a proceeding is called to active military service with any reserve component of the United States armed forces or with the Ohio militia when engaged in full-time National Guard duty.

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### **CONTENT AND OPERATION**

#### **Current law**

Under current law, in any divorce, legal separation, or annulment proceeding, or in any proceeding regarding the allocation of parental rights and responsibilities (e.g. when the parents of a child are not married),<sup>1</sup> the court is required to allocate parental rights and responsibilities either through a sole or shared parenting order (R.C. 3109.04(A)). Once the court establishes a sole or shared parenting order, that order may be modified by (1) the court, if the court determines that a change in circumstances of the child or either of the parents has occurred and modification is in the best interest of the child, or (2) the parents, under certain circumstances (R.C. 3109.04(E)).

#### **The bill**

The bill requires the court to stay any proceeding regarding the allocation or modification of parental rights and responsibilities if a parent who is involved in such an proceeding is called to active military duty, for more than 30 days, with (1) the Ohio organized militia, when engaged in full-time National Guard duty, or

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<sup>1</sup> In Ohio, "allocation of parental rights and responsibilities" is commonly referred to as "custody."

(2) any reserve component of the United States armed forces. The stay must continue until the court receives notice of termination of the active military service. The bill requires the parent who is called to active military service to notify the court of termination of that service no later than the last day of the month in which the service ends. The court, however, may issue an order temporarily allocating or modifying parental rights and responsibilities prior to staying the proceedings.

The bill also specifies that the court must not consider active military service as a change in circumstances and otherwise modify a prior decree allocating parental rights and responsibilities. (See **COMMENT.**) (R.C. 3109.04(I) and (J) and 3109.041.)

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## COMMENT

Under current federal law, the Servicemembers Civil Relief Act of 2003 (SCRA) (50 U.S.C. Appx. §§502, et seq.) requires all state and federal courts to stay *any* civil action or proceeding in which a servicemember is a party (which would include a proceeding in Ohio regarding the allocation or modification of parental rights and responsibilities), for at least 90 days, upon (1) application<sup>2</sup> by that servicemember, or (2) 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 the termination of, or release from, military service.

However, the SCRA defines "military service" as active duty of a servicemember of the Army, Navy, Air Force, Marines, or Coast Guard *and does not include full-time National Guard duty*, except when a member of the National Guard is called to active service by the President or Secretary of Defense for a period of more than 30 consecutive days to respond to a national emergency. Thus, the bill appears to extend the stay privilege to all National Guardsmen *and* reservists. Further, as federal law prevails over state law, if a request for a stay under the bill also meets the criteria for an SCRA stay, the stay must be for at least 90 days.

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<sup>2</sup> 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 (50 U.S.C. §522(b)).

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## **HISTORY**

ACTION

DATE

Introduced

02-22-07

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