

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 1167** Session of  
2011

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

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AS AMENDED ON THIRD CONSIDERATION, SEPTEMBER 27, 2011

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## 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

1 custody order entered by a court of this Commonwealth or any  
2 other state subject to the jurisdictional requirements set forth  
3 in Chapter 54 (relating to uniform child custody jurisdiction  
4 and enforcement).

5 Section 2. Section 4109(d) of Title 51 is amended to read:  
6 § 4109. Child custody proceedings during military deployment.

7 \* \* \*

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

15 \* \* \*

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

19 (a) Petition.--If an eligible servicemember has received  
20 notice of deployment in support of a contingency operation, the  
21 servicemember may petition the court for a modification to an  
22 order granting the servicemember custody with a child under 23  
23 Pa.C.S. § 5323 (relating to award of custody). The modification  
24 may include a temporary assignment of the eligible  
25 servicemember's custody rights to one or more ~~biological~~ ←  
26 ~~relatives~~ FAMILY MEMBERS AS DEFINED IN 23 PA.C.S. § 6303 ←  
27 (RELATING TO DEFINITIONS). The eligible servicemember shall be  
28 joined in the petition by the relatives to whom the  
29 servicemember is seeking to assign these rights. The petition  
30 shall include a proposed custody schedule with the ~~relatives~~ ←



1 FAMILY MEMBERS and the schedule shall not exceed the time  
2 granted to the eligible servicemember prior to the time of  
3 filing the petition.

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

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

15 § 4111. Expedited or electronic hearing.

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

26 (b) Electronic hearing.--Upon motion of a parent who has  
27 received military temporary duty, deployment or mobilization  
28 orders, the court shall, upon reasonable advance notice and for  
29 good cause shown, allow the parent to present testimony and  
30 evidence by electronic means in custody matters instituted under

1 sections 4109 and 4110 when the military duties of the parent  
2 have a material effect on the parent's ability to appear in  
3 person at a regularly scheduled hearing. The term "electronic  
4 means" includes communication by telephone, video teleconference  
5 or the Internet.

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