

S. 5473

A. 7931

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

May 25, 2011

---

IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

IN ASSEMBLY -- Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the domestic relations law, the family court act and the criminal procedure law, in relation to child support obligations of inmates; and to amend section 13 of chapter 182 of the laws of 2010 amending the tax law, the family court act, the domestic relations law and the social services law relating to the modification of child support orders, employer reporting of new hires and quarterly earnings, work programs and the noncustodial earned income tax credit, in relation to the effectiveness of certain provisions thereof

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

1     Section 1. The correction law is amended by adding a new section 149-a  
2     to read as follows:  
3     S 149-A. NOTIFICATION TO INMATES OF THEIR ABILITY TO SEEK MODIFICA-  
4     TIONS OF AN ORDER OF CHILD SUPPORT. NOTWITHSTANDING ANY PROVISION OF LAW  
5     TO THE CONTRARY, THE DEPARTMENT SHALL NOTIFY ALL INMATES RESIDING IN A  
6     CORRECTIONAL FACILITY WITHIN THE STATE OF NEW YORK OF THE POSSIBILITY  
7     THAT THEY MAY BE ABLE TO MODIFY AN EXISTING CHILD SUPPORT ORDER BASED ON  
8     A "SUBSTANTIAL CHANGE IN CIRCUMSTANCES" IN ACCORDANCE WITH SECTION TWO  
9     HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR  
10    HUNDRED FIFTY-ONE OF THE FAMILY COURT ACT.  
11    S 2. Paragraphs (d), (g) and (i) of subdivision 1-b of section 240 of  
12    the domestic relations law, paragraphs (d) and (i) as added by chapter  
13    567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of  
14    the laws of 1992, are amended to read as follows:

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

LBD10641-05-1

1 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-  
2 sion, where the annual amount of the basic child support obligation  
3 would reduce the non-custodial parent's income below the poverty income  
4 guidelines amount for a single person as reported by the federal depart-  
5 ment of health and human services[, the basic child support obligation  
6 shall be twenty-five dollars per month or the difference between the  
7 non-custodial parent's income and the self-support reserve, whichever is  
8 greater], OR IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION  
9 IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDER-  
10 ATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION,  
11 THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE  
12 CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwithstanding  
13 the provisions of paragraph (c) of this subdivision, where the annual  
14 amount of the basic child support obligation would reduce the non-custo-  
15 dial parent's income below the self-support reserve but not below the  
16 poverty income guidelines amount for a single person as reported by the  
17 federal department of health and human services, the basic child support  
18 obligation shall be fifty dollars per month or the difference between  
19 the non-custodial parent's income and the self-support reserve, whichev-  
20 er is greater, IN ADDITION TO ANY AMOUNTS THAT THE COURT MAY, IN ITS  
21 DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX  
22 AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

23 (g) Where the court finds that the non-custodial parent's pro rata  
24 share of the basic child support obligation is unjust or inappropriate,  
25 the court shall order the non-custodial parent to pay such amount of  
26 child support as the court finds just and appropriate, and the court  
27 shall set forth, in a written order, the factors it considered; the  
28 amount of each party's pro rata share of the basic child support obli-  
29 gation; and the reasons that the court did not order the basic child  
30 support obligation. Such written order may not be waived by either  
31 party or counsel; provided, however, and notwithstanding any other  
32 provision of law, the court shall not find that the non-custodial  
33 parent's pro rata share of such obligation is unjust or inappropriate on  
34 the basis that such share exceeds the portion of a public assistance  
35 grant which is attributable to a child or children. [In no instance  
36 shall the court order child support below twenty-five dollars per  
37 month.] Where the non-custodial parent's income is less than or equal to  
38 the poverty income guidelines amount for a single person as reported by  
39 the federal department of health and human services, unpaid child  
40 support arrears in excess of five hundred dollars shall not accrue.

41 (i) Where either or both parties are unrepresented, the court shall  
42 not enter an order or judgment other than a temporary order pursuant to  
43 section two hundred thirty-seven of this article, that includes a  
44 provision for child support unless the unrepresented party or parties  
45 have received a copy of the child support standards chart promulgated by  
46 the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISA-  
47 BILITY ASSISTANCE pursuant to subdivision two of section one hundred  
48 eleven-i of the social services law. Where either party is in receipt of  
49 child support enforcement services through the local social services  
50 district, the local social services district child support enforcement  
51 unit shall advise such party of the amount derived from application of  
52 the child support percentage and that such amount serves as a starting  
53 point for the determination of the child support award, and shall  
54 provide such party with a copy of the child support standards chart. [In  
55 no instance shall the court approve any voluntary support agreement or

1 compromise that includes an amount for child support less than twenty-  
2 five dollars per month.]

3 S 3. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of  
4 the family court act, paragraphs (d) and (i) as amended by chapter 567  
5 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the  
6 laws of 1992, are amended to read as follows:

7 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-  
8 sion, where the annual amount of the basic child support obligation  
9 would reduce the non-custodial parent's income below the poverty income  
10 guidelines amount for a single person as reported by the federal depart-  
11 ment of health and human services, [the basic child support obligation  
12 shall be twenty-five dollars per month or the difference between the  
13 non-custodial parent's income and the self-support reserve, whichever is  
14 greater]OR IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION  
15 IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDER-  
16 ATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION,  
17 THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT  
18 OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwith-  
19 standing the provisions of paragraph (c) of this subdivision, where the  
20 annual amount of the basic child support obligation would reduce the  
21 non-custodial parent's income below the self-support reserve but not  
22 below the poverty income guidelines amount for a single person as  
23 reported by the federal department of health and human services, the  
24 basic child support obligation shall be fifty dollars per month or the  
25 difference between the non-custodial parent's income and the self-sup-  
26 port reserve, whichever is greater, IN ADDITION TO ANY AMOUNTS THAT THE  
27 COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS  
28 FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

29 (g) Where the court finds that the non-custodial parent's pro rata  
30 share of the basic child support obligation is unjust or inappropriate,  
31 the court shall order the non-custodial parent to pay such amount of  
32 child support as the court finds just and appropriate, and the court  
33 shall set forth, in a written order, the factors it considered; the  
34 amount of each party's pro rata share of the basic child support obli-  
35 gation; and the reasons that the court did not order the basic child  
36 support obligation. Such written order may not be waived by either  
37 party or counsel; provided, however, and notwithstanding any other  
38 provision of law, including but not limited to section four hundred  
39 fifteen of this [act] PART, the court shall not find that the non-custo-  
40 dial parent's pro rata share of such obligation is unjust or inappropri-  
41 ate on the basis that such share exceeds the portion of a public assist-  
42 ance grant which is attributable to a child or children. [In no instance  
43 shall the court order child support below twenty-five dollars per  
44 month.] Where the non-custodial parent's income is less than or equal to  
45 the poverty income guidelines amount for a single person as reported by  
46 the federal department of health and human services, unpaid child  
47 support arrears in excess of five hundred dollars shall not accrue.

48 (i) Where either or both parties are unrepresented, the court shall  
49 not enter an order or judgment other than a temporary order pursuant to  
50 section two hundred thirty-seven of [this article] THE DOMESTIC  
51 RELATIONS LAW, that includes a provision for child support unless the  
52 unrepresented party or parties have received a copy of the child support  
53 standards chart promulgated by the commissioner of [social services] THE  
54 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision  
55 two of section one hundred eleven-i of the social services law. Where  
56 either party is in receipt of child support enforcement services through

1 the local social services district, the local social services district  
2 child support enforcement unit shall advise such party of the amount  
3 derived from application of the child support percentage and that such  
4 amount serves as a starting point for the determination of the child  
5 support award, and shall provide such party with a copy of the child  
6 support standards chart. [In no instance shall the court approve any  
7 voluntary support agreement or compromise that includes an amount for  
8 child support less than twenty-five dollars per month.]

9 S 4. Subdivision 1 of section 390.30 of the criminal procedure law is  
10 amended to read as follows:

11 1. The investigation. The pre-sentence investigation consists of the  
12 gathering of information with respect to the circumstances attending the  
13 commission of the offense, the defendant's history of delinquency or  
14 criminality, and the defendant's social history, employment history,  
15 family situation, economic status, INCLUDING CHILD SUPPORT OBLIGATIONS,  
16 education, and personal habits. Such investigation may also include any  
17 other matter which the agency conducting the investigation deems rele-  
18 vant to the question of sentence, and must include any matter the court  
19 directs to be included.

20 S 5. Subdivision 9 of part B of section 236 of the domestic relations  
21 law is amended by adding a new paragraph e to read as follows:

22 E. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON AN  
23 APPLICATION FOR A MODIFICATION OF CHILD SUPPORT PURSUANT TO THIS SUBDI-  
24 VISION, THE COURT IN ITS DISCRETION, MAY ISSUE AN ORDER DIRECTING THAT  
25 AN ORDER FOR PAYMENT OF CHILD SUPPORT BE STAYED FOR A PERIOD OF UP TO  
26 ONE HUNDRED EIGHTY DAYS FOLLOWING THE RELEASE OF A NON-CUSTODIAL PARENT  
27 FROM A PERIOD OF INCARCERATION. ARREARS SHALL ACCRUE DURING SUCH PERI-  
28 OD. THE ORIGINAL ORDER, OR ANY MODIFIED ORDER SHALL BE ENFORCEABLE AT  
29 THE END OF SUCH STAY.

30 S 6. Section 13 of chapter 182 of the laws of 2010 amending the tax  
31 law, the family court act, the domestic relations law and the social  
32 services law relating to the modification of child support orders,  
33 employer reporting of new hires and quarterly earnings, work programs  
34 and the noncustodial earned income tax credit is amended to read as  
35 follows:

36 S 13. This act shall take effect on the ninetieth day after it shall  
37 have become law; provided however, that sections six and seven of this  
38 act shall apply to any action or proceeding to modify any order of child  
39 support entered on or after the effective date of this act except that  
40 if the child support order incorporated without merging a valid agree-  
41 ment or stipulation of the parties, the amendments regarding the modifi-  
42 cation of a child support order set forth in sections six and seven of  
43 this act shall only apply if the incorporated agreement or stipulation  
44 was executed on or after this act's effective date, AND EXCEPT THAT  
45 SECTIONS SIX AND SEVEN OF THIS ACT SHALL APPLY TO ANY ACTION OR PROCEED-  
46 ING TO MODIFY A CHILD SUPPORT ORDER ENTERED AGAINST ANY PERSON WHO IS AN  
47 INMATE IN A CORRECTIONAL FACILITY IN THIS STATE WHOSE INCARCERATION  
48 BEGAN PRIOR TO THE EFFECTIVE DATE OF THIS ACT; provided however, that  
49 sections three and four of this act shall take effect on the three  
50 hundred sixty-fifth day after it shall have become a law.

51 S 7. This act shall take effect on the ninetieth day after it shall  
52 have become a law.