

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1107 Session of
2007

INTRODUCED BY FOLMER, BAKER, WASHINGTON, PUNT, CORMAN, STOUT,
COSTA, RAFFERTY, KASUNIC, PILEGGI, FUMO, ORIE, M. WHITE,
WOZNIAK, KITCHEN, BRUBAKER, BOSCOLA, REGOLA AND STACK,
OCTOBER 25, 2007

REFERRED TO JUDICIARY, OCTOBER 25, 2007

AN ACT

1 Amending Title 51 (Military Affairs) of the Pennsylvania
2 Consolidated Statutes, providing for protection of deployed
3 members of the Pennsylvania National Guard and reserve
4 components in child custody arrangements.

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

7 Section 1. Title 51 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 4109. Military child custody protection.

10 (a) Restriction on change of custody.--If a motion for
11 change of custody of a child of an eligible servicemember is
12 filed with any court in this Commonwealth while the eligible
13 servicemember is deployed in support of a contingency operation,
14 no court may enter an order modifying or amending any previous
15 judgment or order, or issue a new order, that changes the
16 custody arrangement for that child that existed as of the date
17 of the deployment of the eligible servicemember, except that a
18 court may enter a temporary custody order if there is clear and

1 convincing evidence that it is in the best interest of the
2 child.

3 (b) Completion of deployment.--In any proceeding covered
4 under subsection (a), a court shall require that, upon the
5 return of the eligible servicemember from deployment in support
6 of a contingency operation, the custody order that was in effect
7 immediately preceding the date of the deployment or the eligible
8 servicemember is reinstated.

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

16 (d) Failure to appear due to military deployment.--The
17 failure of an eligible servicemember to appear in court due to
18 deployment in support of a contingency operation shall not, in
19 and of itself, be sufficient to justify a modification of a
20 custody or visitation order if the reason for the absence,
21 relocation or failure to comply is the eligible servicemember's
22 active duty in support of a contingency operation.

23 (e) Notice.--An eligible servicemember deployed in support
24 of contingency operations may send written notice of his or her
25 status to any court with jurisdiction over the custody of the
26 eligible servicemember's child or children and to the other
27 parent or persons with physical custody of the eligible
28 servicemember's child or children, provided that an eligible
29 servicemember shall not be penalized for failure to send written
30 notice. The written notice contemplated by this subsection

1 should include the eligible servicemember's name, military rank
2 or grade, unit of assignment, duty location, dates of duty or
3 deployment, if known, and a copy of applicable military orders
4 if not classified or otherwise protected from release.

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

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

12 "Contingency operation." A military operation that:

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

18 (2) results in the call or order to, or retention on,
19 active duty of members of the uniformed services under 10
20 U.S.C. § 688 (relating to retired members; authority to order
21 to active duty; duties), 12301(a) (relating to reserve
22 components generally), 12302 (relating to Ready Reserve),
23 12304 (relating to selected reserve and certain individual
24 Ready Reserve members; order to active duty other than during
25 war or national emergency), 12305 (relating to authority of
26 President to suspend certain laws relating to promotion,
27 retirement, and separation) or 12406 (relating to National
28 Guard in Federal service: call) or any other provision of 10
29 U.S.C. during a war or during a national emergency declared
30 by the President or Congress.

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

6 Section 2. This act shall take effect in 60 days.