

DOMESTIC RELATIONS CODE (23 PA.C.S.) AND MILITARY AND VETERANS
CODE (51 PA.C.S.) - CONSIDERATION OF CRIMINAL CONVICTION,
MODIFICATION OF EXISTING ORDERS, CHILD CUSTODY PROCEEDING DURING
MILITARY DEPLOYMENT AND EXPEDITED OR ELECTRONIC HEARING

Act of Apr. 12, 2012, P.L. 241, No. 32 Cl. 23

Session of 2012
No. 2012-32

SB 1167

AN ACT

Amending Titles 23 (Domestic Relations) and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for consideration of criminal conviction, for modification of existing orders and for child custody proceeding during military deployment; and providing for expedited or electronic hearing.

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

Section 1. Sections 5329(c) and 5338 of Title 23 of the Pennsylvania Consolidated Statutes are amended to read:
§ 5329. Consideration of criminal conviction.

* * *

(c) Initial evaluation.--[The court shall provide for an evaluation to determine whether:

(1) the party or household member who committed an offense under subsection (a) poses a threat to the child; and

(2) counseling is necessary for that party or household member.] **At the initial in-person contact with the court, the judge, conference officer or other appointed individual shall perform an initial evaluation to determine whether the party or household member who committed an offense under subsection (a) poses a threat to the child and whether counseling is necessary. The initial evaluation shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary.**

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§ 5338. Modification of existing order.

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

(b) Applicability.--[This] **Except as provided in 51 Pa.C.S. § 4109 (relating to child custody proceedings during military deployment) , this** section shall apply to any custody order entered by a court of this Commonwealth or any other state subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement).

Section 2. Section 4109 of Title 51 is amended to read:
§ 4109. Child custody proceedings during military deployment.

(a) Restriction on change of custody.--If a petition for change of custody of a child of an eligible servicemember is filed with any court in this Commonwealth while the eligible servicemember is deployed in support of a contingency operation, no court may enter an order modifying or amending any previous

judgment or order, or issue a new order, that changes the custody arrangement for that child that existed as of the date of the deployment of the eligible servicemember, except that a court may enter a temporary custody order if it is in the best interest of the child.

(a.1) Temporary assignment to family members.--If an eligible servicemember has received notice of deployment in support of a contingency operation, a court may issue a temporary order to an eligible servicemember who has rights to a child under 23 Pa.C.S. § 5323 (relating to award of custody) or former 23 Pa.C.S. Ch. 53 Subch. A (relating to general provisions), including a temporary order to temporarily assign custody rights to family members of the servicemember. In the case of temporary assignment of rights to family members of the servicemember, the following shall apply:

(1) The servicemember may petition the court for a temporary order to temporarily assign custody rights to family members of the servicemember. The servicemember shall be joined in the petition by the family members to whom the servicemember is seeking to assign temporary custody rights. The petition shall include a proposed revised custody schedule for care of the child by the family members. The proposed revised custody schedule may not include custody rights which exceed the rights granted to a servicemember set forth in the order in effect at the time of the filing of the petition to grant temporary custody rights to family members.

(2) The court may issue a temporary order with a revised custody schedule as proposed by the servicemember and the family members or another revised custody schedule as the court deems appropriate, if the court finds that a temporary assignment of custody rights to family members of the servicemember is in the best interest of the child. In no case shall a temporary order granting custody rights to the family members of a servicemember exceed the custody rights granted to the servicemember set forth in the order in effect at the time of the filing of the petition to assign temporary custody rights to family members.

In the case of any other temporary order issued under this subsection, the court may issue a temporary order if it is in the best interest of the child.

(b) Completion of deployment.--In any temporary custody order entered under subsection (a) or (a.1), a court shall require that, upon the return of the eligible servicemember from deployment in support of a contingency operation, the custody order that was in effect immediately preceding the date of the deployment of the eligible servicemember is reinstated.

(c) Exclusion of military service from determination of child's best interest.--If a petition for the change of custody of the child of an eligible servicemember who was deployed in support of a contingency operation is filed after the end of the deployment, no court may consider the absence of the eligible servicemember by reason of that deployment in determining the best interest of the child.

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

(e) Relationship to other laws.--Notwithstanding any other provision of law, the provisions of this section shall be applied with regard to child custody issues related to eligible servicemembers deployed in support of contingency operations.

(f) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Contingency operation." A military operation that:

(1) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or

(2) results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. § 688 (relating to retired members: authority to order to active duty; duties), 12301(a) (relating to reserve components generally), 12302 (relating to Ready Reserve), 12304 (relating to Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency), 12305 (relating to authority of President to suspend certain laws relating to promotion, retirement, and separation) or 12406 (relating to National Guard in Federal service: call) or any other provision of 10 U.S.C. during a war or during a national emergency declared by the President or Congress.

"Eligible servicemember." A member of the Pennsylvania National Guard or a member of an active or reserve component of the Armed Forces of the United States who is serving on active duty, other than active duty for training, for a period of 30 or more consecutive days, in support of a contingency operation.

"Family members." As defined in 23 Pa.C.S. § 6303 (relating to definitions).

Section 3. Title 51 is amended by adding a section to read: § 4110. Expedited or electronic hearing.

(a) Expedited hearing.--Upon motion of an eligible servicemember who has received notice of deployment in support of a contingency operation, the court shall, for good cause shown, hold an expedited hearing in custody matters instituted under section 4109 (relating to child custody proceedings during military deployment) when the military duties of the eligible servicemember have a material effect on the eligible servicemember's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(b) Electronic hearing.--Upon motion of an eligible servicemember who has received notice of deployment in support of a contingency operation, the court shall, upon reasonable advance notice and for good cause shown, allow the eligible servicemember to present testimony and evidence by electronic means in custody matters instituted under section 4109 when the military duties of the eligible servicemember have a material effect on the eligible servicemember's ability to appear in person at a regularly scheduled hearing.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Contingency operation." As defined in section 4109 (relating to child custody proceedings during military deployment).

"Electronic means." Includes communication by telephone, video conference or the Internet.

"Eligible servicemember." As defined in section 4109 (relating to child custody proceedings during military deployment).

"Matter." As defined in 42 Pa.C.S. § 102 (relating to definitions).

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

APPROVED--The 12th day of April, A.D. 2012.

TOM CORBETT