

5069

2013-2014 Regular Sessions

I N S E N A T E

May 7, 2013

Introduced by Sen. SKELOS -- 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 and the social services law, in relation to visitation and custody rights of a parent convicted of sexual assault

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

1 Section 1. Subdivision 1-c of section 240 of the domestic relations
2 law, as added by chapter 150 of the laws of 1998, paragraph (a) as
3 amended by chapter 378 of the laws of 1999 and paragraph (c) as amended
4 by chapter 41 of the laws of 2010, is amended to read as follows:
5 1-c. (a) Notwithstanding any other provision of this chapter to the
6 contrary, no court shall make an order providing for visitation or
7 custody to a person who has been convicted of (I) murder in the first or
8 second degree in this state, or convicted of an offense in another
9 jurisdiction which, if committed in this state, would constitute either
10 murder in the first or second degree, of a parent, legal custodian,
11 legal guardian, sibling, half-sibling or step-sibling of any child who
12 is the subject of the proceeding; OR (II) ONE OR MORE OF THE FOLLOWING
13 SEXUAL OFFENSES IN THIS STATE OR CONVICTED OF ONE OR MORE OFFENSES IN
14 ANOTHER JURISDICTION WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE
15 ONE OR MORE OF THE FOLLOWING OFFENSES, WHEN A CHILD WHO IS THE SUBJECT
16 OF THE PROCEEDING WAS CONCEIVED AS A RESULT: (A) RAPE IN THE FIRST OR
17 SECOND DEGREE; (B) COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST
18 DEGREE; (C) PREDATORY SEXUAL ASSAULT; OR (D) PREDATORY SEXUAL ASSAULT
19 AGAINST A CHILD. Pending determination of a petition for visitation or
20 custody, such child shall not visit and no person shall visit with such
21 child present, such person who has been convicted of murder in the first
22 or second degree OR OF ONE OR MORE OF THE SEXUAL OFFENSES ENUMERATED IN
23 THIS PARAGRAPH WHEN THE CHILD WHO IS SUBJECT OF THE PROCEEDING WAS
24 CONCEIVED AS A RESULT OF SUCH OFFENSES in this state, or convicted of

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

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[and offense] ONE OR MORE OFFENSES in another jurisdiction which, if committed in this state, would constitute [either murder in the first or second degree, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding] ONE OR MORE OFFENSES ENUMERATED IN THIS PARAGRAPH without the consent of such child's custodian or legal guardian.

(b) Notwithstanding paragraph (a) of this subdivision a court may order visitation or custody where:

(i) (A) such child is of suitable age to signify assent and such child assents to such visitation or custody; or

(B) if such child is not of suitable age to signify assent, the child's custodian or legal guardian assents to such order; or

(C) IF THE CONVICTION IS PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION, the person who has been convicted of murder in the first or second degree, or an offense in another jurisdiction which if committed in this state, would constitute either murder in the first or second degree, can prove by a preponderance of the evidence that:

(1) he or she, or a family or household member of either party, was a victim of domestic violence by the victim of such murder; and

(2) the domestic violence was causally related to the commission of such murder; and

(ii) the court finds that such visitation or custody is in the best interests of the child.

(c) For the purpose of making a determination pursuant to clause (C) of subparagraph (i) of paragraph (b) of this subdivision, the court shall not be bound by the findings of fact, conclusions of law or ultimate conclusion as determined by the proceedings leading to the conviction of murder in the first or second degree in this state or of an offense in another jurisdiction which, if committed in this state, would constitute murder in either the first or second degree, of a parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding. In all proceedings under this section, an attorney shall be appointed for the child.

S 2. Subdivision 1 of section 111-a of the domestic relations law, as amended by chapter 353 of the laws of 1993, is amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b OF THIS ARTICLE relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given to any person who previously has been given notice of any proceeding involving the child, pursuant to section three hundred eighty-four-c of the social services law, and provided further that notice in an adoption proceeding, pursuant to this section shall not be required to be given to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b OF THIS ARTICLE. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant

1 to this section, and there shall be shown by the petition or by affida-
2 vit or other proof satisfactory to the court that there are no persons
3 other than those set forth in the petition who are entitled to notice.
4 For the purpose of determining persons entitled to notice of adoption
5 proceedings initiated pursuant to this article, persons specified in
6 subdivision two of this section shall not include any person who has
7 been convicted of [rape in the first degree involving forcible compul-
8 sion, under subdivision one of section 130.35 of the penal law, when the
9 child who is the subject of the proceeding was conceived as a result of
10 such rape] ONE OR MORE OF THE FOLLOWING SEXUAL OFFENSES IN THIS STATE OR
11 CONVICTED OF ONE OR MORE OFFENSES IN ANOTHER JURISDICTION WHICH, IF
12 COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OR MORE OF THE FOLLOWING
13 OFFENSES, WHEN THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING WAS
14 CONCEIVED AS A RESULT: (A) RAPE IN FIRST OR SECOND DEGREE; (B) COURSE OF
15 SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE; (C) PREDATORY SEXUAL
16 ASSAULT; OR (D) PREDATORY SEXUAL ASSAULT AGAINST A CHILD.

17 S 3. Subdivision 1 of section 384-c of the social services law, as
18 amended by chapter 18 of the laws of 1979, is amended to read as
19 follows:

20 1. Notwithstanding any inconsistent provision of this or any other
21 law, and in addition to the notice requirements of any law pertaining to
22 persons other than those specified in subdivision two of this section,
23 notice as provided herein shall be given to the persons specified in
24 subdivision two of this section of any proceeding initiated pursuant to
25 sections three hundred fifty-eight-a, three hundred eighty-four, and
26 three hundred eighty-four-b of this chapter, involving a child born
27 out-of-wedlock. Persons specified in subdivision two of this section
28 shall not include any person who has been convicted of [rape in the
29 first degree involving forcible compulsion, under subdivision one of
30 section 130.35 of the penal law, when the child who is the subject of
31 the proceeding was conceived as a result of such rape] ONE OR MORE OF
32 THE FOLLOWING SEXUAL OFFENSES IN THIS STATE OR CONVICTED OF ONE OR MORE
33 OFFENSES IN ANOTHER JURISDICTION WHICH, IF COMMITTED IN THIS STATE,
34 WOULD CONSTITUTE ONE OR MORE OF THE FOLLOWING OFFENSES, WHEN THE CHILD
35 WHO IS THE SUBJECT OF THE PROCEEDING WAS CONCEIVED AS A RESULT: (A) RAPE
36 IN FIRST OR SECOND DEGREE; (B) COURSE OF SEXUAL CONDUCT AGAINST A CHILD
37 IN THE FIRST DEGREE; (C) PREDATORY SEXUAL ASSAULT; OR (D) PREDATORY
38 SEXUAL ASSAULT AGAINST A CHILD.

39 S 4. This act shall take effect immediately.