

3006

2013-2014 Regular Sessions

I N S E N A T E

January 28, 2013

Introduced by Sens. ADAMS, PARKER -- read twice and ordered printed, and
when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, the family court act and the
penal law, in relation to denying custody of a child to a parent
convicted of rape

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

1 Section 1. Subdivision 5 of section 240 of the domestic relations law,
2 as added by section 103 of chapter 398 of the laws of 1997, is renum-
3 bered subdivision 6 and a new subdivision 7 is added to read as follows:
4 7. NOTWITHSTANDING ANY OTHER PROVISION OF ANY LAW TO THE CONTRARY, NO
5 COURT SHALL AWARD CUSTODY TO A PARENT WHO HAS BEEN CONVICTED OF VIOLAT-
6 ING SECTION 130.25 (RAPE IN THE THIRD DEGREE), 130.30 (RAPE IN THE
7 SECOND DEGREE), OR 130.35 (RAPE IN THE FIRST DEGREE) OF THE PENAL LAW,
8 WHERE THE CHILD THAT SUCH PARENT SEEKS CUSTODY OR VISITATION OF WAS
9 CONCEIVED AS A RESULT OF SUCH RAPE.
10 S 2. Subdivision (a) of section 70 of the domestic relations law, as
11 amended by chapter 457 of the laws of 1988, is amended to read as
12 follows:
13 (a) Where a minor child is residing within this state, either parent
14 may apply to the supreme court for a writ of habeas corpus to have such
15 minor child brought before such court; and on the return thereof, the
16 court, on due consideration, may award the natural guardianship, charge
17 and custody of such child to either parent for such time, under such
18 regulations and restrictions, and with such provisions and directions,
19 as the case may require, and may at any time thereafter vacate or modify
20 such order. In all cases there shall be no prima facie right to the
21 custody of the child in either parent, but the court shall determine
22 solely what is for the best interest of the child, and what will best
23 promote its welfare and happiness, and make award accordingly SUBJECT,

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

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1 HOWEVER, TO THE PROVISIONS OF SUBDIVISION SEVEN OF SECTION TWO HUNDRED
2 FORTY OF THIS CHAPTER.

3 S 3. Subdivisions (a), (b) and (c) of section 651 of the family court
4 act, subdivisions (a) and (c) as amended by chapter 85 of the laws of
5 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003,
6 are amended to read as follows:

7 (a) When referred from the supreme court or county court to the family
8 court, the family court has jurisdiction to determine, in accordance
9 with subdivision one of section two hundred forty of the domestic
10 relations law and with the same powers possessed by the supreme court in
11 addition to its own powers, habeas corpus proceedings and proceedings
12 brought by petition and order to show cause, for the determination of
13 the custody or visitation of minors SUBJECT, HOWEVER, TO THE LIMITATIONS
14 SET FORTH IN SUBDIVISION SEVEN OF SECTION TWO HUNDRED FORTY OF THE
15 DOMESTIC RELATIONS LAW.

16 (b) When initiated in the family court, the family court has jurisdic-
17 tion to determine, in accordance with subdivision one of section two
18 hundred forty of the domestic relations law and with the same powers
19 possessed by the supreme court in addition to its own powers, habeas
20 corpus proceedings and proceedings brought by petition and order to show
21 cause, for the determination of the custody or visitation of minors,
22 including applications by a grandparent or grandparents for visitation
23 or custody rights pursuant to section seventy-two or two hundred forty
24 of the domestic relations law SUBJECT, HOWEVER, TO THE LIMITATIONS SET
25 FORTH IN SUBDIVISION SEVEN OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC
26 RELATIONS LAW.

27 (c) When initiated in the family court pursuant to a petition under
28 part eight of article ten of this act or section three hundred fifty-
29 eight-a of the social services law, the family court has jurisdiction to
30 enforce or modify orders or judgments of the supreme court relating to
31 the visitation of minors in foster care, notwithstanding any limitation
32 contained in subdivision (b) of section four hundred sixty-seven of this
33 act BUT SUBJECT, HOWEVER, TO THE LIMITATIONS SET FORTH IN SUBDIVISION
34 SEVEN OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW.

35 S 4. Section 60.27 of the penal law is amended by adding a new subdi-
36 vision 15 to read as follows:

37 15. WHEN A PERSON IS CONVICTED OF RAPE IN THE THIRD DEGREE AS DEFINED
38 IN SECTION 130.25 OF THIS CHAPTER, RAPE IN THE SECOND DEGREE AS DEFINED
39 IN SECTION 130.30 OF THIS CHAPTER OR RAPE IN THE FIRST DEGREE AS DEFINED
40 IN SECTION 130.35 OF THIS CHAPTER, AND A CHILD IS CONCEIVED AS A RESULT
41 OF SUCH RAPE, THE COURT, IN ADDITION TO ANY OTHER SENTENCE, SHALL ORDER
42 THE PAYMENT OF RESTITUTION TO THE VICTIM OF SUCH RAPE IN AN AMOUNT TO
43 SATISFACTORILY PROVIDE CHILD SUPPORT FOR SUCH CHILD UNTIL SUCH CHILD
44 REACHES THE AGE OF TWENTY-ONE YEARS.

45 S 5. This act shall take effect immediately.