

5902

2009-2010 Regular Sessions

I N   S E N A T E

June 18, 2009

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Introduced by Sen. MONTGOMERY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the domestic relations law and the family court act, in relation to the child support obligation of indigent non-custodial parents

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraphs (d), (g) and (i) of subdivision 1-b of section  
2     240 of the domestic relations law, paragraphs (d) and (i) as added by  
3     chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter  
4     41 of the laws of 1992, are amended to read as follows:  
5     (d) Notwithstanding the provisions of paragraph (c) of this subdivi-  
6     sion, where the annual amount of the basic child support obligation  
7     would reduce the non-custodial parent's income below the poverty income  
8     guidelines amount for a single person as reported by the federal depart-  
9     ment of health and human services, the basic child support obligation  
10    shall be twenty-five dollars per month [or the difference between the  
11    non-custodial parent's income and the self-support reserve, whichever is  
12    greater], PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC  
13    CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL  
14    BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F)  
15    OF THIS SUBDIVISION, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO  
16    PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPRO-  
17    PRIATE. Notwithstanding the provisions of paragraph (c) of this subdivi-  
18    sion, where the annual amount of the basic child support obligation  
19    would reduce the non-custodial parent's income below the self-support  
20    reserve but not below the poverty income guidelines amount for a single  
21    person as reported by the federal department of health and human  
22    services, the basic child support obligation shall be fifty dollars per  
23    month or the difference between the non-custodial parent's income and

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 the self-support reserve, whichever is greater, IN ADDITION TO ANY  
2 AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH  
3 SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS  
4 SUBDIVISION.

5 (g) Where the court finds that the non-custodial parent's pro rata  
6 share of the basic child support obligation is unjust or inappropriate,  
7 the court shall order the non-custodial parent to pay such amount of  
8 child support as the court finds just and appropriate, and the court  
9 shall set forth, in a written order, the factors it considered; the  
10 amount of each party's pro rata share of the basic child support obli-  
11 gation; and the reasons that the court did not order the basic child  
12 support obligation. Such written order may not be waived by either  
13 party or counsel; provided, however, and notwithstanding any other  
14 provision of law, the court shall not find that the non-custodial  
15 parent's pro rata share of such obligation is unjust or inappropriate on  
16 the basis that such share exceeds the portion of a public assistance  
17 grant which is attributable to a child or children. [In no instance  
18 shall the court order child support below twenty-five dollars per  
19 month.] Where the non-custodial parent's income is less than or equal to  
20 the poverty income guidelines amount for a single person as reported by  
21 the federal department of health and human services, unpaid child  
22 support arrears in excess of five hundred dollars shall not accrue.

23 (i) Where either or both parties are unrepresented, the court shall  
24 not enter an order or judgment other than a temporary order pursuant to  
25 section two hundred thirty-seven of this article, that includes a  
26 provision for child support unless the unrepresented party or parties  
27 have received a copy of the child support standards chart promulgated by  
28 the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISA-  
29 BILITY ASSISTANCE pursuant to subdivision two of section one hundred  
30 eleven-i of the social services law. Where either party is in receipt of  
31 child support enforcement services through the local social services  
32 district, the local social services district child support enforcement  
33 unit shall advise such party of the amount derived from application of  
34 the child support percentage and that such amount serves as a starting  
35 point for the determination of the child support award, and shall  
36 provide such party with a copy of the child support standards chart. [In  
37 no instance shall the court approve any voluntary support agreement or  
38 compromise that includes an amount for child support less than twenty-  
39 five dollars per month.]

40 S 2. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of  
41 the family court act, paragraphs (d) and (i) as added by chapter 567 of  
42 the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws  
43 of 1992, are amended to read as follows:

44 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-  
45 sion, where the annual amount of the basic child support obligation  
46 would reduce the non-custodial parent's income below the poverty income  
47 guidelines amount for a single person as reported by the federal depart-  
48 ment of health and human services, the basic child support obligation  
49 shall be twenty-five dollars per month [or the difference between the  
50 non-custodial parent's income and the self-support reserve, whichever is  
51 greater]; PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC  
52 CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL  
53 BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F)  
54 OF THIS SUBDIVISION, THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT  
55 TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND  
56 APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this

1 subdivision, where the annual amount of the basic child support obli-  
2 gation would reduce the non-custodial parent's income below the self-  
3 support reserve but not below the poverty income guidelines amount for a  
4 single person as reported by the federal department of health and human  
5 services, the basic child support obligation shall be fifty dollars per  
6 month or the difference between the non-custodial parent's income and  
7 the self-support reserve, whichever is greater, IN ADDITION TO ANY  
8 AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH  
9 SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS  
10 SUBDIVISION.

11 (g) Where the court finds that the non-custodial parent's pro rata  
12 share of the basic child support obligation is unjust or inappropriate,  
13 the court shall order the non-custodial parent to pay such amount of  
14 child support as the court finds just and appropriate, and the court  
15 shall set forth, in a written order, the factors it considered; the  
16 amount of each party's pro rata share of the basic child support obli-  
17 gation; and the reasons that the court did not order the basic child  
18 support obligation. Such written order may not be waived by either  
19 party or counsel; provided, however, and notwithstanding any other  
20 provision of law, including but not limited to section four hundred  
21 fifteen of this [act] PART, the court shall not find that the non-custo-  
22 dial parent's pro rata share of such obligation is unjust or inappropri-  
23 ate on the basis that such share exceeds the portion of a public assist-  
24 ance grant which is attributable to a child or children. [In no instance  
25 shall the court order child support below twenty-five dollars per  
26 month.] Where the non-custodial parent's income is less than or equal to  
27 the poverty income guidelines amount for a single person as reported by  
28 the federal department of health and human services, unpaid child  
29 support arrears in excess of five hundred dollars shall not accrue.

30 (i) Where either or both parties are unrepresented, the court shall  
31 not enter an order or judgment other than a temporary order pursuant to  
32 section two hundred thirty-seven of [this article] THE DOMESTIC  
33 RELATIONS LAW, that includes a provision for child support unless the  
34 unrepresented party or parties have received a copy of the child support  
35 standards chart promulgated by the commissioner of [social services] THE  
36 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision  
37 two of section one hundred eleven-i of the social services law. Where  
38 either party is in receipt of child support enforcement services through  
39 the local social services district, the local social services district  
40 child support enforcement unit shall advise such party of the amount  
41 derived from application of the child support percentage and that such  
42 amount serves as a starting point for the determination of the child  
43 support award, and shall provide such party with a copy of the child  
44 support standards chart. [In no instance shall the court approve any  
45 voluntary support agreement or compromise that includes an amount for  
46 child support less than twenty-five dollars per month.]

47 S 3. This act shall take effect on the ninetieth day after it shall  
48 have become a law.