

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, FONTANA, BOSCOLA, FARNESE, BROWNE, FERLO AND ROBBINS, JUNE 21, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 7, 2012

AN ACT

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

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

10 Section 1. Section 5338 of Title 23 of the Pennsylvania ←
11 Consolidated Statutes, is amended to read:

12 SECTION 1. SECTIONS 5329(C) AND 5338 OF TITLE 23 OF THE ←
13 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

14 § 5329. CONSIDERATION OF CRIMINAL CONVICTION.

15 * * *

16 (C) INITIAL EVALUATION.--[THE COURT SHALL PROVIDE FOR AN
17 EVALUATION TO DETERMINE WHETHER:

18 (1) THE PARTY OR HOUSEHOLD MEMBER WHO COMMITTED AN

1 OFFENSE UNDER SUBSECTION (A) POSES A THREAT TO THE CHILD; AND
2 (2) COUNSELING IS NECESSARY FOR THAT PARTY OR HOUSEHOLD
3 MEMBER.] AT THE INITIAL IN-PERSON CONTACT WITH THE COURT, THE
4 JUDGE, CONFERENCE OFFICER OR OTHER APPOINTED INDIVIDUAL SHALL
5 PERFORM AN INITIAL EVALUATION TO DETERMINE WHETHER THE PARTY
6 OR HOUSEHOLD MEMBER WHO COMMITTED AN OFFENSE UNDER SUBSECTION
7 (A) POSES A THREAT TO THE CHILD AND WHETHER COUNSELING IS
8 NECESSARY. THE INITIAL EVALUATION SHALL NOT BE CONDUCTED BY A
9 MENTAL HEALTH PROFESSIONAL. AFTER THE INITIAL EVALUATION, THE
10 COURT MAY ORDER FURTHER EVALUATION OR COUNSELING BY A MENTAL
11 HEALTH PROFESSIONAL IF THE COURT DETERMINES IT IS NECESSARY.

12 * * *

13 § 5338. Modification of existing order.

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

16 (b) Applicability.--[This] Except as provided in 51 Pa.C.S.
17 ~~§§ 4109 (relating to child custody proceedings during military~~ ←
18 ~~deployment) and 4110 (relating to assignment of custody rights~~
19 ~~during military deployment)~~ § 4109 (RELATING TO CHILD CUSTODY ←
20 PROCEEDINGS DURING MILITARY DEPLOYMENT), this section shall
21 apply to any custody order entered by a court of this
22 Commonwealth or any other state subject to the jurisdictional
23 requirements set forth in Chapter 54 (relating to uniform child
24 custody jurisdiction and enforcement).

25 Section 2. Section ~~4109(d)~~ 4109 of Title 51 is amended to ←
26 read:

27 § 4109. Child custody proceedings during military deployment.

28 * * * ←

29 (A) RESTRICTION ON CHANGE OF CUSTODY.--IF A PETITION FOR ←
30 CHANGE OF CUSTODY OF A CHILD OF AN ELIGIBLE SERVICEMEMBER IS

1 FILED WITH ANY COURT IN THIS COMMONWEALTH WHILE THE ELIGIBLE
2 SERVICEMEMBER IS DEPLOYED IN SUPPORT OF A CONTINGENCY OPERATION,
3 NO COURT MAY ENTER AN ORDER MODIFYING OR AMENDING ANY PREVIOUS
4 JUDGMENT OR ORDER, OR ISSUE A NEW ORDER, THAT CHANGES THE
5 CUSTODY ARRANGEMENT FOR THAT CHILD THAT EXISTED AS OF THE DATE
6 OF THE DEPLOYMENT OF THE ELIGIBLE SERVICEMEMBER, EXCEPT THAT A
7 COURT MAY ENTER A TEMPORARY CUSTODY ORDER IF IT IS IN THE BEST
8 INTEREST OF THE CHILD.

9 (A.1) TEMPORARY ASSIGNMENT TO FAMILY MEMBERS.--IF AN
10 ELIGIBLE SERVICEMEMBER HAS RECEIVED NOTICE OF DEPLOYMENT IN
11 SUPPORT OF A CONTINGENCY OPERATION, A COURT MAY ISSUE A
12 TEMPORARY ORDER TO AN ELIGIBLE SERVICEMEMBER WHO HAS RIGHTS TO A
13 CHILD UNDER 23 PA.C.S. § 5323 (RELATING TO AWARD OF CUSTODY) OR
14 FORMER 23 PA.C.S. CH. 53 SUBCH. A (RELATING TO GENERAL
15 PROVISIONS), INCLUDING A TEMPORARY ORDER TO TEMPORARILY ASSIGN
16 CUSTODY RIGHTS TO FAMILY MEMBERS OF THE SERVICEMEMBER. IN THE
17 CASE OF TEMPORARY ASSIGNMENT OF RIGHTS TO FAMILY MEMBERS OF THE
18 SERVICEMEMBER, THE FOLLOWING SHALL APPLY:

19 (1) THE SERVICEMEMBER MAY PETITION THE COURT FOR A
20 TEMPORARY ORDER TO TEMPORARILY ASSIGN CUSTODY RIGHTS TO
21 FAMILY MEMBERS OF THE SERVICEMEMBER. THE SERVICEMEMBER SHALL
22 BE JOINED IN THE PETITION BY THE FAMILY MEMBERS TO WHOM THE
23 SERVICEMEMBER IS SEEKING TO ASSIGN TEMPORARY CUSTODY RIGHTS.
24 THE PETITION SHALL INCLUDE A PROPOSED REVISED CUSTODY
25 SCHEDULE FOR CARE OF THE CHILD BY THE FAMILY MEMBERS. THE
26 PROPOSED REVISED CUSTODY SCHEDULE MAY NOT INCLUDE CUSTODY
27 RIGHTS WHICH EXCEED THE RIGHTS GRANTED TO A SERVICEMEMBER SET
28 FORTH IN THE ORDER IN EFFECT AT THE TIME OF THE FILING OF THE
29 PETITION TO GRANT TEMPORARY CUSTODY RIGHTS TO FAMILY MEMBERS.

30 (2) THE COURT MAY ISSUE A TEMPORARY ORDER WITH A REVISED

1 CUSTODY SCHEDULE AS PROPOSED BY THE SERVICEMEMBER AND THE
2 FAMILY MEMBERS OR ANOTHER REVISED CUSTODY SCHEDULE AS THE
3 COURT DEEMS APPROPRIATE, IF THE COURT FINDS THAT A TEMPORARY
4 ASSIGNMENT OF CUSTODY RIGHTS TO FAMILY MEMBERS OF THE
5 SERVICEMEMBER IS IN THE BEST INTEREST OF THE CHILD. IN NO
6 CASE SHALL A TEMPORARY ORDER GRANTING CUSTODY RIGHTS TO THE
7 FAMILY MEMBERS OF A SERVICEMEMBER EXCEED THE CUSTODY RIGHTS
8 GRANTED TO THE SERVICEMEMBER SET FORTH IN THE ORDER IN EFFECT
9 AT THE TIME OF THE FILING OF THE PETITION TO ASSIGN TEMPORARY
10 CUSTODY RIGHTS TO FAMILY MEMBERS.

11 IN THE CASE OF ANY OTHER TEMPORARY ORDER ISSUED UNDER THIS
12 SUBSECTION, THE COURT MAY ISSUE A TEMPORARY ORDER IF IT IS IN
13 THE BEST INTEREST OF THE CHILD.

14 (B) COMPLETION OF DEPLOYMENT.--IN ANY TEMPORARY CUSTODY
15 ORDER ENTERED UNDER SUBSECTION (A) OR (A.1), A COURT SHALL
16 REQUIRE THAT, UPON THE RETURN OF THE ELIGIBLE SERVICEMEMBER FROM
17 DEPLOYMENT IN SUPPORT OF A CONTINGENCY OPERATION, THE CUSTODY
18 ORDER THAT WAS IN EFFECT IMMEDIATELY PRECEDING THE DATE OF THE
19 DEPLOYMENT OF THE ELIGIBLE SERVICEMEMBER IS REINSTATED.

20 (C) EXCLUSION OF MILITARY SERVICE FROM DETERMINATION OF
21 CHILD'S BEST INTEREST.--IF A PETITION FOR THE CHANGE OF CUSTODY
22 OF THE CHILD OF AN ELIGIBLE SERVICEMEMBER WHO WAS DEPLOYED IN
23 SUPPORT OF A CONTINGENCY OPERATION IS FILED AFTER THE END OF THE
24 DEPLOYMENT, NO COURT MAY CONSIDER THE ABSENCE OF THE ELIGIBLE
25 SERVICEMEMBER BY REASON OF THAT DEPLOYMENT IN DETERMINING THE
26 BEST INTEREST OF THE CHILD.

27 (d) Failure to appear due to military deployment.--The
28 failure of an eligible servicemember to appear in court due to
29 deployment in support of a contingency operation shall not, in
30 and of itself, be sufficient to justify a modification of a

1 custody [or visitation] order if the reason for the failure to
2 appear is the eligible servicemember's active duty in support of
3 a contingency operation.

4 * * *

5 (E) 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 (F) 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 "FAMILY MEMBERS." AS DEFINED IN 23 PA.C.S. § 6303 (RELATING
7 TO DEFINITIONS).

8 Section 3. Title 51 is amended by adding ~~sections~~ A SECTION ←
9 to read:

10 § 4110. ~~Assignment of custody rights during military~~ ←
11 ~~deployment.~~

12 ~~(a) Petition. If an eligible servicemember has received~~
13 ~~notice of deployment in support of a contingency operation, the~~
14 ~~servicemember may petition the court for a modification to an~~
15 ~~order granting the servicemember custody with a child under 23~~
16 ~~Pa.C.S. § 5323 (relating to award of custody). The modification~~
17 ~~may include a temporary assignment of the eligible~~
18 ~~servicemember's custody rights to one or more family members as~~
19 ~~defined in 23 Pa.C.S. § 6303 (relating to definitions). The~~
20 ~~eligible servicemember shall be joined in the petition by the~~
21 ~~relatives to whom the servicemember is seeking to assign these~~
22 ~~rights. The petition shall include a proposed custody schedule~~
23 ~~with the family members and the schedule shall not exceed the~~
24 ~~time granted to the eligible servicemember prior to the time of~~
25 ~~filing the petition.~~

26 ~~(b) Order. The court may grant the eligible servicemember's~~
27 ~~request for assignment of custody rights if the court finds that~~
28 ~~custody on terms as the court deems appropriate would be in the~~
29 ~~best interest of the child. An order granting assignment of~~
30 ~~custody rights pursuant to this section shall terminate~~

1 ~~immediately upon the termination of the eligible servicemember's~~
2 ~~deployment.~~

3 ~~(c) Definitions. As used in this section, the terms~~
4 ~~"contingency operation" and "eligible servicemember" shall have~~
5 ~~the same meanings given to them under section 4109 (relating to~~
6 ~~child custody proceedings during military deployment).~~

7 ~~§ 4111. Expedited or electronic hearing.~~

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

19 ~~(b) Electronic hearing.--Upon motion of a parent ELIGIBLE~~ ←
20 ~~SERVICEMEMBER who has received military temporary duty,~~ ←
21 ~~deployment or mobilization orders NOTICE OF DEPLOYMENT IN~~ ←
22 ~~SUPPORT OF A CONTINGENCY OPERATION, the court shall, upon~~
23 ~~reasonable advance notice and for good cause shown, allow the~~
24 ~~parent ELIGIBLE SERVICEMEMBER to present testimony and evidence~~ ←
25 ~~by electronic means in custody matters instituted under sections~~ ←
26 ~~SECTION 4109 and 4110 when the military duties of the parent~~ ←
27 ~~ELIGIBLE SERVICEMEMBER have a material effect on the parent's~~ ←
28 ~~ELIGIBLE SERVICEMEMBER'S ability to appear in person at a~~ ←
29 ~~regularly scheduled hearing. The term "electronic means"~~ ←
30 ~~includes communication by telephone, video teleconference or the~~

1 Internet.

2 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING ←
3 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
4 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

5 "CONTINGENCY OPERATION." AS DEFINED IN SECTION 4109
6 (RELATING TO CHILD CUSTODY PROCEEDINGS DURING MILITARY
7 DEPLOYMENT).

8 "ELECTRONIC MEANS." INCLUDES COMMUNICATION BY TELEPHONE,
9 VIDEO CONFERENCE OR THE INTERNET.

10 "ELIGIBLE SERVICEMEMBER." AS DEFINED IN SECTION 4109
11 (RELATING TO CHILD CUSTODY PROCEEDINGS DURING MILITARY
12 DEPLOYMENT).

13 "MATTER." AS DEFINED IN 42 PA.C.S. § 102 (RELATING TO
14 DEFINITIONS).

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