

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1167 Session of  
2011

INTRODUCED BY BAKER, SOLOBAY, BRUBAKER, RAFFERTY, FOLMER,  
GORDNER, GREENLEAF, HUGHES, COSTA, MENSCH, ERICKSON, ORIE,  
SCHWANK, TARTAGLIONE, TOMLINSON, WAUGH, WILLIAMS, YUDICHAK  
AND FONTANA, JUNE 21, 2011

REFERRED TO JUDICIARY, JUNE 21, 2011

AN ACT

1 Amending Titles 23 (Domestic Relations) and 51 (Military  
2 Affairs) of the Pennsylvania Consolidated Statutes, further  
3 providing for modification of existing orders and for child  
4 custody proceeding during military deployment; and providing  
5 for assignment of custody rights during military deployment  
6 and expedited or electronic hearing.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 5338 of Title 23 of the Pennsylvania  
10 Consolidated Statutes, added November 23, 2010 (P.L.1106,  
11 No.112), is amended to read:

12 § 5338. Modification of existing order.

13 (a) Best interest of the child.--Upon petition, a court may  
14 modify a custody order to serve the best interest of the child.

15 (b) Applicability.--[This] Except as provided in 51 Pa.C.S.  
16 §§ 4109 (relating to child custody proceedings during military  
17 deployment) and 4110 (relating to assignment of custody rights  
18 during military deployment), this section shall apply to any  
19 custody order entered by a court of this Commonwealth or any

1 other state subject to the jurisdictional requirements set forth  
2 in Chapter 54 (relating to uniform child custody jurisdiction  
3 and enforcement).

4 Section 2. Section 4109(d) of Title 51 is amended to read:  
5 § 4109. Child custody proceedings during military deployment.

6 \* \* \*

7 (d) Failure to appear due to military deployment.--The  
8 failure of an eligible servicemember to appear in court due to  
9 deployment in support of a contingency operation shall not, in  
10 and of itself, be sufficient to justify a modification of a  
11 custody [or visitation] order if the reason for the failure to  
12 appear is the eligible servicemember's active duty in support of  
13 a contingency operation.

14 \* \* \*

15 Section 3. Title 51 is amended by adding sections to read:  
16 § 4110. Assignment of custody rights during military  
17 deployment.

18 (a) Petition.--If an eligible servicemember has received  
19 notice of deployment in support of a contingency operation, the  
20 servicemember may petition the court for a modification to an  
21 order granting the servicemember custody with a child under 23  
22 Pa.C.S. § 5323 (relating to award of custody). The modification  
23 may include a temporary assignment of the eligible  
24 servicemember's custody rights to one or more biological  
25 relatives. The eligible servicemember shall be joined in the  
26 petition by the relatives to whom the servicemember is seeking  
27 to assign these rights. The petition shall include a proposed  
28 custody schedule with the relatives and the schedule shall not  
29 exceed the time granted to the eligible servicemember prior to  
30 the time of filing the petition.

1 (b) Order.--The court may grant the eligible servicemember's  
2 request for assignment of custody rights if the court finds that  
3 custody on terms as the court deems appropriate would be in the  
4 best interest of the child. An order granting assignment of  
5 custody rights pursuant to this section shall terminate  
6 immediately upon the termination of the eligible servicemember's  
7 deployment.

8 (c) Definitions.--As used in this section, the terms  
9 "contingency operation" and "eligible servicemember" shall have  
10 the same meanings given to them under section 4109 (relating to  
11 child custody proceedings during military deployment).

12 § 4111. Expedited or electronic hearing.

13 (a) Expedited hearing.--Upon motion of a parent who has  
14 received notice of deployment in support of a contingency  
15 operation, the court shall, for good cause shown, hold an  
16 expedited hearing in custody matters instituted under sections  
17 4109 (relating to child custody proceedings during military  
18 deployment) and 4110 (relating to assignment of custody rights  
19 during military deployment) when the military duties of the  
20 parent have a material effect on the parent's ability, or  
21 anticipated ability, to appear in person at a regularly  
22 scheduled hearing.

23 (b) Electronic hearing.--Upon motion of a parent who has  
24 received military temporary duty, deployment or mobilization  
25 orders, the court shall, upon reasonable advance notice and for  
26 good cause shown, allow the parent to present testimony and  
27 evidence by electronic means in custody matters instituted under  
28 sections 4109 and 4110 when the military duties of the parent  
29 have a material effect on the parent's ability to appear in  
30 person at a regularly scheduled hearing. The term "electronic

1 means" includes communication by telephone, video teleconference  
2 or the Internet.

3 Section 4. This act shall take effect in 60 days.