I. Pennsylvania Legislative Changes:

A. Amendments to Consideration of Criminal Convictions.

Effective June 11, 2012, 23 Pa.C.S.A. § 5329 will be amended to address the fact that many Pennsylvania counties are requiring parties to a custody action, who have committed an enumerated offense, to receive counseling from a mental health professional prior to being permitted to exercise any custody rights.

Section 5329 entitled "Consideration of Criminal Conviction" identifies several Pennsylvania criminal offenses, and if a party to a custody action, or a member of that person's household, has committed one of these offenses, the court shall consider whether the party or a member of the party's household poses a threat of harm to the child before making an order of custody. Section 5329(c) states that the court shall provide for an initial evaluation to determine whether the party or household member who committed the offense (a) poses a threat to the child, and (b) whether counseling is necessary for the party or household member.

At least a few Pennsylvania counties were interpreting this statute to mean that if a party, or a member of the party's household, has committed one of these offenses, the party, or the member of the party's household, was required to receive an evaluation by a mental health professional prior to the court awarding that party any rights of custody'. For example, if a party had been exercising primary physical custody of a child for ten years and that party had a 20 year old driving under influence offense, the court would not award custody to that party until that party received an evaluation from a mental health professional.

In an effort to address this concern, Pennsylvania legislature added language to section 5329 that states, "At the initial in-person contact with the court, the judge, conference officer or other appointed individual shall perform an initial evaluation to determine whether the party or the household member who committed an offense under Subsection (A) poses a threat to the child and whether counseling is necessary. **The initial evaluation shall not be conducted by a mental health professional.**" The addition clearly gives Judges and conference officers the authority to grant custodial rights to individuals who have been convicted of one of the enumerated offenses without first having a mental health professional conduct an evaluation. Additionally, the new language provides a broad group of persons who may conduct the initial evaluation. Therefore, no matter what process a county has adopted for a custody litigant's initial contact with the court, the court, conference officer or other appointed individual is authorized to determine whether a party or a member of a party's household poses a threat of harm to the child. Attached hereto as **Exhibit A** is a copy of Senate Bill No. 1167 setting forth the amendments to section 5329.

B. Custody Proceedings During Military Deployment.

Effective June 11, 2012, the Pennsylvania legislature amended section 5338 (modification of existing order) to limit the court's authority to modify the custody rights of certain eligible members of the armed forces by cross referencing 51 Pa.C.S.A. § 4109 relating to child custody proceedings during military deployment. Prior to the recent amendments, Section 4109(a) had provided that no court may enter an order modifying or amending a previous custody order while an eligible service member is deployed, except that a court may enter a temporary custody order. The new amendments added section 4109(a.1), relating to a service member's ability to assign his or her custodial rights to a family member, and section 4110 relating to an expedited hearing, where the court is permitted to conduct an "electronic hearing."

Section 4109(a.1) provides that if an eligible service member "has received notice of deployment in support of a contingency operation, a court may issue a temporary order to an eligible service member…including a temporary order to temporarily assign custody rights to family members of the service member." To assign the custody rights, the service member shall join the family member to the petition and include a proposed custody schedule for care of the child by the family member. The statute limits the extent of the family member's rights to custody to the rights granted to the service member in effect at the time of the filing of the petition.

Section 4110 provides for "an expedited hearing" and upon motion, permit the eligible service member to present testimony and evidence by electronic means where the military duties of the eligible service member have a material effect on his or her ability to appear in person at a regularly scheduled hearing.

The effect of this statute increases the class of persons who have the right to seek custody, and evidences our culture's recognition of an expanded family unit. As grandparents were granted standing to seek custodial rights, now any "family member" of a deployed's family is granted standing to join with the service member to file a petition for custody. "Family member" is defined as "spouses, parents and children or other persons related by consanguinity or affinity."

During the time in which the family of a service member is assigned custodial rights, and potentially providing significant care for a child, that family member may be gaining standing not as a "family member", but standing through "*in loco parentis*." Pursuant to section 5324 of the Custody Act, a person who stands "*in loco parentis*" has standing to file for any form of physical or legal custody. Therefore, an additional party may have rights to seek custody of the child even after the service member completes his or her deployment.

The immediate effect of this statute ensures that a party's child is given the opportunity to maintain a relationship with the service member through his or her family. However, there may be a long lasting effect of the custody schedule after deployment if the family member is able to establish *in loco parentis*. Attached as Exhibit A is a copy of Senate Bill No. 1167 that sets forth the additional rights for a service member and his or her family members.

II. Case Law Updates:

A. Pennsylvania Supreme Court.

CUSTODY – COUNSELING REQUIREMENT – PRISONER'S REQUEST FOR VISITATION
D.R.C. v. J.A.Z., 31 A.3d 677 (Pa. November 23, 2011).

Issue: Under the old custody statute, was the Department of Corrections required to provide counseling to incarcerated individuals who have been convicted of one of the offenses enumerated in the custody statute so that they can exercise the right to prison visitation of a minor child?

Holding: No. The law did not require the Department of Corrections to provide counseling, and the statute, in effect at the time this case was initiated, does not require counseling as a prerequisite to a court engaging in an evaluation as to whether it is in the child's best interests to participate in prison visitation.

Facts: On February 19, 2004, D.R.C., Sr. ("Father") filed a custody complaint in York County Court of Common Pleas seeking visitation of his minor son at the state correctional institution in Huntington, Pennsylvania, where Father was serving a life sentence for first degree murder. J.A.Z. ("Mother") opposed

prison visits for the minor child.

On July 6, 2005, the trial court denied Father's request for visitation and Father appealed. The Superior Court vacated this order and remanded to hold a hearing concerning Father's request for visitation. On remand, the trial court issued a pre-trial order directing Father to present evidence that he no longer poses a threat of harm to the child. Father submitted the requested evidence to the court consisting of Father's sworn affidavit and pages of testimony and character witnesses from his first degree murder trial.

On June 26, 2008, the trial court held a telephone hearing, which Mother and Father appeared, as well as a licensed psychologist manager at SCI Huntington and a corrections counselor at the prison, who testified regarding types of counseling Father received, or was eligible to receive at the prison. Upon receipt of his testimony, the trial court dismissed Father's petition for visitation because Father "never received the counseling mandated by the custody statute." The trial reasoned that it did not have authority to order the Department of Corrections to "design, construct, and administer" a program of counseling that would meet the requirements of the custody statute. The trial court also reasoned that it doubted it had the authority to appoint an outside private individual and to order the Department of Corrections to cooperate by providing access to both the correctional institution and the inmate.

Father again appealed this order and the Superior Court found the trial court erred by not appointing a qualified professional. The Superior Court, in this 2009 Opinion, found that the Department of Corrections and the individual prisons employ the types of qualified professionals that the legislator intended to provide counseling evaluations as directed by the custody statute.

On subsequent remand, the trial court directed the Department of Corrections to choose a qualified professional and evaluate Father, and on May 7, 2009, the Department of Corrections filed a petition to intervene, a motion to stay, and a motion for reconsideration. The trial court granted the Department of Corrections' petition to intervene and denied the Department of Corrections' motion to stay.

The Department of Corrections filed a notice of appeal to the Superior Court as to its motion for reconsideration and the trial court stayed the proceedings until the resolution of the Department of Corrections' appeal. The Superior Court affirmed and the Department of Corrections appealed to the Pennsylvania Supreme Court for consideration of whether the Domestic Relations Code requires the Department of Corrections to provide counseling to currently incarcerated felons so that they may obtain rights of custody, partial custody, and visitation and whether a custody court can order the Department of Corrections to provide and pay for custody related counseling for a state inmate.

Conclusion: The majority opinion examined the statute and determined that even if the General Assembly intended an evaluation of a party, who committed an enumerated offense, prior to providing rights of custody, the statute was not clear as to whether the General Assembly intended this section to apply to offending parents who remain incarcerated. The Majority opinion stated that it applies to persons who have "been convicted" but does not identify whether it applies to parties who are incarcerated.

As the statute is ambiguous, the majority opinion looked to legislative history to determine legislative intent. In review, "The purpose of [this provision] was to make certain that where a parent had been convicted of a serious crime, the conduct underlying that crime will be evaluated as an additional factor along with many other factors." The legislature "sought to remedy the reintroduction of an offending parent into the child's life without an assessment of that parent's potential threat to the child in custody and visitation arrangements." The

court stated that the custody statute regarding criminal offenses "could be applied to currently incarcerated felons, but such an interpretation would be unreasonable." The court found that the legislative history intended to prevent "the placement of a child *into the home* of an offending parent without first having engaged in a risk of harm assessment."

In reliance on the Department of Corrections' arguments that a person who is incarcerated is constantly supervised and prison policies preclude anyone from having unsupervised visitation and prohibit certain sex offenders from having any physical visits with minors, the General Assembly's intent for these provisions of the custody statute do not apply for prison visitation. The court stated that, "Due to the strictures of their confinement and the rules of the penal institution, incarcerated parents are unable to engage in the type of physical interaction feared by the drafters of this legislation."

Concurring and Dissenting (Justice Saylor, in which Justice Todd joins): Dissenting opinion disagrees with the majority's holding that there is any ambiguity with the statute and disagrees with the majority's applications of the statute. The Dissenting opinion finds that counseling is appropriate for a prisoner to obtain visitation with a minor child. This opinion does address the issue of "who must pay for the services" of prison counseling. The opinion does not identify who should pay for the counseling but this opinion states that there is no basis to require the Department of Corrections to provide the counseling.

Legislative Update: The version of the statute analyzed in this opinion has been amended. The issues raised by this provision are addressed in the new Custody Act, and amended a second time with the addition of language effective June 11, 2012. In light of the new language added to the criminal conviction provision whereby the initial evaluation is conducted at the initial in-person contact with the court including a judge, conference officer or other appointed individual, a party would only be required to obtain counseling if determined at the initial in-person contact.

TERMINATION OF PARENTAL RIGHTS - INCARCERATION

In Re: R.I.S. and A.I.S., 36 A.3d 567 (Pa. November 23, 2011).

Issue: Whether incarceration can serve as grounds for the involuntary termination of parental rights when an incarcerated parent makes full use of the opportunities that are available to him in prison and complies with the reunification plan?

Holding: No. A parent's absence or failure to support his or her child due to incarceration is not, in itself, a basis for a determination of abandonment.

Facts: In June 2008, C.S. ("Father") was sentenced such that his earliest release date was June 2012 and his latest release date was in June 2016. Father served his sentence in a state correctional institution in Erie County. In January 2009, York County Children and Youth Services filed a dependency action and the children were placed in a temporary foster home.

On March 2, 2010, a hearing was held whereby a family service plan identified a goal for Father of reunification. Father's goals included cooperating with the service plan, signing necessary releases, remaining in contact with Children and Youth Services, and providing documentation regarding his involvement in therapeutic prison programs and maintaining good prison conduct. Evidence was presented that Father met each of these goals and cooperated with the service plan. Father had maintained written and telephone contact

with Children and committed no incidents of misconduct. Father requested visitation with the children, but was denied due to the distance between York and Erie, Pennsylvania. Father requested "virtual visitation", but was denied because Children and Youth Services did not have video conferencing capability. Father purchased a pre-paid phone card and made several attempts to call the children, but the foster parents refused the calls from Father.

When the court summarized Father's progress, it stated that "there was nothing that he didn't do or that there wasn't some satisfactory reason for him not being able to do it."

Children and Youth Services filed a petition for goal change, from reunification to adoption, and filed a petition to terminate Father's rights.

Following the hearing, the trial court denied the goal change petition and denied involuntary termination. The trial court concluded that the Children and Youth Services' petition seeking termination was based solely on the length of Father's incarceration. With respect to the petition for goal change, the trial court concluded that reunification should remain the goal and the trial court stated that the petition to change the goal was simply another way to make an argument regarding their petition for termination, therefore, the court need not provide further response.

Children and Youth Services appealed to the Superior Court and the Superior Court reversed the trial court and held that Father's incarceration is evidence of his incapacity to parent in that his "failure to comply with the laws of the Commonwealth created a situation and environment that has left Children without proper parental care." The Superior Court also stated that, "The length of Father's prison sentence supports the conclusion that he cannot remedy the parental deficiencies that led to the children's placement." The Court noted that when Father was in prison, the first child was not yet born and the other one was less than one year old. Upon Father's release, the children would be 5 and 6 years old at the youngest, or 9 and 10 years old at the oldest.

Conclusion: "The right to conceive and raise one's children has long been recognized as one of our basic civil rights." As noted by the Supreme Court, "A parent's absence or failure to support his or her child due to incarceration is not, in itself, conclusively determinative of the issue of parental abandonment." The Court must inquire whether the parent had utilized those resources at his or her command while in prison to continue and pursue a close relationship.

The Supreme Court found that the Superior Court improperly substituted its judgment for that of the trier fact and thus, should be overturned. The Court reiterated the standard and stated that, "incarceration alone is not per say evidence of parental incapacity or that it represents sufficient grounds for involuntary termination of parental rights." The Supreme Court found that the trial court improperly dismissed the petition for goal change in that an order required discreet inquiries with an analysis of interests separate from those reviewed relevant to involuntary termination. Therefore, the Supreme Court remands to the trial court for an examination of the petition for goal change from reunification to adoption.

Concurring (Justice Saylor, in which Chief Justice Castille joins): Justice Saylor's concurring opinion, although in support of the majority's finding, makes it clear that there are instances where the length of the parent's incarceration will preclude "the court from unifying the former prisoner and the child on a timely basis," and that a child is entitled to a permanent home. There are cases where the length of a sentence, standing alone, "should and does meet the legal criteria for involuntary termination." The concurring opinion noted that it is incumbent upon the judicial system to be child focused. "Regardless of the heartbreak to a parent, children are

entitled to every opportunity for a successful life, and a permanent, loving parental relationship generally fosters that opportunity."

Dissenting Opinion (Justice Orie Melvin): The opinion written by Justice Orie Melvin agrees with the Superior Court and notes that not only must Father's prison sentence end, Father must overcome additional hurdles before being able to care for the children, including obtaining appropriate housing, employment and fulfilling the conditions of parole.

The dissenting opinion concurs with the general premise that incarceration alone does not provide grounds for termination, however, the length of Father's prison sentence does support the conclusion that he cannot remedy the parental deficiencies that led to the children's placement. The dissenting opinion states that the majority improperly applies the law that if an incarcerated parent makes every effort to maintain a parent/child relationship, the court may not terminate his rights. The dissenting opinion states that although "an incarcerated parent may be doing everything required of him while in prison, the child's needs for consistent parental care cannot be cast aside or put on hold." The dissenting opinion agreed with the Superior Court's opinion that Father's uncertain prospects regarding his ability to parent combined with a lack of bond with the children outweigh Father's efforts to maintain a presence in the children's lives. The dissent notes the reality that there is a difference between "incapacity" to parent and a "desire" to do so.

B. Pennsylvania Superior Court Cases.

CUSTODY – FAILURE TO CONSIDER CUSTODY FACTORS IN SECTION 5328 – RESTRICTIONS ON VISITATION RIGHTS

J.R.M. v. J.E.A., 33 A.3d 647 (Pa. Super. December 5, 2011).

Issue: Does a trial court err when it does not engage in a fact specific, case specific, analysis of the best interests factors?

Holding: A trial court is required to engage in a specific analysis of the best interests factors and shall consider all of the factors listed in §5328(a) when entering a custody order. The Superior Court also addressed the trial court's authority to place restrictions on a party's periods of physical custody and stated that a restriction will be imposed only if the parties agree, or if the physical custody would have a detrimental impact on the child in the absence of the restrictions.

Facts: After Mother and Father were dating for approximately one month, Mother and Father became engaged to be married. Two months after their engagement, Mother was pregnant, but by that time, Mother and Father were experiencing trouble in their relationship and they separated. After their separation, Father lived approximately two hours away form Mother, and Father began a relationship with his ex-wife, who was now his fiancé. After their breakup, the parties had difficulty communicating, and as a result, Mother did not inform Father when the child was born.

Upon Father learning that the child was born, Mother had arranged for Father to contact Mother's employer to arrange for visitation with the child. Father, "grudgingly" arranged visits through Mother's employer and began to visit with the child at various locations with Mother's employer or another individual present. In anticipation of receiving overnight custody, Father set up a room in his home for the Child to exercise overnight custody visit.

Mother filed a custody complaint on December 10, 2010, and Father filed a custody complaint on December 14, 2010. The parties attend a custody conciliation conference, which did not resolve the dispute, and the parties agreed in the interim that Father would have partial custody three days per week, for a two hour time period. Father exercised these periods of custody in Mother's church. Although Father was alone in the room with the child, Mother was present in the church during Father's periods of custody.

On March 25, 2011, the trial court entered an order and findings of fact, whereby Mother was granted primary physical custody and Father was granted partial physical custody three days per week, for three, three hour periods. During these periods of custody, Mother or any other suitable caregiver was to be in the area. In the court's finding of fact, the court does not address each of the section 5328 factors, rather it addresses the communication breakdown, the distance between the parties, and Mother's breast feeding.

Father filed a timely appeal raising two issues, (1) Did the trial court err in failing to engage in a "fact-specific, case-specific" analysis of the best interest facts set forth in section 5328, and (2) did the trial court err in placing restrictions on Father's periods of custody, such that Mother or a suitable caregiver was required to be present. *Conclusion*: The Superior Court held that that trial did err in "failing to consider the factors it was required to consider in rendering its custody decision." The trial court merely mentioned three issues, and failed to address any other factor. "**All** of the factors listed in section 5328(a) are required to be considered by the trial court when entering a custody order." With respect to the restrictions on Father's custody, the Superior Court held that "an award of custody generally does not contain any restrictions . . . [and will only] be imposed if the parties have agreed to a restriction or if the party requesting a restriction shows that without it, partial custody will have a detrimental impact on the child." As the trial court made no finding of fact that Father was unfit or unable to care for the Child on his own, and in fact, Father and his fiancé were prepared to exercise overnights with the child, the trial court should not have restricted Father's period of physical custody.

CUSTODY – FALSE CLAIMS OF ABUSE

M.O. v. F.W., ___ A.3d ___, 2012 PA Super 49 (Pa. Super. February 28, 2012).

Issue: (1) May a trial court enter into evidence a prior custody evaluation report, when the preparing expert does not testify? (2) Did the trial court err in entering a temporary custody order which awarded Mother sole legal and physical custody of the Child?

Holding: (1) Yes. Even though the preparing expert did not testify, when a prior custody evaluation was made part of the record in a prior proceeding, and the party who objects to the prior custody evaluation is the party to address the conclusions of the prior custody evaluation, a trial court may enter a prior custody evaluation report into evidence. (2) No. The trial court did not err in entering a temporary award of sole legal and physical custody to Mother where the trial court found that Father exhibited recent poor judgment that created a risk of harm to the child.

Facts: The child was born on June 13, 2007, and custody litigation began before the child was born. In September 2008, the parties received a private custody evaluation from Dr. Steven Cohen. On November 2, 009, by agreement, an order was entered granting the parties shared legal custody and Mother primary physical custody subject to Father's period of physical custody 6 out of 14 overnights in a two week cycle.

On January 7, 2011, Father filed a PFA petition alleging Mother and her boyfriend were physically, emotionally, and psychologically and sexually abusing the Child, and Father filed an emergency petition to modify custody

on January 20, 2011. Father's petition requested that the court grant him sole physical and legal custody "until such time as the Child is capable of evading physically and emotionally abusive situations with Mother and her Paramour." Mother filed a contempt petition alleging that Father's allegations of abuse were false and that Father had subjected the Child to evaluations without Mother's knowledge and consent.

The trial court held a hearing over seven days in April and May 2011. On June 9, 2011, the trial court entered a temporary custody order giving Mother sole legal and physical custody of the Child. The temporary order required Father's visits to be supervised to prevent Father from subjecting the Child to additional doctors visits or physical examinations. The court noted "I am not going to have this child stripped every time she comes from mother's house and examined . . . I just don't want emergency trips to the doctor. I don't trust Father's judgment on this anymore."

After hearing extensive testimony and reviewing numerous exhibits, the trial court entered an order whereby Mother was granted primary physical custody and Father was granted two, two-hour supervised visits with the Child each week. The court found that all evidence of abuse while the Child was in Mother's custody was completely unfounded, and there was no evidence to substantiate Father's claims. Father's "heinous attempt to wrest custody from Mother and, in effect, terminate her relationship with her daughter, is so detrimental to the child's welfare that the court was left no option but to limit his contact with his daughter so as to prevent any further attempt to poison her mind."

On appeal, Father raised five issues (1) Did the trial court err by awarding Mother sole legal and primary physical custody of the Child, (2) whether the trial court abused its discretion by denying Father's Motion to Remove counsel, (3) whether the trial court abused its discretion by denying Father's Amended Motion for recusal and mistrial based on bias and prejudice, (4) whether the trial court erred by admitting into evidence a prior custody evaluation report, without testimony from the preparing expert, and (5) whether the trial court erred by granting a temporary order, prior to entering the final order, which awarded Mother sole legal and physical custody.

Conclusion: The Superior Court addressed issues (1)-(3). In reliance on the trial court's opinion, the trial court "thoroughly and cogently addressed the issues regarding why the custody order is in the best interest of the Child . . . [i]n fact, we commend [the trial court] for refusal to allow such a blatant attempt of forum shopping to occur during a hotly contested custody battle."

With respect to admitting the 2009 custody evaluation report, the court noted that expert reports may not be used in custody actions unless the author of the report testifies and is subject to cross examination by the party adversely affected. The right of a litigant to in-court presentation of evidence is essential to due process. Even though the expert did not testify regarding the 2009 custody evaluation, the court relied on several reasons why the admission was not a violation of due process: (1) a number of witnesses, including Father's witnesses, had testified about the report's conclusions, and the expert's alleged bias, (2) Father hired an expert to rebut the 2009 report's conclusions, (3) Father referenced the 2009 report in his testimony, (4) Father hired the expert who preformed the 2009 Report, and (5) the custody report clarified the role that the expert played in the in the history of the parties' custody dispute. Under these circumstances, Father was not denied due process with the admission of the 2009 report.

With respect to the last issue, whether the court erred in entering the temporary order while it took the time to review the record in entering a custody order, the trial court did not err. Based on Father's actions of subjecting the child to numerous invasive and degrading physical examinations, in addition to having her strip every time

he received custody of her from Mother, the trial court's orders are more than reasonable.

CUSTODY - RELOCATION – SIGNIFICANT IMPAIRMENT OF CUSTODIAL RIGHTS

C.M.K. v. K.E.M., ___ A.3d ___, 2012 PA Super 76 (Pa. Super. March 27, 2012).

Issue: (1) Does a party who files a notice of proposed relocation "tacitly concede" that a parties' proposed move is a "relocation"? (2) Was the proposed move, approximately 68 miles from where Father resides, in the child's best interest, when Father has maintained a relationship with the child and Father exercises custody alternating weekends, with a midweek visit.

Holding: (1) No. A party who files a notice of proposed relocation pursuant to section 5337 does not "tacitly concede" that a parties' proposed move is a "relocation" as defined in the statute. A party who files a notice of proposed relocation is entitled to a hearing to litigate all issues, including whether the move itself constitutes "relocation." (2) No. Although Father exercised partial custody on alternating weekends, with a midweek visit, the proposed move was not in the best interest of the child when the move would impair Father's ability to participate in weekday events with the child, including attending school and sporting events, and the Child's bond with Father's family would be affected.

Facts: Mother lives in Grove City, Mercer County, Pennsylvania, with the child. Father lives in Grove City, Mercer County, Pennsylvania with his girlfriend and her 13 year-old child. Mother and Father were never married, but resided together from January 2004 to July 2008, in Grove City. When Mother and Father lived together, they both were active in the care of the child.

In November 2008 and May 2010, Mother filed custody complaints, both of which resulted in agreements where Mother was granted primary physical custody and Father was granted partial physical custody. Commencing in May 2010, Father exercised custody on alternating weekends, with a midweek visit. The court noted that in addition to Father's partial custody, Father was involved in the child's school and sport activities. Additionally, the Child had established a good familial support network with Father's family in the Grove City area.

On June 2, 2011, Mother sent a notice to Father with a proposed relocation to Albion, Pennsylvania (68 miles from Father's residence). Mother stated that she previously resided in this area, her family was located there, she had the opportunity for improved housing, and she had job prospects with the possibility of becoming a part owner in a business.

After the relocation hearing, the trial court found that Mother's proposed move met the definition of "relocation" because she "tacitly conceded" the move was a relocation due to her Notice of Proposed relocation. In the alternative, the trial court held that Mother's move would significantly impair Father's right to exercise custody. In review of the factors relevant to a parties' ability to move, the trial court denied Mother's petition. *Conclusion*: The Superior Court held that a Notice of Proposed Relocation was not, in it self, sufficient to provide that Mother's proposed move was a "relocation" pursuant to the statute. The court noted that a party who files a notice of proposed relocation is entitled to a hearing to litigate all issues, including whether the move itself constitutes "relocation," and nor "did it raise a presumption that [a] proposed move constituted relocation."

Relocation occurs when a proposed move would significantly impair a parties' ability to exercise custodial rights. Although the Superior Court rejected the trial court's finding that Mother's Notice of Proposed

relocation equated to an admission that Mother's move was a "relocation," the Superior Court upheld the trial court's alternative finding that the move significantly impaired Father's ability to parent. The Superior Court relied on Father's continued midweek involvement in the Child's life.

In reviewing the trial's analysis of the factors in section 5337(h), the Superior Court noted several factors in support of the trial court's order denying Mother's ability to relocate, including: (1) Child and Father have a strong support system in Grove City, (2) the Child has dinner with Father and paternal grandparents every Wednesday night, (3) Mother has continued to have contact with paternal grandparents, (4) the child does not have an equally strong support system with Mother's family, (5) the "advantages of the proposed move are minor, at best," including Mother earning approximately the same amount at her new employment and only a minimally lesser rent. Additionally, the trial court found that the Child would have little to gain with the relocation. Combining all of these facts, and finding that Mother's claims that Father had abused her were lessened by the fact that Mother had reconciled with Father after the incidents of abuse, supported the trial court's denial of Mother's Petition to Relocate.

TERMINATION OF PARENTAL RIGHTS – INABILITY TO UNDERSTAND ENGLISH LANGUAGE

In re P.S.S.C. and P.D.S.C., 32 A.3d 1281 (Pa. Super. November 29, 2011).

Issue: Was there sufficient evidence to terminate Father's parental rights considering that Father's inability to speak or read English made it impossible for him to understand and act upon his parental rights, and he failed to have counsel until immediately prior to the termination hearing?

Holding: No. When Father's "language barrier and lack of counsel made it impossible for him to understand and act upon his parent rights and responsibilities regarding the termination process," there was insufficient evidence on the record to support termination of Father's parental rights.

Facts: Father is Spanish-speaking, and his children were born in Puerto Rico in 1999 and 2001, and lived there with Father and Mother. When Father was incarcerated in a Puerto Rico prison in 2005, Mother took the children to Lebanon, Pa., and in December 2006, Mother abandoned the children in Lebanon to return to Puerto Rico. Lebanon County Children and Youth Services took custody of the children. At this time, LCCYS had contact with Mother, but Mother did not provide Father's address.

In May 2007, LCCYS obtained Father's prison address and sent copies of goals and notice of review hearings, written in English only. No attempt was made by LCCYS to determine if Father spoke or read the English language or if he received the notices. Father did attempt to contact LCCYS, but despite Father's efforts, the goal was changed to adoption in 2008.

In December 2009, Father was released from prison and refused to sign the termination papers. In March 2010, Father moved to Texas, and continued to call LCCYS to speak with the Children. Father finally obtained a legal aid application nearly four years after LCCYS took the children into custody.

Father traveled twice to Lebanon County to attend termination hearings, and on May 10, 2011, the trial court held the final termination hearing, where an interpreter appeared and translated the testimony. Father testified that all papers he received from LCCYS were served in English and that Father was under the impression that he was not allowed to have any contact with the Children. The trial court terminated Father's parental rights, and although the court set forth the reasons for terminating Mother's rights, there were no such reasons identified for Father.

Conclusion: The court notes that it is well established under 23 Pa.C.S.A. 2511(a)(1), "incarceration alone cannot support termination due to a parent's failure to perform parental duties . . . [and] a parent's absence and failure to support a child due to incarceration is not conclusive on the issue of whether the parent has abandoned the child." A court must determine whether the parent utilized those resources available in prison to continue a relationship with the child.

Father attempted to use the resources available through LCCYS, but to no avail. The resources and aide to Father while he was incarcerated were "completely inadequate for an unrepresented Spanish-speaking individual without access to an interpreter. In essence, the services or assistance reasonably available to Father by LCCYS were simply not available in light of the language barrier."

The court distinguished this case from the 1986 case: Adoption of Baby Boy A v. Catholic Social Services, where the court terminated the parental rights of an illiterate and incarcerated individual. In Adoption of Baby Boy A v. Catholic Social Services, although father was illiterate and this hindered his participation in the child's life, the parent made essentially no effort to find out information regarding the child. In this case, Father had made several attempts to speak with the children.

The court held that although this is a "close case," "there is insufficient evidence in the record to conclude that Father could actually read the various notices, plans, and petitions regarding termination of his parental rights [and this] tips the scale in favor of Father." It is not clear from the record that Father evidenced a "settled purpose to relinquish his parental rights or was unable, unwilling, or incapable of performing his parental duties based upon his apparent limitation—not understanding the English Language."

C. Pennsylvania Trial Court Cases.

CUSTODY – GRANDPARENTS -- ORAL AGREEMENT BEFORE OPEN COURT – DURESS/COERCION

Morganti v. Morganti, 104 Berks Co. L. J. 40 (C.C.P. September 27, 2011).

Issue: Does a party, represented by counsel, have a right to recant an oral agreement that was agreed under oath based on the assertion that the party was "in an unfit state of mind" and that the party "panicked"?

Holding: No. When there is nothing in the record to show duress, coercion or under influence, a party, represented by counsel, does not have the right to recant an oral agreement that was agreed under oath and made part of the record.

Facts: On December 16, 2006, the plaintiffs, Maternal Grandparents, commenced a custody action against Mother and Father. Following a hearing, Maternal Grandparents were granted sole legal and primary physical custody, and Mother was granted extensive access to Maternal Grandparents homes to access the Child. On May 24, 2009, Father died in an ATV accident.

Through a series of other filings, Maternal Grandparents maintained primary physical custody until March 14, 2011, when Mother filed a petition for primary physical custody. On May 11, 2011, the Custody Master filed his report granting Mother sole legal and primary physical custody. Maternal Grandparents filed exceptions, both parties filed pre-trial memoranda, and the parties attend a pretrial conference.

On August 5, 2011, "in open court with the benefit of counsel, the parties were sworn and entered into an oral custody agreement on the record" for Mother to have primary physical custody. The court accepted the Agreement of the parties and entered the agreement as a court order.

Four days later, on August 9, 2011, Maternal Grandparents filed a Petition to Recant Oral Agreement, stating that they were "blindsided" by Mother's pretrial memorandum and that they "panicked." Maternal Grandparents stated that they were "emotionally upset, stunned, confused, and totally disillusioned because Maternal Grandparents had never heard these allegations in the past."

Conclusion: Despite Maternal Grandparents arguments, the trial court noted that the Maternal Grandparents were represented by counsel. All parties were sworn and stood before the court where the attorneys presented the agreement. The court denied the petition, stating that "there is simply nothing to suggest that this Agreement was the product of duress, coercion or undue duress, and to the contrary the record indicates that Maternal Grandparents freely adopted the Agreement."

CUSTODY – BEST INTEREST OF CHILDREN – SLEEP DISORDER

Hopper v. Hopper, 61 Cumberland Co. Leg. J. 14 (C.C.P. December 1, 2011).
Issue: Whether father was permitted to exercise interim periods of partial custody, after the first day of hearing, despite Mother's assertion that Father was unfit to receive unsupervised custody due to reasons that include an alleged sleep disorder.

Holding: Yes. As the court, during the first day of hearing, heard testimony from both parties and Father offered testimony of a psychologist that he was not a danger to himself and to the child, Father was entitled to periods of unsupervised physical custody.

Facts: The parties were married on August 21, 2004 and separated on May 23, 2011. Father found that Mother had taken the children and was moving out of the marital residence. After separation, Mother refused to allow Father to see the children. Father filed a custody complaint on June 10, 2011.

Following pre-trial memoranda filed by both parties, the court identified that the hearing would take several days, and in order to allow the court to fashion an interim order, the parties agreed that the court would hear evidence from Mother and Father on the first day. Mother testified that Father had a sleep disorder that made it difficult to wake Father. Father stated that his sleep disorder did not disrupt his employment as a pharmacist and he offered the opinion of a psychologist that he was not a danger to himself or others.

After the first day of hearing, the court entered a temporary order whereby Mother was granted primary physical custody and Father was granted alternating weekends from Friday until Sunday. Mother filed an appeal, arguing, among other positions, that the court should have accepted her position that the Children cannot be left alone with Father due to his sleep disorder.

Conclusion: The court stated that it anticipated the hearing to take several days, and to reach an interim order, the court would hear from both parties on the first day of hearing. After the first day, the court stated "the court is not obliged to accept the most alarmist position of either party." The minimal periods of temporary or partial physical custody granted to Father do not represent a threat of harm to the children.

CUSTODY – COURT REJECTS HOMESCHOOLING – SPECIAL NEEDS

SK v. TO, C.P. Northumberland County, No. 98-1793 (C.C.P. November 21, 2011).

Issue: Should a Child with special needs attend public school, which possesses individuals trained to work with children with special needs and behavioral issues, in light of Mother's alternative to home school the child? *Holding*: Yes. Although the court stated that it is not against the option of homeschooling, the Child, with special needs, should attend public school when the public school has individuals trained to work with the Child, and Mother's period of homeschooling caused concern for the school and the court.

Facts: The custody action was commenced in July 9, 2009, and Mother and Father did not agree on schooling. Mother believed that she should continue to home school the Child, who had learning and behavioral issues. Father believed the Child should attend public school. On July 26, 2011 and September 12, 2011, the court heard the issue of schooling.

Mother presented a home schooling portfolio for the prior academic year. In response, the Shamokin Area School District had concerns about the portfolio and requested the child to undergo a re-evaluation. The court noted that a child with special needs should be evaluated every two years, and the child had not been evaluated since 2006. While under Mother's direction of homeschooling, the Child did not receive services for her special needs since 2007. At the Shamokin Area School District, there were individuals trained to work with children with special needs and behavioral issues.

Conclusion: The court found that public school was in the Child's best interest, and there was nothing in the record that shows Mother had obtained special needs services in the home school setting. The court heard testimony that "the child is autistic . . . and instead of getting the Child the services that are specialized for her needs, Mother remains inactive." The court stated that it was "not against the option of homeschooling, and looks at every situation on a case by case basis." The Shamokin Area School District has trained professionals and services, and since Mother is not providing for these services, it is in the Child's best interest to attend public school.

Mother argued that the minor's behavior impeded the Child's educational process and was a danger to the Child and others. In response, the court heard testimony from the Child's prior public school teacher, and the teacher indicated that the issues raised by Mother are not uncommon for children in public school with behavioral issues. Therefore, considering Mother's inaction and the services available at public school, public school is in the Child's best interest.

J. PAUL HELVY
717.237.5343 ▪ phelvy@mwn.com

ANTHONY M. HOOVER
717.237.5477 ▪ ahoover@mwn.com

EXHIBIT A

HOUSE AMENDED

PRIOR PRINTER'S NOS. 1399, 1604 PRINTER'S NO. 1947

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

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

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

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

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

§ 5329. CONSIDERATION OF CRIMINAL CONVICTION.

* * *

(C) INITIAL EVALUATION.--[THE COURT SHALL PROVIDE FOR AN EVALUATION TO

DETERMINE WHETHER:

(1) THE PARTY OR HOUSEHOLD MEMBER WHO COMMITTED AN OFFENSE UNDER SUBSECTION (A) POSES A THREAT TO THE CHILD; AND

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

* * *

§ 5338. Modification of existing order.

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

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

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

§ 4109. Child custody proceedings during military deployment.

~~* * *~~

(A) RESTRICTION ON CHANGE OF CUSTODY.--IF A PETITION FOR CHANGE OF CUSTODY OF A CHILD OF AN ELIGIBLE SERVICEMEMBER IS FILED WITH ANY COURT IN THIS COMMONWEALTH WHILE THE ELIGIBLE SERVICEMEMBER IS DEPLOYED IN SUPPORT OF A CONTINGENCY OPERATION, NO COURT MAY ENTER AN ORDER MODIFYING OR

AMENDING ANY PREVIOUS JUDGMENT OR ORDER, OR ISSUE A NEW ORDER, THAT CHANGES THE CUSTODY ARRANGEMENT FOR THAT CHILD THAT EXISTED AS OF THE DATE OF THE DEPLOYMENT OF THE ELIGIBLE SERVICEMEMBER, EXCEPT THAT A COURT MAY ENTER A TEMPORARY CUSTODY ORDER IF IT IS IN THE BEST INTEREST OF THE CHILD.

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

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

(2) THE COURT MAY ISSUE A TEMPORARY ORDER WITH A REVISED CUSTODY SCHEDULE AS PROPOSED BY THE SERVICEMEMBER AND THE FAMILY MEMBERS OR ANOTHER REVISED CUSTODY SCHEDULE AS THE COURT DEEMS APPROPRIATE, IF THE COURT FINDS THAT A TEMPORARY ASSIGNMENT OF CUSTODY RIGHTS TO FAMILY MEMBERS OF THE SERVICEMEMBER IS IN THE BEST INTEREST OF THE CHILD. IN NO CASE SHALL A TEMPORARY ORDER GRANTING CUSTODY RIGHTS TO THE FAMILY MEMBERS OF A SERVICEMEMBER EXCEED THE CUSTODY RIGHTS GRANTED TO THE SERVICEMEMBER SET FORTH IN THE ORDER IN EFFECT AT THE TIME OF THE FILING OF THE PETITION TO ASSIGN TEMPORARY CUSTODY RIGHTS TO FAMILY MEMBERS. IN THE CASE OF ANY OTHER TEMPORARY ORDER ISSUED UNDER THIS SUBSECTION, THE COURT MAY ISSUE A TEMPORARY ORDER IF IT IS IN THE BEST INTEREST OF THE

CHILD.

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

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

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

***

(E) RELATIONSHIP TO OTHER LAWS.--NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROVISIONS OF THIS SECTION SHALL BE APPLIED WITH REGARD TO CHILD CUSTODY ISSUES RELATED TO ELIGIBLE SERVICEMEMBERS DEPLOYED IN SUPPORT OF CONTINGENCY OPERATIONS.

(F) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"CONTINGENCY OPERATION." A MILITARY OPERATION THAT:

(1) IS DESIGNATED BY THE SECRETARY OF DEFENSE AS AN OPERATION IN WHICH MEMBERS OF THE ARMED FORCES ARE OR MAY BECOME INVOLVED IN MILITARY ACTIONS, OPERATIONS OR HOSTILITIES AGAINST AN ENEMY OF THE UNITED STATES OR AGAINST AN OPPOSING MILITARY FORCE; OR

(2) RESULTS IN THE CALL OR ORDER TO, OR RETENTION ON, ACTIVE DUTY

OF MEMBERS OF THE UNIFORMED SERVICES UNDER 10 U.S.C. § 688 (RELATING TO RETIRED MEMBERS: AUTHORITY TO ORDER TO ACTIVE DUTY; DUTIES), 12301(A) (RELATING TO RESERVE COMPONENTS GENERALLY), 12302 (RELATING TO READY RESERVE), 12304 (RELATING TO SELECTED RESERVE AND CERTAIN INDIVIDUAL READY RESERVE MEMBERS; ORDER TO ACTIVE DUTY OTHER THAN DURING WAR OR NATIONAL EMERGENCY), 12305 (RELATING TO AUTHORITY OF PRESIDENT TO SUSPEND CERTAIN LAWS RELATING TO PROMOTION, RETIREMENT, AND SEPARATION) OR 12406 (RELATING TO NATIONAL GUARD IN FEDERAL SERVICE: CALL) OR ANY OTHER PROVISION OF 10 U.S.C. DURING A WAR OR DURING A NATIONAL EMERGENCY DECLARED BY THE PRESIDENT OR CONGRESS.

"ELIGIBLE SERVICEMEMBER." A MEMBER OF THE PENNSYLVANIA NATIONAL GUARD OR A MEMBER OF AN ACTIVE OR RESERVE COMPONENT OF THE ARMED FORCES OF THE UNITED STATES WHO IS SERVING ON ACTIVE DUTY, OTHER THAN ACTIVE DUTY FOR TRAINING, FOR A PERIOD OF 30 OR MORE CONSECUTIVE DAYS, IN SUPPORT OF A CONTINGENCY OPERATION.

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

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

§ 4110. ~~Assignment of custody rights during military deployment.~~

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

~~(b) Order.--The court may grant the eligible servicemember's request~~

for assignment of custody rights if the court finds that custody on terms as the court deems appropriate would be in the best interest of the child. An order granting assignment of custody rights pursuant to this section shall terminate immediately upon the termination of the eligible servicemember's deployment.

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

§ 4111. Expedited or electronic hearing.

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

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

(C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES

SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

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

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

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

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

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