

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE HEARING

STATE CAPITOL  
MAJORITY CAUCUS ROOM  
ROOM 140  
HARRISBURG, PENNSYLVANIA

MONDAY, AUGUST 25, 2008  
1:10 P.M.

PRESENTATION ON SB 1107  
CHILD CUSTODY PROCEEDINGS  
DURING MILITARY DEPLOYMENT

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, MAJORITY CHAIRMAN  
HONORABLE DEBERAH KULA  
HONORABLE CARL W. MANTZ  
HONORABLE JOHN E. PALLONE  
HONORABLE SEAN M. RAMALEY  
HONORABLE DON WALKO

IN ATTENDANCE:

HONORABLE JAMES E. CASORIO, JR.  
HONORABLE MIKE FOLMER  
HONORABLE CHRIS SAINATO  
HONORABLE DANTE SANTONI, JR.

\* \* \* \* \*

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ALSO PRESENT:  
DAVID McGLAUGHLIN  
MAJORITY SENIOR RESEARCH ANALYST  
JOHN RYAN  
MAJORITY EXECUTIVE DIRECTOR  
KAREN L. DALTON  
MINORITY SENIOR LEGAL COUNSEL

DEBRA B. MILLER  
REPORTER

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2  
3 CHAIRMAN CALTAGIRONE: If it is all right --  
4 I know the Senator is on his way; he had a delay, but  
5 he will be coming -- so if it is okay, officially we  
6 will be starting the hearing, and I have a seat right  
7 here beside me for him. I do not think he would mind  
8 us getting started.

9 For the record, if everybody would introduce  
10 themselves, starting to my right and working over to  
11 my left and the back panel, staff as well as members.  
12 Sean.

13 REPRESENTATIVE RAMALEY: Good afternoon.  
14 Sean Ramaley, 16th District, Beaver and Allegheny  
15 Counties.

16 MR. McGLAUGHLIN: Good afternoon.  
17 David McGlaughlin, Senior Analyst for the Judiciary  
18 Committee staff.

19 CHAIRMAN CALTAGIRONE: State Rep.  
20 Tom Caltagirone, Chairman of the House Judiciary,  
21 127th District, Reading and Berks County.

22 MR. RYAN: John Ryan, Executive Director of  
23 the House Judiciary Committee.

24 REPRESENTATIVE KULA: Deberah Kula,  
25 52nd District, Fayette and Westmoreland Counties.

1           REPRESENTATIVE SAINATO: I'm Representative  
2 Chris Sainato. I have parts of Lawrence and a small  
3 section of Beaver County in western Pennsylvania.

4           REPRESENTATIVE SANTONI: Representative  
5 Dante Santoni from Berks County.

6           MS. DALTON: Karen Dalton, Senior Counsel,  
7 House Judiciary Committee.

8           CHAIRMAN CALTAGIRONE: And for the record,  
9 if the gentlemen who will be testifying, if you could  
10 identify yourselves for the record, we will start,  
11 and then we'll get to the testimony.

12           MR. GUISE: All right. I am Dennis Guise.  
13 I am the Chief Counsel for the Department of Military  
14 and Veterans Affairs.

15           BRIGADIER GENERAL WAGNER: Good afternoon.  
16 Scott Wagner, Deputy Adjutant General for Veterans'  
17 Affairs, the Department of Military and Veterans  
18 Affairs.

19           LIEUTENANT COLONEL KOLLAR: Good afternoon.  
20 Lt. Col. Kris Kollar, a military personnel management  
21 officer for the Headquarters, Pennsylvania Air  
22 National Guard.

23           MR. EISEMANN: Andrew Eisemann, a civilian  
24 attorney here in Harrisburg. I'm chair of the  
25 Pennsylvania Bar Association's Military and Veterans'

1 Affairs Committee, also a lieutenant colonel in the  
2 Army Reserves.

3 MR. RYAN: Mr. Eisemann, we were going to  
4 have the three representatives of the Military  
5 Affairs and have you as a separate testifier.

6 MR. EISEMANN: Sure.

7 MR. RYAN: Because I think yours may be more  
8 technical in nature than some of them.

9 CHAIRMAN CALTAGIRONE: But please stay where  
10 you are at.

11 All right. If we would like to start off  
12 with the testimony, sir.

13 BRIGADIER GENERAL WAGNER: I would be happy  
14 to start off, and thank you, Mr. Chairman.

15 It is a pleasure to appear before you this  
16 afternoon to share some thoughts on Senate Bill 1107  
17 on child custody proceedings during military  
18 deployments.

19 As previously introduced, my name is  
20 Scott Wagner. I serve as the Deputy Adjutant General  
21 for Veterans' Affairs for the Commonwealth of  
22 Pennsylvania.

23 I am also a retired colonel with the  
24 Pennsylvania Army National Guard and served as the  
25 Commander of the 213th Air Support Group in

1 Afghanistan 2003-2004.

2 Both from the perspective of the veterans'  
3 interests and as a former commander of deployed  
4 troops, I want to thank the House Judiciary Committee  
5 and the General Assembly for considering this  
6 legislation.

7 When our soldiers and airmen deploy in  
8 support of contingency operations, they are stressed  
9 by a number of factors.

10 First and foremost is, perhaps obviously,  
11 the stress of the combat zone and the hazards that  
12 that entails, but secondly and perhaps more  
13 important, especially to this issue, is the stress  
14 that comes from family situations and relationships,  
15 especially when legal proceedings and child custody  
16 may be in dispute.

17 While we do have some cases, and you will  
18 hear later personal testimony, I believe we have been  
19 fortunate in Pennsylvania in not having any highly  
20 publicized child-custody cases involving service  
21 members who return from deployment overseas to find  
22 their preexisting child-care arrangements being  
23 challenged or changed in part because of their  
24 service overseas.

25 From my own experience in Afghanistan, I can

1 tell you that for the most part, child-custody issues  
2 were handled and executed as planned by the soldier.  
3 Still, it only takes one case and the worries that  
4 it inflicts on a soldier to affect morale and  
5 readiness.

6 I was told recently by my former Command  
7 Sergeant Major that this issue is affecting some  
8 troops overseas, both active-duty servicemen and  
9 members in the reserve component who have Family Care  
10 Plan issues. And perhaps sometimes more importantly  
11 in the active-duty case, they come from across the  
12 United States, and they do not have the community and  
13 the family based from where our National Guardsmen  
14 would deploy, the soldiers, the single parent with  
15 custody. It is obviously more so of an issue with  
16 them if they lose their child, but it is still an  
17 issue in both our components, active and reserve.

18 Today's military is different from the force  
19 of just a few years ago. For example, the number of  
20 single parents in the reserve components has  
21 increased from approximately 46,000 nationwide in  
22 2,000 to 70,000 in 2006.

23 The number of female service members has  
24 increased as well. In the Army National Guard,  
25 nationwide, the number has nearly doubled since 1990,



1 rising from about 7 percent of the force to just over  
2 13 percent today.

3           Although the increase in numbers is not as  
4 dramatic in some of the other components of the  
5 military, it is clear that in today's total force for  
6 the national defense, we clearly rely on female  
7 soldiers, sailors, airmen, and marines like never  
8 before.

9           Because of the lessons learned in Operations  
10 Desert Shield and Desert Storm in the early 1990s,  
11 the Armed Forces have focused much more intensely on  
12 family-care issues.

13           All service members who are single parents  
14 and all married couples with minor children where  
15 both spouses are in the service must prepare and keep  
16 an up-to-date Family Care Plan. Now, this is a  
17 function of deployment, a requirement of deployment,  
18 a requirement of serving in the military.

19           These plans provide for the designation of  
20 individuals to care for children, both on a  
21 short-term and long-term basis, when parents are  
22 deployed to remote locations or combat zones.

23           These plans recognize the importance of  
24 planning in advance for the care of children of  
25 military parents, and they are supported in some

1 cases by court-approved custody arrangements.

2 As you may know, the Department of Military  
3 and Veterans Affairs manages the Scotland School for  
4 Veterans' Children near Chambersburg, which offers a  
5 9-month residential school opportunity for veterans'  
6 children, and we now have admissions preference for  
7 children of deployed or deploying service members.

8 This represents a Family Care Plan option  
9 for those parents who are in this situation, and I  
10 can tell you that last year at one point, we had as  
11 many as 12 students in residence that had parents  
12 deploy.

13 In the case of single parents, the other  
14 parent who is not in the military may receive custody  
15 while the military parent is deployed.

16 In most cases, this works out fine. When  
17 the service member returns from deployment, custody  
18 is restored to its pre-deployment condition.

19 But in some cases, the parent who is not in  
20 the service takes action to change custody  
21 arrangements, either while the member is deployed or  
22 just after he or she returns. Sometimes they argue  
23 that custody should be changed because of the  
24 military parent's deployment obligations.

25 It is just not right for soldiers who serve

1 their country and take the risks and face the  
2 challenges of deployments to come home and find that  
3 their status as custodial parents is being challenged  
4 or changed.

5 The Armed Forces recognizes the importance  
6 of families in other ways as well. We have active  
7 family readiness groups and family support groups  
8 that support our service members and their families  
9 during times of mobilization and then deployment.

10 These groups, which often include volunteers  
11 from our many veterans' organizations, do a great job  
12 in helping service members and families. Of course,  
13 they cannot resolve difficult child-custody  
14 issues.

15 Recent Federal legislation, which Mr. Guise  
16 will describe in a moment, and State legislation like  
17 Senate Bill 1107 will help address this situation.

18 These efforts even the playing field and  
19 make it clear that our soldiers, sailors, airmen, and  
20 marines who are serving will not suffer disadvantages  
21 in civil legal matters because of deployments.

22 We have learned over the past few years that  
23 family-care issues, including custody battles, have  
24 been a factor in soldier retention.

25 Why is it important for Pennsylvania to

1 stand up for our service members with legislation  
2 like Senate Bill 1107? When service members are  
3 separated from their families while they are  
4 deployed, it is important to give them some  
5 additional assurance that their child-custody  
6 arrangements will not be adversely affected.

7 Just as the demographic composition of the  
8 military has changed in recent years, so, too, has  
9 the way that we fight changed since September 11,  
10 2001.

11 Our nation relies on our reserve components  
12 like never before, and this means that soldiers and  
13 airmen from around Pennsylvania and around the  
14 country are taken away from their civilian pursuits  
15 to deploy at home and abroad.

16 Of the 19,000 or so members of the  
17 Pennsylvania Army and Air National Guard, nearly  
18 17,000 have been called to serve in operational  
19 missions both at home and overseas since the  
20 September 11, 2001, terrorist attacks.

21 Presently, the Pennsylvania Army National  
22 Guard is planning to undertake its largest  
23 mobilization and deployment since World War II.

24 The 56th Stryker Brigade and the Combat  
25 Aviation Brigade are both slated to mobilize and

1 deploy over the next several months. They will join  
2 other members of our Army and Air National Guard who  
3 are presently deployed overseas.

4 The scope of upcoming Pennsylvania  
5 deployments makes it all the more important to give  
6 our personnel the reassurances we can with regard to  
7 child-custody issues.

8 Thank you for the opportunity to make  
9 this statement. I will be followed by Lt. Col.  
10 Kris Kollar of the Pennsylvania Air National Guard.

11 LIEUTENANT COLONEL KOLLAR: Thank you,  
12 Mr. Chairman.

13 As already stated, I am Lt. Col.  
14 Kris Kollar, and I serve as the military personnel  
15 officer for the Headquarters, Pennsylvania Air  
16 National Guard.

17 In May, I returned from deployment with the  
18 Air Guard to Ali Air Base, Iraq, where I served  
19 as the Deputy Commander, 407th Air Expeditionary  
20 Group.

21 While there, I was responsible for the daily  
22 well-being of approximately 750 airmen, and during  
23 times of emergency operations or when our facility  
24 was under attack, I was responsible for dispatching  
25 emergency operations, personnel, and explosive

1 ordinances personnel and keeping safe over 10,000  
2 contractors, civilians, and army and air personnel.

3 Today, I would like to describe some of the  
4 issues that can affect our deploying airmen and  
5 soldiers.

6 First, just a word about the Air National  
7 Guard. The Pennsylvania Army and Air National Guard  
8 is one of the largest and most deployed National  
9 Guard forces in the United States.

10 Our Pennsylvania Army National Guard is home  
11 to the 28th Infantry Division (Mechanized), the  
12 oldest continuing serving division in the U.S. Army,  
13 and the 213th Area Support Group, as well as  
14 important combat aviation units, schoolhouses, and  
15 training facilities such as Fort Indiantown Gap.

16 The 213th Area Support Group just recently  
17 returned from a 1-year deployment to Iraq, and large  
18 elements of the 28th Infantry Division have deployed  
19 in the past. And as you have heard, the 56th Stryker  
20 Brigade Combat Team, about 4,000 strong, is preparing  
21 to mobilize and deploy in the next few months.

22 In the Air National Guard, we have three  
23 major flying wings: the 171st Air Refueling Wing  
24 based at Pittsburgh International Airport; the 193rd  
25 Special Operations Wing based at Harrisburg

1 International Airport; and the 111th Fighter Wing  
2 based at Willow Grove Naval Air Station, as well  
3 as a number of operations and support groups based at  
4 Fort Indiantown Gap, State College, and Johnstown.

5 All in all, the Pennsylvania Army and Air  
6 National Guard have about 19,000 personnel, and as  
7 General Wagner observed, about 17,000 have mobilized  
8 or deployed to support operational missions at home  
9 and abroad since September 11, 2001.

10 As we speak today, the 111th Fighter Wing  
11 has personnel and aircraft deployed to Bagram Air  
12 Base, Afghanistan, in support of Operation Iraqi  
13 Freedom. The 193rd Special Operations Wing regularly  
14 deploys personnel and aircraft to Southwest Asia.  
15 Refuelers from the 171st Air Refueling Wing are  
16 deploying this week to the air base in Kurdistan, and  
17 are also preparing to deploy later this fall to  
18 Anderson Air Force Base in Guam to support Operation  
19 Iraqi Freedom. Our engineers, RED HORSE, and other  
20 operational personnel have also deployed.

21 When you look at the Guard, nearly everyone  
22 has deployed at least once, and large numbers have  
23 deployed two, three, or even more times. Overseas  
24 deployments by their very nature are a cause of  
25 stress for our personnel and their families.

1           As General Wagner observed, the Armed Forces  
2 has done a good job of focusing on family issues.  
3 Our personnel are required to prepare Family Care  
4 Plans and to make firm and forceful agreements to  
5 care for their minor children during deployments.

6           We also rely on family readiness groups and  
7 family support groups to help our personnel and their  
8 families deal with the stress of deployment.

9           Let me give you a few examples where  
10 child-custody issues have arisen in the Army and Air  
11 National Guard.

12           You have heard about the cases from other  
13 States, and we have been fortunate here in  
14 Pennsylvania that there have been no horror stories  
15 within our borders. But all the same, I have seen  
16 reports of several instances where child-custody  
17 cases have involved military deployment issues.

18           In an ongoing case with the 193rd Special  
19 Operations Wing, the spouse of one of our airmen has  
20 argued that he should be denied shared custody  
21 because of his being away from home on deployments  
22 and should only have visitation rights and not shared  
23 custody.

24           This case is complicated because one spouse  
25 lives in Pennsylvania while the other lives in



1 Maryland. All the same, it seems clear to the  
2 service member that his military service is being  
3 used against him in this matter.

4 In cases involving personnel receiving legal  
5 assistance with the 213th Area Support Group, during  
6 their recent deployments, there were a couple of  
7 cases where noncustodial, nonmilitary parents waited  
8 until the soldier deployed to seek to change the  
9 custody to themselves.

10 Family law issues are the most frequently  
11 raised issues in legal-assistance settings. When  
12 someone tries to overturn family-care arrangements  
13 set forth in the Family Care Plans, it is a major  
14 stressor for our personnel.

15 While deployed to Southern Iraq, I  
16 experienced my own personal child-custody challenges  
17 when working with the local domestic relations  
18 office. Although the facts of my own case and  
19 circumstances are not germane to this proceeding, I  
20 can attest firsthand to the exceptional difficulty  
21 the deployed airmen and soldiers experience when  
22 confronted with child-custody issues.

23 Iraq is a world away from central  
24 Pennsylvania, and the distance exponentially  
25 complicated my ability to deal with the legal system

1 and former spouse.

2 Life at a forward-operating base is  
3 difficult enough in and of itself. Separation from  
4 family, combat rigors, 12- to 14-hour workdays, and  
5 climate extremes are but a few of the circumstances  
6 endured. Thoughts of a change to a pre-deployment  
7 child-custody agreement only added stressors  
8 that were certainly unnecessary and at times  
9 overwhelming.

10 Serving one's nation and Commonwealth during  
11 a military deployment should not put single moms and  
12 dads, who just happen to also be soldiers and airmen,  
13 at a disadvantage.

14 I believe Pennsylvania service members  
15 appreciate all the support they have received from  
16 the Pennsylvania General Assembly. Thank you for  
17 considering legislation to address difficult and  
18 sometimes sensitive child-custody issues in a fair  
19 and reasonable way.

20 I will be followed by Mr. Dennis Guise,  
21 Chief Counsel at the DMVA. Mr. Guise.

22 MR. GUISE: Thank you, Mr. Chairman, for  
23 the opportunity to appear before you with regard to  
24 Senate Bill 1107, Printer's Number 1987, related to  
25 child-custody proceedings during military

1 deployments.

2           We want to thank Senator Folmer for  
3 introducing this bill, the State Senate for passing  
4 it unanimously, and your committee for considering it  
5 here today.

6           Prior to my appointment as Chief Counsel for  
7 the Department of Military and Veterans Affairs, I  
8 also served as staff judge advocate for Headquarters,  
9 Pennsylvania Air National Guard, prior to my  
10 retirement in January 2003.

11           By coincidence, the judge advocates of the  
12 Pennsylvania Army and Air National Guard had a  
13 conference this weekend, and I had a chance to  
14 discuss child-custody issues with some of my former  
15 colleagues. I can confirm what General Wagner and  
16 Lt. Col. Kollar have already said.

17           Although we have no highly publicized cases  
18 here in Pennsylvania like those in New York and other  
19 States, these issues can be gut-wrenching for our  
20 soldiers and airmen. Mostly legal assistance issues  
21 that arise for deployed sailors, airmen, sailors, and  
22 marines are related to family issues. Our personnel  
23 have encountered situations where the deployed status  
24 has been raised as a negative factor in child-custody  
25 hearings.

1           General Wagner and Lieutenant Colonel Kollar  
2 described some of the cases, and I will not repeat  
3 them here. My purpose is to address some of the  
4 legal issues related to the proposed legislation.

5           One of the questions I have been asked is  
6 whether the State legislation is needed on this  
7 subject in light of the recent amendments to the  
8 Servicemembers Civil Relief Act, which is a Federal  
9 law, 50 U.S.C., Appendix Section 101, et cetera.  
10 This new revision to the SCRA became law as part of a  
11 2008 National Defense Authorization Act, which was  
12 enacted in January of 2008.

13           Section 584 of the Defense Authorization Act  
14 amended two sections of the Servicemembers Civil  
15 Relief Act to make it clear that they apply to  
16 child-custody proceedings.

17           Section 201 of the SCRA applies to  
18 protection of service members against default  
19 judgments. This section was amended to state that  
20 these protections, which prevent the entry of default  
21 judgments against military personnel on active duty,  
22 in most circumstances apply to child-custody cases.

23           The DoD Authorization Act also amended  
24 section 202 of the SCRA, which relates to stay of  
25 proceedings in which military personnel are parties.

1           Service members whose service materially  
2 affects their ability to appear in proceedings are  
3 entitled to a stay, and now these provisions apply  
4 expressly to child-custody proceedings.

5           These changes in Federal law and the  
6 legislative history that accompany them are  
7 important on a nationwide basis. They do apply to  
8 State courts and State proceedings as well as Federal  
9 courts.

10           The conference committee report that  
11 accompanied the Federal legislation stated that the  
12 intent of Congress was that judges should not  
13 consider the absence of military members for  
14 deployment as the sole or even a major factor in  
15 determining child-custody arrangements.

16           Section 584 of the Defense Authorization Act  
17 as finally adopted does not go quite as far as the  
18 version that earlier passed the U.S. House of  
19 Representatives, but it is a positive step at the  
20 Federal level.

21           Senate Bill 1107 or similar State  
22 legislation is still needed because it provides  
23 additional important guidance to judges and those  
24 involved in child-custody decisions. This  
25 legislation represents a careful balance.

1           First, it applies only to "eligible  
2       servicemembers," which is defined as a member of the  
3       active or reserve components, including the  
4       Pennsylvania National Guard, who was serving on  
5       active duty for 30 or more consecutive days in  
6       support of contingency operations. It does not apply  
7       to all members of the Armed Forces or even all  
8       members on active duty but just those supporting  
9       contingency operations. This is a significant  
10      limitation.

11           Second, the bill does not upset the  
12      longstanding precedent that the best interests of the  
13      children is the guiding factor in making  
14      child-custody decisions. It merely provides guidance  
15      to judges that the fact that one parent is serving  
16      his or her country in the Armed Forces in support of  
17      contingency operations should not be a factor in  
18      determining the child's best interests.

19           And the bill very carefully makes it clear  
20      that when a deployment is over and the parent is  
21      available to take custody of the child as was  
22      prearranged, the custody-order arrangements that were  
23      in effect prior to the deployment should be  
24      reinstated.

25           Third, the bill provides procedural

1 safeguards akin to those in the Federal  
2 Servicemembers Civil Relief Act concerning the impact  
3 of the failure of a deployed soldier to appear at a  
4 hearing. Such a failure to appear should not in and  
5 of itself justify a modification of a custody or  
6 visitation order.

7 As both General Wagner and Lieutenant  
8 Colonel Kollar reported, consideration of this bill  
9 comes at an important time.

10 The Pennsylvania National Guard is about to  
11 embark on its largest mobilization since World War  
12 II. We will have more men and women serving in  
13 active Federal service during the next year than we  
14 have had in years past.

15 Although everyone hopes that these difficult  
16 and sensitive custody issues can be worked out by  
17 agreement among the parties, this bill will, if  
18 enacted, help our soldiers and airmen and reassure  
19 them that their military service will not be held  
20 against them in making child-custody decisions. It  
21 will also help in the retention of personnel and  
22 promote readiness.

23 Thank you again for the opportunity to make  
24 this presentation. Any of the three of us would be  
25 happy to answer any questions you may have.

1           CHAIRMAN CALTAGIRONE: Thank you.

2           I would like the additional members that  
3 came in after those folks, starting with John, if you  
4 would mention who you are and the district that you  
5 represent.

6           REPRESENTATIVE PALLONE: John Pallone. I  
7 represent northern Westmoreland County and southern  
8 Armstrong County, the 54th Legislative District in  
9 western Pennsylvania.

10          REPRESENTATIVE WALKO: Don Walko, Allegheny  
11 County.

12          REPRESENTATIVE MANTZ: Carl Mantz, the 187th  
13 Legislative District, parts of Lehigh and Berks  
14 Counties.

15          CHAIRMAN CALTAGIRONE: And my dear friend,  
16 Jimmy Casorio, from the western part of the  
17 State.

18          Questions from the members? Counsel, any  
19 questions?

20          I think you made your case.

21          MR. GUISE: Thank you.

22          CHAIRMAN CALTAGIRONE: We all support the  
23 issue, and hopefully we will have enough time when we  
24 get back to be able to bring this bill up for  
25 consideration.



1           Ah, Senator, please come up here and join  
2 us.

3           SENATOR FOLMER: I didn't know if you wanted  
4 me to testify or not.

5           CHAIRMAN CALTAGIRONE: No; come on up here.

6           SENATOR FOLMER: Do you want me to testify  
7 first?

8           CHAIRMAN CALTAGIRONE: Well, you can come up  
9 here.

10          SENATOR FOLMER: All right.

11          CHAIRMAN CALTAGIRONE: Yeah, and if you have  
12 any questions for them while they are here---

13          SENATOR FOLMER: No, I have no questions for  
14 them.

15          CHAIRMAN CALTAGIRONE: Well, all right.  
16 Thank you, gentlemen. It was good to have  
17 you.

18          MR. GUISE: All right. Thank you.

19          BRIGADIER GENERAL WAGNER: Thank you,  
20 Mr. Chairman.

21          CHAIRMAN CALTAGIRONE: The Senator is here  
22 with us, and he would like to make some comments for  
23 the official record.

24          SENATOR FOLMER: Well, thank you,  
25 Mr. Chairman and all the members of the House

1 Judiciary Committee.

2 First of all, I would like to express my  
3 humble apology for being tardy for my own hearing,  
4 but there were circumstances that were truly beyond  
5 my control, and I do, I just thank you all for being  
6 here and for this opportunity to bring this, I  
7 believe, a very, very important issue that pertains  
8 to our brave men, the young men and women that are  
9 serving for us and defending those freedoms and our  
10 way of life overseas.

11 Attached to my testimony are articles from  
12 NPR and military.com that detail some of the problems  
13 that soldiers, both men and women, have with child  
14 custody during their deployments.

15 Consider the case of Tanya Towne, a divorced  
16 mother of two who was granted custody of both her  
17 sons but lost custody while she was deployed  
18 overseas.

19 Or consider the case of Marine Corporal  
20 Levi Bradley, a divorced father, who was faced with  
21 the challenge of serving in Iraq while trying to deal  
22 with changes in the custody arrangements of his son  
23 back in the United States.

24 Given the many stresses that are placed on  
25 the military, I do not believe they should have the

1 added problems of having to worry about losing  
2 custody of their children, not because they are bad  
3 parents but rather because they have been deployed  
4 overseas by their country.

5           While a bill recently signed into law by the  
6 President strengthens protections for service members  
7 and their families, there are still a number of  
8 concerns. The fear is that military moms and dads  
9 could still be vulnerable to problems with child  
10 custody.

11           The goal of Senate Bill 1107 is to ensure  
12 that we are not punishing our soldiers by forcing  
13 them to decide between their families and service to  
14 their country.

15           Senate Bill 1107 does this by freezing  
16 child-custody arrangements in place at the time a  
17 soldier is deployed overseas. When a soldier returns  
18 from deployment, a custody battle may resume.  
19 However, while overseas, a soldier cannot lose  
20 custody if custody was previously granted.

21           Prior to the passage by the full Senate,  
22 Senate Bill 1107 was amended twice. One amendment  
23 integrated the Military Code, Title 51, with the  
24 Pennsylvania Domestic Relations Code, Title 23. The  
25 other amendment clarified the custody proceedings as

1 they relate to deployed military personnel.

2 I hope that this committee will report  
3 Senate Bill 1107 to the full House for consideration.  
4 In the interim, I would be happy to answer any  
5 questions that you may have.

6 CHAIRMAN CALTAGIRONE: Thank you, Senator.

7 Are there any questions?

8 Thank you, Senator.

9 SENATOR FOLMER: Thank you.

10 MR. RYAN: Perhaps, Attorney Eisemann, you  
11 would like to take center stage.

12 It would be helpful if you use the mike,  
13 please.

14 MR. EISEMANN: That's fine. Then I think,  
15 Mary, you should be up here, too.

16 MR. RYAN: She will follow in her testimony.

17 MR. EISEMANN: Thank you, Mr. Ryan.

18 Mr. Chairman, thank you for having me come  
19 here to brief the committee.

20 Myself, I am an attorney here in Harrisburg.  
21 I also serve as the chair of the Pennsylvania Bar  
22 Association's Military and Veterans' Affairs  
23 Committee.

24 I have recently returned from a deployment  
25 to Iraq, and I'm a Lieutenant Colonel in the Army

1 with 24 years of service, 16 of which is active.

2 And I could come from the side of personal  
3 experience on soldiers that I have seen and worked  
4 with who have to go through this custody issue. I  
5 could also talk about how it affects morale and  
6 readiness, but I think that was already driven home,  
7 and those are very important issues.

8 But quite frankly, I think the primary, the  
9 most critical issue here, is the best interests of  
10 the child, and I have to agree with those who want to  
11 protect the interests of children.

12 I support this bill 100 percent, because I  
13 do not think this bill has a negative impact on the  
14 rights of children.

15 I have looked at this bill; I have read it  
16 many times. We have debated it through the  
17 committee. We have debated this bill through the  
18 Pennsylvania Bar Association's Board of Governors.

19 So I make it clear that I am not here as  
20 part of PBA. I am coming here, I was asked to be  
21 here, as an individual. So this is not the PBA's  
22 policy, because the PBA could not decide which way to  
23 weigh in on. This is a controversial subject.

24 Looking at the bill itself, many times I do  
25 not see a negative impact in the best interests of

1 the child. It only prevents a service member's  
2 rights as a parent from being impaired while he or  
3 she is deployed. And I say "she" because many of the  
4 members are mothers as well. I personally dealt with  
5 one or possibly two that were going through custody  
6 issues as a mother.

7 Section 2 of the act, looking at it  
8 carefully, it amends Section 4109 of Title 51,  
9 Military Affairs, by allowing the court to only enter  
10 a temporary custody order while the service member is  
11 deployed. Again, a temporary custody order.

12 The amendment makes it clear that a court  
13 cannot make a permanent change to the custody order  
14 that existed when the service member was  
15 deployed.

16 I think that is key that the bill, it allows  
17 a temporary custody-order change. In fact, that  
18 works in conjunction with the Family Care Plan  
19 process that is extremely important in the Army  
20 National Guard and in the Army and the Air Force, the  
21 Air National Guard.

22 A lot of effort is taken into creating that  
23 Family Care Plan -- the soldier; the other parent, if  
24 there is one applicable; the Commander; and then it  
25 is also notarized. There is a lot of work that goes

1 into this Family Care Plan.

2 So then the service member deploys, comes  
3 back, or while he or she was there finds out that the  
4 custody arrangement that he or she had has been  
5 changed because the service member couldn't be there  
6 to defend himself or herself.

7 The bill also prevents a court from  
8 considering the absence of the service member in  
9 determining the best interests of the child. I think  
10 that is a key provision.

11 And then finally, the bill prevents a court  
12 from justifying a change in the custody arrangement  
13 because the service member was not able to appear,  
14 for obvious reasons. The service member cannot  
15 just fly back to Pennsylvania and appear before a  
16 court.

17 Back to the best-interests-of-the-child  
18 test, because frankly, the service member does not  
19 matter. And I will have to agree with Mary that the  
20 rights of the service member and all the other issues  
21 that we address, it really does not matter when it  
22 comes down to what are the best interests of the  
23 child.

24 The bill does not prevent either parent from  
25 filing a petition when that service member returns

1 from an overseas deployment.

2 That service member returns. One of the two  
3 parties can file a petition to modify the permanent  
4 custody order to serve the best interests of the  
5 child, because circumstances can change, and the bill  
6 does not prevent the right of either parent to do  
7 that, which is good and which is why I support this  
8 bill.

9 Even in cases where a child is living with a  
10 nondeployed parent and the child has adapted to the  
11 circumstances, I asked this question: Why has the  
12 custody arrangement that was in place before the  
13 deployment suddenly become unsatisfactory or not in  
14 the child's best interests?

15 In other words, a court with attorneys  
16 involved and the parents involved all considered  
17 what was in the best interests of the child, and that  
18 was put into the permanent custody order. If a  
19 service member deploys, what could happen when that  
20 service member deploys and suddenly it is not  
21 satisfactory?

22 The mother or the father who deployed is  
23 back permanently, and the child should be able to  
24 grow up under the arrangement that both parents  
25 agreed to or were ordered by the court. That is the



1 permanent court order.

2 Now, the bill, again, does not prevent any  
3 one of the parents from coming in and petitioning the  
4 court to change the court order, because custody  
5 orders always change. They are flexible. One of the  
6 two parents can come in and petition the court for a  
7 hearing to change the custody arrangement if that is  
8 the case.

9 For example, maybe the returning parent is  
10 suffering from Post-Traumatic Stress Disorder, or  
11 they have an injury, or anything else that can happen  
12 where the circumstances change. The bill does not  
13 prevent one of the two parties from going back to  
14 court to rearrange the custody arrangement, and I  
15 think that is an important part of the bill that has  
16 been presented.

17 There can be some language changes to this  
18 bill, probably to see if possibly an expedited  
19 hearing could be held, or maybe some of the  
20 definitions could be looked at. But the urgency of  
21 this matter, as it was mentioned, the Pennsylvania  
22 National Guard and the Air National Guard are  
23 deploying by the end of this year, and my  
24 understanding is that if this bill is not passed, it  
25 could be another year before it is considered, and

1     meanwhile, our soldiers are deployed already.

2             The Pennsylvania Bar Association is  
3     committed and it is in favor of maybe looking at it  
4     once it becomes law to air any corrections that have  
5     to be made, but we need to get the protections in  
6     place now.

7             Finally, again, I have read this bill more  
8     times than I can count, and I fail to see anywhere  
9     how a child's best interests are automatically  
10    jeopardized as a result of this bill.  If anything,  
11    I believe allowing children to be subject to  
12    permanent changes in custody while the child's mother  
13    or father is deployed is not in the child's best  
14    interests.

15            The child has a parent who is deployed into  
16    a dangerous area.  That parent's life is at stake.  I  
17    know that in Pennsylvania we have a Stryker Brigade  
18    leaving, and they are not deploying to some large  
19    base where they are protected by a lot of security  
20    measures.  They are going to be out there living,  
21    working, eating with the Iraqis, in contact  
22    constantly with the enemy, and I do not see how a  
23    child's best interests are served by allowing someone  
24    who is back in the States to be coming in and  
25    changing that order that he or she arranged before he

1 left.

2 Thank you.

3 CHAIRMAN CALTAGIRONE: Thank you.

4 For the record, that was Andrew R. Eisemann,  
5 Esq., Chairman of the Military and Veterans' Affairs  
6 Committee of the Pennsylvania Bar Association.

7 MR. EISEMANN: Yes, sir.

8 CHAIRMAN CALTAGIRONE: Questions from the  
9 panel?

10 Senator? Counsel?

11 MR. RYAN: Briefly.

12 CHAIRMAN CALTAGIRONE: Counsel. Or the  
13 Deputy Executive Director, John Ryan.

14 MR. RYAN: Our Chief Counsel is not here, so  
15 I do both. I am also taking that role today.

16 Briefly, in reviewing this, one of the  
17 concerns that I initially had in rereading it is,  
18 this section will not apply to active duty for just  
19 general training. Is that correct?

20 MR. EISEMANN: No. It has a deployment in  
21 support of an emergency order.

22 MR. RYAN: So even if a person locally here  
23 were called up for training purposes for 30 days,  
24 they still would not be an included person?

25 MR. EISEMANN: That is correct.

1           MR. RYAN:   Okay.  I think that is an  
2 important thing, because I think that most training  
3 periods are for a maximum of 30 days, aren't they,  
4 usually?

5           MR. EISEMANN:  Most are less than 30 days.

6           MR. RYAN:  Yes.

7           Are there any circumstances where it could  
8 actually be longer sometimes?

9           MR. EISEMANN:  Sometimes that can be longer:  
10 on an ADSW tour, active duty for special work, or a  
11 deployment in support of operations within CONUS,  
12 within the United States.

13          MR. RYAN:  Right.

14          MR. EISEMANN:  But those are normally not  
15 Federal orders in support of an Operation Iraqi  
16 Freedom or Enduring Freedom.

17          MR. RYAN:  Yes, and I think that is  
18 important, because in Section 2, we are also talking  
19 about incorporating some Federal references to here,  
20 a call up of actual National Guard as a reserve unit,  
21 where they are actually made a component and act as a  
22 component of the regular Army for the purposes of  
23 service, right?

24          MR. EISEMANN:  Correct.  That is what the  
25 Pennsylvania National Guard is facing this year, an

1 order just like this.

2 MR. RYAN: Yes. So upon those  
3 circumstances, when they are actively called up to  
4 serve in the regular Army, basically they are in  
5 combat situations.

6 MR. EISEMANN: If they are going into Iraq,  
7 Afghanistan, yes, and most, most are going into Iraq.  
8 Some may stay in Kuwait, but most are going into  
9 Iraq.

10 MR. RYAN: Well, they are still in a  
11 theater.

12 MR. EISEMANN: In support of Iraq. Yes,  
13 sir.

14 MR. RYAN: The reason, I guess, the Guam  
15 location is probably in support of the air support  
16 issue is because---

17 MR. EISEMANN: That's a good point.

18 MR. RYAN: And Guam is even further away  
19 than Iraq is as far as getting back to the  
20 States.

21 The other issue on here refers to a  
22 contingency operation, and again, we are talking  
23 about -- I guess with the Federal definition we are  
24 incorporating, as far as the reference, to the  
25 Secretary of Defense. And other than in Afghanistan

1 and Iraq, do we have or do you know of any other  
2 situations that we have that would qualify as a  
3 contingency operation?

4 MR. EISEMANN: Sir, we have soldiers,  
5 including National Guard, in over a hundred countries  
6 in the world. There are contingency operations going  
7 on everywhere. Most are, of course, small. This  
8 bill will affect mostly those deploying to Iraq and  
9 some who are going to Afghanistan.

10 But yes, contingency operations are going on  
11 around the world.

12 MR. RYAN: Okay. But this would only be in  
13 circumstances where they are actually going there in  
14 excess of 30 days.

15 MR. EISEMANN: Correct.

16 MR. RYAN: It would not include any  
17 temporary assignments.

18 MR. EISEMANN: No; no.

19 MR. RYAN: All right. I have no further  
20 questions.

21 CHAIRMAN CALTAGIRONE: Thank you.

22 Thank you very much for your testimony.

23 MR. EISEMANN: Thank you.

24 CHAIRMAN CALTAGIRONE: We will next hear  
25 from Mary Burchik, Esq., Buzgon---

1 MS. BURCHIK: Buzgon Davis.

2 CHAIRMAN CALTAGIRONE: Buzgon Davis Law  
3 Offices. Okay.

4 Go right ahead.

5 MS. BURCHIK: Thank you very much.

6 Mr. Chairman, Senator Folmer, members of the  
7 committee, I thank you for allowing me to share some  
8 thoughts with you about Senate Bill 1107.

9 Preliminarily I want to say, I don't think  
10 we are too far apart. I represent a lot of service  
11 men and women because my base of practice is Lebanon  
12 County, which is where Fort Indiantown Gap is  
13 located.

14 I know the sacrifices that they make. I  
15 have been doing this for 15 years. A large  
16 percentage of my practice is custody work, and I do  
17 represent many members of the military.

18 With that being said, and may I get my  
19 glasses, please? I knew I forgot something.  
20 Sorry.

21 I thank you for your indulgence.

22 I also must say that I was very moved by the  
23 testimony and the statements that I heard earlier.  
24 It is a very moving bill. It is one that we do not  
25 have a lot of disagreement on.

1 I am here testifying as a private attorney.  
2 However, I am the Legislative Chair of the Family Law  
3 Section of the Pennsylvania Bar Association. We have  
4 not taken a stand on this bill because we didn't have  
5 enough time to get together to do that.

6 But I am here testifying because I do feel  
7 that with some minor changes in the language, perhaps  
8 this bill can be, you know, can go through and we  
9 will all be on the same page. We believe that the  
10 bill, the spirit of the bill, is noble, and no one is  
11 questioning the social policy behind moving this bill  
12 through.

13 That being said, I am concerned that it may  
14 erode the best-interest standard, which has been the  
15 polestar of deciding custody matters in this State,  
16 and I believe in most States in the United States.

17 Prior to becoming an attorney, I was an  
18 educational therapist at a children's mental  
19 hospital, if you will. So I also come from a  
20 position of seeing what changes can do to little  
21 people, and that is one of the reasons that I am here  
22 today.

23 I believe that the bill as it is currently  
24 written has the potential of thrusting, in some  
25 situations, very young children into uncomfortable



1 and even frightening situations, and when I say  
2 frightening, frightening to a little child. Not  
3 frightening to us, but frightening to perhaps a  
4 2-year-old who, when a custody order was entered when  
5 they were 18 months old and the service member comes  
6 home 18 months later, may not even know that parent.  
7 And we are not looking to take away the rights of the  
8 service member, but perhaps have an expedited hearing  
9 if in fact it is necessary.

10           Quite frankly, I have not gotten,  
11 representing as many service members as I do, I have  
12 not ever represented someone in a circumstance such  
13 as we are discussing today. I think that speaks well  
14 for our judiciary, because quite frankly, in Lebanon  
15 County, Dauphin County, Berks County, I practice in  
16 all of these counties; I don't think the judges would  
17 enter an order unless there were exigent  
18 circumstances that arose during a deployment. So I  
19 think we need to applaud our judiciary for that.

20           Do safeguards need to be put in place?  
21 Perhaps, but one of the concerns I have as well is,  
22 does this open up a can of worms for other parents  
23 who may have to go overseas for long periods of time  
24 because of their employment, who perhaps are  
25 hospitalized for lengthy periods of time, or

1 institutionalized for lengthy periods of time?  
2 Would it be creating some sort of constitutional  
3 challenge if that were not taken into consideration  
4 as well?

5           So I do not want to see the door open to  
6 those situations, but I am afraid that this bill, as  
7 written, may do that.

8           Again, I want to reiterate that I am  
9 sympathetic to and understanding of the proposed  
10 legislation because of the representation that I do  
11 of service men and women.

12           That being said, and I did want to make one  
13 comment before I talk about the minor changes. I am  
14 assuming that we are going to change line 15, take  
15 that out. It says, "...custody of the child of a  
16 marriage entered...."

17           MR. RYAN: Well, if I may interrupt you at  
18 this point, I wanted to cover that, because  
19 Representative Manderino, after your telephone  
20 conference, brought that issue up.

21           First of all, this section that you are  
22 referring to, 5310, refers to all custody matters,  
23 whether the person is in the military or not.

24           Now, how would that interpret to your  
25 meaning about currently unmarried people, whether

1 they are eligible for modification of custody orders?  
2 Take out the change. Are you telling me that people  
3 that are unmarried cannot get a change of a custody  
4 order?

5 MS. BURCHIK: No. I am saying that I---  
6 Maybe I am misunderstanding that, Mr. Ryan, but I am  
7 saying that that says, "...any order for the custody  
8 of the child of a marriage...."

9 MR. RYAN: That is the current law.

10 MS. BURCHIK: I understand that, and I am  
11 saying---

12 MR. RYAN: Well, what I am saying is that  
13 that is the current law, whether you be in the  
14 military or not in the military.

15 MS. BURCHIK: Right.

16 MR. RYAN: It does not change because we are  
17 exempting out the military from that position that  
18 the person has to be married.

19 MS. BURCHIK: I do understand that.

20 MR. RYAN: Okay.

21 MS. BURCHIK: Okay.

22 MR. RYAN: Well, I wanted to deal with that  
23 specifically, because I was really distressed by  
24 that, because as I go back and look at the rest of  
25 the section in here, it makes references to other

1 jurisdictional matters.

2 And also in Chapter 51, which deals with  
3 legitimacy and determination of paternity, in those  
4 sections, it is made absolutely clear that once  
5 paternity has been established, either acknowledged  
6 by the person involved with our department of records  
7 and/or by a court, that that person is to be treated  
8 as if they had been married.

9 So in this particular situation, we would be  
10 talking about whether a person had ever been married  
11 and how the paternity had been determined, that they  
12 in fact would be treated the same as married  
13 individuals.

14 MS. BURCHIK: Okay.

15 MR. RYAN: So I just didn't understand that  
16 discussion of the law. I think that is almost a  
17 red herring, because this is our current law and we  
18 are not changing it.

19 MS. BURCHIK: I understand that. I was not  
20 privy to that discussion with Representative  
21 Manderino.

22 MR. RYAN: Oh, okay. Well, you just  
23 repeated it, what she said to me, that this was a  
24 concern and you thought that had to be changed. If  
25 that needs to be changed for the purposes of this

1 act, it needs to be changed for everything.

2 MS. BURCHIK: I don't disagree with that.

3 MR. RYAN: Okay. Well, my basic argument  
4 is, I'm not sure it does have to be changed---

5 MS. BURCHIK: Okay.

6 MR. RYAN: ---because we have been dealing  
7 with changes in custody among unmarried individuals  
8 for as long as custody was around.

9 MS. BURCHIK: Ad infinitum. You are  
10 absolutely right.

11 MR. RYAN: Okay.

12 MS. BURCHIK: That was not the most  
13 important issue that I had.

14 MR. RYAN: Okay. Then I just wished to  
15 dispose of that, because I was concerned about  
16 it.

17 MS. BURCHIK: Okay.

18 MR. RYAN: But I think really there was just  
19 a little misunderstanding about that.

20 MS. BURCHIK: In subsection (a), titled  
21 "Restriction on change of custody," I am not opposed  
22 at all in forbidding there to be any change in  
23 custody while a service member is deployed, unless  
24 there are exigent circumstances, and let me give you  
25 an example.

1           Several times I have had situations where  
2 service people are being deployed and they transfer  
3 their custody rights to a family member, perhaps a  
4 grandparent, an aunt, or an uncle.

5           If a situation would arise while that  
6 service person is deployed with the aunt or the uncle  
7 -- let's say the aunt, who has temporary custody of  
8 that child, gets a DUI -- does that, the way this  
9 bill is currently written, does that forbid a  
10 noncustodial, nondeployed parent from filing a  
11 petition to modify? That is a concern that I  
12 have.

13           And this happens quite frequently where -- I  
14 do not want to say quite frequently. It does happen  
15 where service members who are deployed transfer their  
16 custody rights to someone, to a third party -- not a  
17 parent, not a noncustodial parent. So that is a  
18 concern that I have. What would we do in a case like  
19 that? That is number one.

20           So I think if we would put in there language  
21 stating that "unless under exigent circumstances" or  
22 something similar to that, that may take care of that  
23 problem that I foresee.

24           And again, I think the judges that I deal  
25 with in family court are very -- they are not going

1 to just review any old change in circumstances if it  
2 is an exigent circumstance, but, you know, that is  
3 something that I have run into.

4 With regard to subsection (b), titled  
5 "Completion of deployment," I would suggest that  
6 perhaps we would put in there, if in fact there is a  
7 change in custody, as I have described in my example,  
8 if there is a change in custody during deployment,  
9 then there could be an expedited hearing upon the  
10 return home of the service person.

11 You know, that service person wouldn't have  
12 to go through the custody process that they many  
13 times have, but it would be immediately heard by a  
14 judge.

15 And again, that would only be in those cases  
16 where the judge found that there were exigent  
17 circumstances that would need to change the custody  
18 order while the service person was deployed. So that  
19 is my suggestion on subsection (b).

20 Subsection (c). The current status of the  
21 law -- and when I refer to that, I am talking about  
22 the appellate law that comes down on these custody  
23 cases -- the overriding standard, as we all know, is  
24 the best interest of the child. And the appellate  
25 law has made it perfectly clear that all things, all

1 issues, matter in custody cases.

2 So while I agree that the deployment should  
3 not be considered a major factor in changing a  
4 custody order, I would suggest that we put in there  
5 that no court may consider "only" the absence of the  
6 eligible service member.

7 Those are my concerns. I thank you for  
8 your time, and I would be happy to take any  
9 questions.

10 CHAIRMAN CALTAGIRONE: Questions from the  
11 members or staff?

12 MR. RYAN: Just briefly.

13 Basically in the first Section (a), you say  
14 you do not have any difficulties with any of our  
15 definitional standpoints as far as deployments go and  
16 when it is eligible or not eligible?

17 MS. BURCHIK: No. I did have those,  
18 Mr. Ryan, prior to your asking that question about  
19 what "deployment," the definition is, and that  
20 satisfied my concerns about what that means.

21 MR. RYAN: You do not want just anybody who  
22 is called up for a few weeks or a period of time over  
23 at Fort Indiantown Gap using that as, perhaps, an  
24 excuse to avoid a particular court---

25 MS. BURCHIK: Yes, sir, that is correct.



1 MR. RYAN: Thank you. And I do not think  
2 that was anybody's intention.

3 MS. BURCHIK: And I do not think it was  
4 either.

5 MR. RYAN: Briefly, in the first section  
6 that you are talking about, the court may enter a  
7 temporary custody order if it is clear and convincing  
8 evidence that it is in the best interests of the  
9 child. How does that differ from what you are  
10 talking about, exigent circumstances?

11 MS. BURCHIK: I think the definition of  
12 "clear and convincing evidence" is concerning. What  
13 does that mean? You know, is it--- I think when our  
14 judges hear an exigent circumstance or an emergency  
15 situation, that, to them, means more than clear and  
16 convincing. I think that that is, in my opinion, too  
17 nebulous for the courts to really decide, is it truly  
18 an emergency or not?

19 MR. RYAN: You mean exigent in a higher  
20 standard to clear and convincing?

21 MS. BURCHIK: Well, legally, no, but I think  
22 if we had language in there of an emergency nature or  
23 exigent nature, I think it is clearer.

24 MR. RYAN: Okay.

25 MS. BURCHIK: I think it is clearer for our

1 judiciary.

2 MR. RYAN: Okay.

3 MS. BURCHIK: For instance, Mr. Ryan, we  
4 have a process in the custody realm called emergency  
5 custody petitions. It has to be a true---

6 MR. RYAN: I am familiar with custody.

7 MS. BURCHIK: Okay, sir.

8 Well, as you well know then, it has to be a  
9 real emergency for most of our judges, not just, hey,  
10 he said he was going to take her and he wasn't going  
11 to bring her home this weekend. It has to be a true  
12 emergency.

13 So I think if we had language like that in  
14 there, it would make it clearer.

15 MR. RYAN: Okay. I wasn't sure if you  
16 thought that perhaps a DUI for, let's say an aunt or  
17 uncle, would be something that would be an exigent  
18 circumstance? Would that be something that would be  
19 an exigent circumstance?

20 MS. BURCHIK: I think that is something that  
21 the court would have to consider immediately.

22 MR. RYAN: Okay.

23 MS. BURCHIK: If that child was in the care  
24 of that person, yes.

25 MR. RYAN: Okay.

1           The other question, I guess, just briefly,  
2 is, do you feel there is a requirement, after the  
3 person or the judge has made a temporary change,  
4 which generally under the factual things we have  
5 talked about, it usually involves a third party, not  
6 the member themselves, as they may be in Iraq or  
7 Afghanistan.

8           MS. BURCHIK: That is right.

9           MR. RYAN. That that person should have to  
10 go through the hearing when they come back, when they  
11 are able to physically take over or take back the  
12 custody of the child? Do you think it should be an  
13 emergency hearing held at that time as opposed to  
14 just going back to the status quo?

15           MS. BURCHIK: Well, not an emergency  
16 hearing. If necessary, and that is--- Well, if we  
17 had the first scenario, that the custody was changed  
18 due to exigent circumstances, then yes, there would  
19 have to be an expedited hearing.

20           MR. RYAN: But what I am saying is that it  
21 involved a third party, not involving a service  
22 member. You are putting them, when they come back,  
23 through the problem of having to get to a hearing as  
24 opposed to getting the full restitution or  
25 restoration of their rights under the original order.

1 Who is going to initiate that?

2 MS. BURCHIK: Well, the service member  
3 would.

4 MR. RYAN: Well---

5 MS. BURCHIK: Or if not---

6 MR. RYAN: Well, what the point of this act  
7 is is to take the burden off of the service member  
8 who has been, involuntary in most situations, sent to  
9 someplace extreme.

10 MS. BURCHIK: I understand that, and my  
11 concern is the children, and I would say 80 percent  
12 of the time, maybe 85 percent of the time, that is  
13 not going to happen.

14 MR. RYAN: Well, you are taking a situation  
15 where a court may have already made a determination  
16 about a parent that it is best that I have had full  
17 custody of my child at the risk or at the, let us say  
18 the other person is, for some reason, not quite as  
19 qualified, and the courts determine I should have  
20 major custody of my child with visitation rights  
21 given to the parent.

22 Now, what you are doing is, you may have a  
23 temporary change of circumstances, but that previous  
24 court determination was that I was the person who was  
25 best suited.

1           Why should I have to go through another  
2 hearing when I had nothing to do with this other  
3 change of circumstance? Why don't we go back to what  
4 the court has already determined and litigated, and  
5 why is it you are going to put the burden back on me  
6 to have to do that again?

7           MS. BURCHIK: Because it is in the best  
8 interest of the child for the court to look at it to  
9 make sure that that child is, that the best  
10 circumstances are happening for that child.

11           And again, I do not think that this is going  
12 to happen often.

13           MR. RYAN: Okay. I have no further  
14 questions.

15           CHAIRMAN CALTAGIRONE: Representative  
16 Pallone.

17           REPRESENTATIVE PALLONE: Thank you,  
18 Mr. Chairman.

19           It is hard to see over the podium.

20           MS. BURCHIK: Oh; I am sorry, sir.

21           REPRESENTATIVE PALLONE: John Pallone.

22           And I think that I have more of a statement  
23 than a question, because it is my understanding, the  
24 way I read the proposal from the Senate Bill, that  
25 primarily we just want to leave the existing custody

1 order in place as the status quo, notwithstanding the  
2 removal of either parent because of deployment in the  
3 military, for whatever those reasons are. And if,  
4 applying your standard of the best interests of the  
5 child, which having been a domestic relations  
6 practitioner myself for at least 15 years or more, I  
7 understand that primary care, primary importance  
8 relative to the best interest of the child.

9           Wouldn't it be then more realistic or even  
10 maybe more responsible then, if I am the nondeployed  
11 parent or the person with custody, if I believe  
12 within a reasonable degree of certainty that it is  
13 not in the best interests of the child to go back to  
14 the status quo for whatever reasons, that it is  
15 incumbent upon me as the physical custodial parent  
16 right now to petition the court, whether it be an  
17 emergency or expedited or otherwise, to say no, we  
18 shouldn't let little Johnny go back to his mom or dad  
19 under the old order because circumstances have  
20 changed? Something traumatic may have been happening  
21 while he or she was away affecting the mental state  
22 of the individual and the ability to be able to  
23 provide care, or physical issues that may need to be  
24 addressed, or housing accommodations and things to  
25 that effect.

1           I think the bill in chief as it sits  
2 addresses that, because as the nondeployed parent --  
3 if you would agree or disagree, and I would like to  
4 know -- as the nondeployed parent or person with  
5 custody in the absence of the other, I could  
6 certainly have petitioned the court on his or her  
7 return to in fact do exactly what you are saying --  
8 protecting the highest and best interests of the  
9 child.

10           MS. BURCHIK: I do not disagree with that if  
11 it is the custodial parent, the nondeployed person is  
12 the custodial parent. But if they feel that the  
13 service person upon coming home should not have the  
14 rights they had prior to, then yes, I think it  
15 behooves the custodial parent to file the petition to  
16 modify.

17           I am talking about when there are exigent  
18 circumstances.

19           REPRESENTATIVE PALLONE: But the custodial  
20 party, under the same circumstances, would apply.  
21 You would still be able to petition the court, either  
22 under the guardianship statute and/or the custodial  
23 statutes, to be able to say, is it in the best  
24 interests for this child to be with that parent under  
25 the old order because -- mental, physical, blah,

1    blah, blah, blah, whatever your reasons are, I mean,  
2    and you meet that burden in court.

3           And I know the five or six counties that I  
4    practiced in in southwestern Pennsylvania, the judges  
5    were very, very diligent and very, very judicious  
6    when it came to custody arrangements anyway.

7           I think we meet that standard, because there  
8    is already a mechanism in place to protect the  
9    highest and best interests of the child without  
10   passing an unnecessary law or putting unnecessary  
11   language in a bill that already is addressing a  
12   problem that exists in probably a minority of  
13   circumstances throughout the Commonwealth.

14           MS. BURCHIK:   But, Representative, this bill  
15   as it is written would not allow the court even to  
16   consider the absence of the eligible service member.

17           I am saying, in that case, put the word  
18   "only," that they cannot "only" consider that.   That  
19   has to be a factor in a young child's life.

20           REPRESENTATIVE PALLONE:   And again, and  
21   correct me if I am wrong, because I believe the  
22   intent of the bill is to not allow a custody order to  
23   be amended or set aside because a military person had  
24   been deployed.

25           Upon his or her return, the circumstances



1 change. This section 3109, I believe it is, or 4109,  
2 does not apply at that point because the military  
3 person is not deployed any longer. He or she is now  
4 back in the States, and regular, if you want to call  
5 it that, custody and/or guardianship arrangements  
6 would then apply.

7 This, I think, is just intended to prevent  
8 another parent from going into court and petitioning  
9 to have the custody arrangement, whether it is --  
10 more likely under a joint and shared custody  
11 arrangement through a primary physical custody and  
12 shared physical visitations or whatever. But it  
13 prevents someone from doing that in absentia saying,  
14 well, he didn't show up, so therefore, I win.

15 MS. BURCHIK: Well, I do not disagree with  
16 that at all.

17 REPRESENTATIVE PALLONE: That is what the  
18 intent of this legislation is. And I do not want to  
19 speak for the Senator, but having been a domestic  
20 practitioner for more than 15 years, I know  
21 sometimes the shell game that gets played in domestic  
22 court.

23 MS. BURCHIK: You bet. Absolutely.

24 REPRESENTATIVE PALLONE: And this protects a  
25 deployed military person, whether it be a male or

1 female, during his or her absence while he or she is  
2 deployed, from having a modification put into place  
3 other than something that is clearly of the highest  
4 and best interests of the child, such as a  
5 guardianship arrangement or something because that  
6 parent isn't here to make those decisions.

7 MS. BURCHIK: That is true. Maybe---

8 REPRESENTATIVE PALLONE: As soon as that  
9 military person comes back, this section does not  
10 apply anymore because he or she is not deployed. He  
11 or she is back in the States, and the regular  
12 standard, infinitum of years of custody law, whether  
13 it be common law and/or statutory law, comes into  
14 play at that point, including case law.

15 MS. BURCHIK: Well, maybe I am  
16 misunderstanding subsection (c). Perhaps Senator  
17 Folmer can explain it to me.

18 It says, "If a motion for the change of  
19 custody of the child of an eligible servicemember who  
20 was deployed in support of a contingency operation is  
21 filed after the end of the deployment, no court may  
22 consider the absence of the eligible servicemember by  
23 reason of that deployment in determining the best  
24 interest of the child."

25 REPRESENTATIVE PALLONE: And again, I think

1 my reading of the statute being proposed says that we  
2 cannot come in and say, well, this father or this  
3 mother has not visited this child in the last  
4 13 months.

5 MS. BURCHIK: Okay.

6 REPRESENTATIVE PALLONE: And as we do in  
7 many cases when we litigate custody, if there has  
8 been no contact from the parent for an extended  
9 period of time, you can certainly use that as  
10 justification not to give very liberal custodial  
11 and/or visitation rights.

12 MS. BURCHIK: Sure.

13 REPRESENTATIVE PALLONE: What we are saying,  
14 in this case, notwithstanding the fact that he or she  
15 was deployed, you have to look outside the deployment  
16 for your justification to say you cannot use that  
17 time of deployment out of the Commonwealth.

18 If I am sent to Iraq or Afghanistan or  
19 wherever else in the world because of my military  
20 assignment, I mean, it is unreasonable for me to have  
21 frequent contact with my son or daughter because I am  
22 in some other part of the world, whether it be with  
23 the ability to leave or not.

24 This, again, for the 2 years prior to  
25 deployment the military person never saw the child,

1 that becomes relevant information. For 2 years, this  
2 person never saw the child; then he or she was  
3 deployed.

4 You know, notwithstanding that, if we were  
5 doing this 13 months ago, we would be saying, 2 years  
6 before he got deployed, he never saw the child; we  
7 need to ease this child in under that fact scenario.

8 But the way this is written, subsection (c)  
9 says that you cannot use the period of deployment as  
10 part of your rationale to block custody and/or  
11 visitation, and I think it is legitimate, and I think  
12 it is absolutely right on point.

13 MS. BURCHIK: And I would only suggest that  
14 if we add the term that they can not "only" consider  
15 that, that that really does serve the best-interest  
16 standard of the child.

17 And again, I go back to my scenario of a  
18 very young child who maybe for half their lifetime  
19 hasn't seen this person. Again, not through any  
20 fault of that service member, but if we are going to  
21 keep the best-interest standard, don't we have to  
22 consider absences of time, even though they are not  
23 that parent's fault?

24 And that is why I say put in there not  
25 "only" consider that, that cannot be the "only"

1 criteria for modifying a custody order after  
2 deployment has ended.

3 REPRESENTATIVE PALLONE: I think that  
4 existing judicial discretion applies and that issue  
5 has been addressed.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 Senator Folmer.

9 SENATOR FOLMER: Hi, Mary.

10 MS. BURCHIK: Senator.

11 SENATOR FOLMER: No one has greater respect  
12 for yourself than myself. You do what you do very  
13 well, and knowing that, you are a very good person  
14 also.

15 But after saying all that, I want to try to  
16 give you, being the author of the bill, what my whole  
17 goal here was.

18 First of all, no one takes more seriously  
19 the Constitution -- and I carry it with me everywhere  
20 I go; right there it is -- than myself. No one, as a  
21 father and as a grandfather, as someone who believes  
22 in the traditional institution of family, and it is  
23 unfortunate we have divorces and so forth and these  
24 battles take place and the children become pawns in  
25 this whole messed up, crazy system. The goal here of

1 this bill is to make sure that those men and women  
2 who are serving in those extreme circumstances, that  
3 they do not have to be worried that they may lose a  
4 custody battle because they are not there because of  
5 that extreme circumstance.

6 We tried in our best attempt in writing this  
7 bill to make sure that we put forth the best  
8 interests of the child the best we could. No bill is  
9 perfect, obviously. And I am not opposed to any  
10 changes to the bill as long as it does not get caught  
11 up in the quagmire of this whole system that we have  
12 here. And we can get really bogged down, and I think  
13 that this bill is just too important, not because it  
14 is mine, shoot, you can take my name off of it. I  
15 mean, seriously. I mean, anybody here can put their  
16 name on it. I really don't care.

17 My main concern, and I could not be more  
18 sincere, is that what is going on and the stories  
19 that I have read -- I included two with my testimony,  
20 and there are scores of others. I just believe that  
21 the bill, the whole intent of the bill, was to make  
22 sure that there were no advantages either/or, that  
23 there was just a maintained equal playing field, that  
24 when they would return, any battles that may arise  
25 would take place. I do not want to do anything that

1 would hurt a service person.

2           And finally, that reason is this: Since  
3 being in this position, I never realized -- and I  
4 have gotten to know a lot of the gentleman and ladies  
5 who serve for us over at the Gap -- how  
6 disenfranchised as citizens they feel at times. They  
7 don't feel a part of the political system. They just  
8 feel as though they are just there.

9           And they volunteer. Yes, they are paid and  
10 so forth, but they still put their lives on the line,  
11 and I just feel that -- and as a parent, the last  
12 thing I would want to be worried about when I'm  
13 dodging a bullet or a car bomb or any other scenario  
14 that occurs over there, that I would be sitting there  
15 going, geez, I wonder if I'm going to lose my child  
16 because I'm here, and so forth.

17           So that was basically, to answer it in a  
18 long way, the original intent was not to create an  
19 advantage for or against; it was mainly to make sure  
20 that, and more upon children, but it was to make sure  
21 that those men and women who are serving overseas,  
22 that they do not need to worry about this, I mean,  
23 that this be on hold until it is finished.

24           That was the whole intent.

25           MS. BURCHIK: And I do not disagree with

1 that at all, Senator. My concern remains with the  
2 children.

3 SENATOR FOLMER: Thank you.

4 MS. BURCHIK: Thank you.

5 CHAIRMAN CALTAGIRONE: Thank you for your  
6 testimony.

7 MS. BURCHIK: Thank you.

8 CHAIRMAN CALTAGIRONE: We will next hear  
9 from Matthew T. Dohner, a Sergeant in the  
10 United States Army National Guard.

11 SERGEANT DOHNER: Good afternoon,  
12 Mr. Chairman, Senator Folmer, honorable members of  
13 the committee.

14 As you mentioned, my name is Matthew Dohner.  
15 I am a Sergeant in the 28th Aviation Brigade in the  
16 United States Army National Guard, and I'm scheduled  
17 to deploy next year.

18 I come before you today to express my  
19 support for Senator Folmer's Senate Bill 1107. This  
20 bill will not only affect military members across the  
21 State, but it will affect me personally.

22 My story is one that is echoed not only  
23 across Pennsylvania but across the country. Today, I  
24 would like to share with you a condensed version of  
25 my situation.



1           I am the father of a 10-year-old daughter,  
2 and I have had primary custody since she was 3 months  
3 old.

4           In 2004, I was deployed to Iraq. At the  
5 time, I was still living with my mother, and as per  
6 my military Family Care Plan, my mother assumed  
7 full-time care of my daughter.

8           During my deployment, my daughter's mother  
9 sued me for custody because, and I quote from her  
10 petition for custody, "He has been away from the  
11 child for an extended period of time."

12           Not only was I fighting in a war zone, but I  
13 was also fighting the battle at home to keep custody  
14 of my child. This added to the stress level that I  
15 was already under fighting for my country, which I am  
16 very proud to have done.

17           Not only did my mother have to have the  
18 stress of a son at war, but she also had the stress  
19 of fighting for me to keep custody of my daughter.

20           This also was a very stressful time for my  
21 then 6-year-old daughter. Not only was I not around  
22 to help explain the situation to her, but the  
23 situation was freely spoken about in her mother's  
24 home while she was on her weekend visits.

25           No child should have to be subject to the

1 thought that he or she will be taken away from the  
2 only home that they know and put into another while  
3 their primary parent is deployed. And currently, I  
4 am being sued once again in the event that I am  
5 deployed coming up in February.

6 Men and women across the State are fighting  
7 in Afghanistan and Iraq. No one should have to have  
8 the additional stress of their child being taken away  
9 from them while they are at war. This is a dangerous  
10 distraction. While their thoughts should be on  
11 keeping themselves and fellow service men and women  
12 alive, their thoughts are at home with their children  
13 and trying to maintain custody.

14 In conclusion, I would like to deeply stress  
15 that this is an undue hardship that soldiers and  
16 their families should not have to encounter. I plead  
17 with you today to pass Senate Bill 1107 out of  
18 committee and on to a vote so that no other military  
19 family has to go through this additional stress while  
20 deployed.

21 Today, my wife and I are raising a wonderful  
22 young lady. Both my wife and I are in the Guard.  
23 With the war still waging and a probable deployment  
24 in the future, my thoughts go to my family and what  
25 additional fights that they may have to be subject to

1 if this bill is not passed.

2 I would like to thank the committee for  
3 allowing me to share my story with you. If there are  
4 any questions, I would be happy to answer them.

5 CHAIRMAN CALTAGIRONE: Thank you.

6 Questions? Mr. Ryan.

7 MR. RYAN: Sir, did your mother have to go  
8 to court to attempt to defend the change while you  
9 were away?

10 SERGEANT DOHNER: Yes, she did.

11 MR. RYAN: She did?

12 SERGEANT DOHNER: Yes.

13 MR. RYAN: And obviously, I guess she was  
14 successful at that particular point?

15 SERGEANT DOHNER: She was successful only  
16 because my daughter's mother never informed her  
17 attorney that I was in Iraq and just said that I  
18 wasn't around my child for an extended period of  
19 time. So it was thrown out, and after I returned  
20 home, I was sued again for custody, which I did  
21 win.

22 MR. RYAN: Okay. But she fully knew well  
23 that you were in Iraq.

24 SERGEANT DOHNER: Yes, definitely. She  
25 definitely did.

1 MR. RYAN: And your ex-wife tried to take  
2 advantage of that?

3 SERGEANT DOHNER: Yes, she did.

4 MR. RYAN: I have read about and seen  
5 numerous reports concerning, and these being ages and  
6 ages ago with the Sailors' and Soldiers' Relief Act,  
7 which we don't have anymore. Thirty years changes a  
8 lot.

9 SERGEANT DOHNER: The Civil Service Relief  
10 Act now.

11 MR. RYAN: Yes. But basically there are now  
12 these circumstances where it seems today that the  
13 general application of what I thought was a Federal  
14 statute that would cover these situations seems to  
15 be, I do not know whether they are just ignored or  
16 the people are ignorant of their existence anymore  
17 and do not recognize it as much as they used to. But  
18 I guess that is the reason why we probably need this  
19 separate Pennsylvania act.

20 SERGEANT DOHNER: Definitely.

21 MR. RYAN: Thank you.

22 CHAIRMAN CALTAGIRONE: Karen.

23 MS. DALTON: Sergeant, thank you. It's an  
24 honor to speak to you today.

25 I must admit, I have never been in the

1 military. Would you kindly go through with us the  
2 process of the Family Care Plan initiation so that we  
3 understand, at least I understand the steps that are  
4 taken for custody arrangements?

5 SERGEANT DOHNER: Sure.

6 MS. DALTON: And thank you, Mr. Chairman.

7 SERGEANT DOHNER: Sure.

8 It is actually several different forms that  
9 you need to fill out.

10 You sit down with your Commander and you go  
11 through a questionnaire with him, which you initial  
12 as well as him. This takes about, usually about an  
13 hour just to sit down with your Commander and go  
14 through that questionnaire form.

15 You select what person you think would be  
16 most capable of taking care of your child in the  
17 event that you are deployed or away. And once that  
18 has been done, it has to be taken to a notary, and  
19 another form has to be signed by the person that you  
20 have selected to take care of your child, and that  
21 has to be taken to a notary as well, so that all  
22 parties know who is going to be taking care of the  
23 child, that they are not just going to somebody else  
24 when you leave.

25 MS. DALTON: So, Sergeant, just in terms of

1 the practical application, so the existing custody  
2 order -- and I am just making this up, as an example  
3 -- that the other parent would concede to get their  
4 weekend custody?

5 SERGEANT DOHNER: Correct.

6 MS. DALTON: So in other words, the person  
7 who is taking care of the child under the Family Care  
8 Plan stands in the shoes of the soldier.

9 SERGEANT DOHNER: Exactly. Yes.

10 MS. DALTON: Thank you, Mr. Chairman.

11 Thank you, Sergeant.

12 CHAIRMAN CALTAGIRONE: Are there any other  
13 questions?

14 If not, we will adjourn the hearing. But I  
15 have promised the Senator, my dear friend, that I  
16 would like to put it on the scheduled calendar when  
17 we get back, because I think it is absolutely  
18 necessary, I think the intent is well meant, and I  
19 think some of these other minor problems we can work  
20 out.

21 But I think it is urgent, especially with  
22 the news that we have heard with the deployment that  
23 will be coming up, that we get this legislation into  
24 law.

25 Thank you.

1                   SERGEANT DOHNER: Thank you.

2                   CHAIRMAN CALTAGIRONE: The meeting is  
3 adjourned.

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5                   (The hearing concluded at 2:28 p.m.)

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1           I hereby certify that the proceedings and  
2 evidence are contained fully and accurately in the  
3 notes taken by me on the within proceedings and that  
4 this is a correct transcript of the same.

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Debra B. Miller, Reporter

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