

10347

I N A S S E M B L Y

March 18, 2010

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the military law, in relation to the creation of the short-term military service guardian

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

1 Section 1. The domestic relations law is amended by adding a new article 6-A to read as follows:

3 ARTICLE 6-A

4 SHORT-TERM MILITARY SERVICE GUARDIAN

5 SECTION 90. DEFINITIONS.

6 91. SHORT-TERM MILITARY SERVICE GUARDIAN.

7 92. DUTIES OF A SHORT-TERM MILITARY SERVICE GUARDIAN OF A MINOR.

8 S 90. DEFINITIONS. "SHORT-TERM MILITARY SERVICE GUARDIAN" MEANS A  
9 GUARDIAN OF THE PERSON OF A MINOR, AS APPOINTED UNDER SECTION NINETY-ONE  
10 OF THIS ARTICLE, EFFECTIVE ON THE DATE OF THE APPOINTMENT OR TO BECOME  
11 EFFECTIVE AT A LATER DATE UNDER SECTION NINETY-ONE OF THIS ARTICLE,  
12 EXCEPT THAT A SHORT-TERM MILITARY SERVICE GUARDIAN SHALL HAVE THE  
13 AUTHORITY TO APPLY FOR AND RECEIVE ON BEHALF OF THE MINOR BENEFITS TO  
14 WHICH THE CHILD MAY BE ENTITLED FROM OR UNDER FEDERAL, STATE, OR LOCAL  
15 ORGANIZATIONS OR PROGRAMS.

16 S 91. SHORT-TERM MILITARY SERVICE GUARDIAN. 1. A PERSON WHO IS IN  
17 ACTIVE MILITARY SERVICE AND WHO IS A PARENT, ADOPTIVE PARENT, OR ADJUDI-  
18 CATED PARENT WHO HAS PHYSICAL CUSTODY OF A MINOR CHILD AND WHO DOES NOT  
19 SHARE JOINT CUSTODY OF THE CHILD MAY APPOINT IN WRITING, WITH NOTICE TO  
20 THE OTHER LIVING PARENT OF THE CHILD AND TO THE COURT AS DESCRIBED IN  
21 SUBDIVISION TWO OF THIS SECTION, A SHORT-TERM MILITARY SERVICE GUARDIAN  
22 OF THE MINOR CHILD. THE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILI-  
23 TARY SERVICE GUARDIAN SHALL BE DATED AND SHALL IDENTIFY THE APPOINTING  
24 PARENT, THE OTHER LIVING PARENT, THE MINOR, AND THE PERSON APPOINTED TO  
25 BE THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE WRITTEN INSTRUMENT  
26 SHALL BE SIGNED BY, OR AT THE DIRECTION OF, THE APPOINTING PARENT IN THE  
27 PRESENCE OF AT LEAST TWO CREDIBLE WITNESSES, AT LEAST EIGHTEEN YEARS OF  
28 AGE, NEITHER OF WHOM IS RELATED TO THE PARENT NOR THE PERSON APPOINTED

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

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1 AS THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE PERSON APPOINTED AS THE  
2 SHORT-TERM MILITARY SERVICE GUARDIAN SHALL ALSO SIGN THE WRITTEN INSTRU-  
3 MENT, BUT NEED NOT SIGN AT THE SAME TIME AS THE APPOINTING PARENT.

4 2. A PARENT SHALL NOT APPOINT A SHORT-TERM MILITARY SERVICE GUARDIAN  
5 OF A MINOR CHILD IF THE CHILD HAS ANOTHER LIVING PARENT, ADOPTIVE PARENT  
6 OR ADJUDICATED PARENT:

7 (A) WHO HAS JOINT CUSTODY OF THE CHILD,

8 (B) WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED,

9 (C) WHOSE WHEREABOUTS ARE KNOWN, AND

10 (D) WHO IS WILLING AND ABLE TO MAKE AND CARRY OUT DAY-TO-DAY CHILD  
11 CARE DECISIONS CONCERNING THE MINOR, UNLESS THE NON-APPOINTING PARENT  
12 CONSENTS TO THE APPOINTMENT BY SIGNING THE WRITTEN INSTRUMENT OF  
13 APPOINTMENT.

14 3. THE APPOINTING PARENT SHALL ATTACH TO THE WRITTEN INSTRUMENT HIS OR  
15 HER SWORN STATEMENT OF MAILING THAT STATES HE OR SHE SENT, NO LATER THAN  
16 TWO DAYS AFTER THE WRITTEN INSTRUMENT WAS COMPLETED, COPIES OF HIS OR  
17 HER SWORN STATEMENT OF MAILING AND THE WRITTEN INSTRUMENT CONTAINING ALL  
18 REQUIRED SIGNATURES AND DATES BY CERTIFIED OR REGISTERED MAIL, RETURN  
19 RECEIPT REQUESTED TO:

20 (A) THE LAST KNOWN ADDRESS OF THE OTHER LIVING PARENT,

21 (B) THE COURT WHICH ISSUED THE ORDER THAT AWARDED PHYSICAL CUSTODY OF  
22 THE CHILD TO THE APPOINTING PARENT,

23 (C) THE COURT (IF DIFFERENT FROM THE COURT THAT AWARDED PHYSICAL  
24 CUSTODY OF THE CHILD TO THE APPOINTING PARENT) WHICH ISSUED THE LAST  
25 ORDER THAT CONCERNS THE CHILD, THE CHILD'S SUPPORT, OR CUSTODY OF OR  
26 VISITATION WITH THE CHILD, AND

27 (D) IF THERE IS NO COURT ORDER, THEN TO THE COURT CLERK IN THE COUNTY  
28 IN WHICH THE CHILD RESIDES.

29 4. THE APPOINTMENT OF THE SHORT-TERM MILITARY SERVICE GUARDIAN IS  
30 EFFECTIVE IMMEDIATELY UPON THE DATE THE WRITTEN INSTRUMENT IS EXECUTED,  
31 UNLESS THE WRITTEN INSTRUMENT PROVIDES FOR THE APPOINTMENT TO BECOME  
32 EFFECTIVE UPON A LATER SPECIFIED DATE OR EVENT. THE APPOINTMENT IS  
33 EFFECTIVE WITHOUT COURT APPROVAL. THE SHORT-TERM MILITARY SERVICE GUARD-  
34 IAN SHALL HAVE AUTHORITY TO ACT AS GUARDIAN OF THE MINOR AS PROVIDED IN  
35 ARTICLE SIX OF THIS CHAPTER FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS FROM  
36 THE DATE THE APPOINTMENT IS EFFECTIVE UNLESS THE WRITTEN INSTRUMENT  
37 PROVIDES FOR THE APPOINTMENT TO TERMINATE UPON AN EARLIER SPECIFIED DATE  
38 OR EVENT. ONLY ONE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILITARY  
39 SERVICE GUARDIAN MAY BE IN FORCE AT ANY GIVEN TIME, BUT A WRITTEN  
40 INSTRUMENT PREPARED IN ACCORDANCE WITH THE SAME REQUIREMENTS OF THIS  
41 SECTION MAY REAPPOINT THE SHORT-TERM MILITARY SERVICE GUARDIAN OR NAME A  
42 DIFFERENT SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN FOR AN ADDI-  
43 TIONAL PERIOD OF ONE HUNDRED EIGHTY DAYS. A REAPPOINTMENT OR THE  
44 APPOINTMENT OF A SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE  
45 ACCOMPLISHED BY A WRITTEN INSTRUMENT COMPLETED BEFORE THE EXPIRATION OF  
46 THE FIRST WRITTEN INSTRUMENT.

47 5. EVERY APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE  
48 AMENDED OR REVOKED BY THE APPOINTING PARENT OF THE MINOR AT ANY TIME AND  
49 IN ANY MANNER COMMUNICATED TO THE SHORT-TERM MILITARY SERVICE GUARDIAN  
50 OR TO ANY OTHER PERSON. ANY PERSON OTHER THAN THE SHORT-TERM MILITARY  
51 SERVICE GUARDIAN TO WHOM A REVOCATION OR AMENDMENT IS COMMUNICATED OR  
52 DELIVERED SHALL MAKE ALL REASONABLE EFFORTS TO INFORM THE SHORT-TERM  
53 MILITARY SERVICE GUARDIAN OF THAT FACT AS PROMPTLY AS POSSIBLE.

54 6. THE APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN OR  
55 SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN DOES NOT AFFECT THE  
56 RIGHTS OF THE OTHER PARENT IN THE MINOR.

1 7. THE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILITARY SERVICE  
2 GUARDIAN MAY, BUT NEED NOT, BE IN THE FOLLOWING FORM:

3 APPOINTMENT OF SHORT-TERM MILITARY SERVICE GUARDIAN

4 IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS

5 BY PROPERLY COMPLETING THIS FORM, A PARENT OF THE MINOR CHILD IS  
6 APPOINTING A SHORT-TERM MILITARY SERVICE GUARDIAN OF A CHILD OF THE  
7 PARENT FOR A PERIOD OF UP TO ONE HUNDRED EIGHTY (180) DAYS. A SEPARATE  
8 FORM SHOULD BE COMPLETED FOR EACH CHILD. THE PERSON APPOINTED AS THE  
9 SHORT-TERM MILITARY SERVICE GUARDIAN MUST SIGN THE FORM, BUT NEED NOT DO  
10 SO AT THE SAME TIME AS THE PARENT OR PARENTS. THIS FORM MAY BE USED TO  
11 REAPPOINT A SHORT-TERM MILITARY SERVICE GUARDIAN OR TO APPOINT A SUCCES-  
12 SOR SHORT-TERM MILITARY SERVICE GUARDIAN SO AS TO EXTEND THE ENTIRE TIME  
13 OF THE GUARDIANSHIP TO A PERIOD OF THREE HUNDRED SIXTY (360) DAYS. BOTH  
14 LIVING PARENTS OF A CHILD MAY TOGETHER APPOINT A SHORT-TERM MILITARY  
15 SERVICE GUARDIAN OF THE CHILD FOR A PERIOD OF UP TO THREE HUNDRED SIXTY  
16 (360) DAYS THROUGH THE USE OF THIS FORM. IF THE SHORT-TERM MILITARY  
17 SERVICE GUARDIAN IS APPOINTED BY BOTH LIVING PARENTS OF THE CHILD, THE  
18 PARENTS NEED NOT SIGN THE FORM AT THE SAME TIME.

19 1. PARENT AND CHILD. I (INSERT NAME OF APPOINTING PARENT), CURRENTLY  
20 RESIDING AT (INSERT ADDRESS OF APPOINTING PARENT), AM A PARENT OF THE  
21 FOLLOWING CHILD: (INSERT NAME AND DATE OF BIRTH OF CHILD).

22 2. GUARDIAN. I HEREBY APPOINT THE FOLLOWING PERSON AS THE SHORT-TERM  
23 MILITARY SERVICE GUARDIAN FOR THE CHILD: (INSERT NAME AND ADDRESS OF  
24 APPOINTED PERSON).

25 3. EFFECTIVE DATE. THIS APPOINTMENT BECOMES EFFECTIVE: (CHECK ONE IF  
26 YOU WISH IT TO BE APPLICABLE)

27 ( ) ON THE DATE THAT I STATE IN WRITING THAT I AM NO LONGER ABLE TO  
28 MAKE AND CARRY OUT DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE CHILD  
29 BECAUSE OF MY ACTIVE DUTY STATUS IN THE MILITARY.

30 ( ) ON THE FOLLOWING DATE: (INSERT DATE).

31 ( ) OTHER (INSERT OTHER).

32 (NOTE: IF THIS ITEM IS NOT COMPLETED, THE APPOINTMENT IS EFFECTIVE  
33 IMMEDIATELY UPON THE DATE THE FORM IS SIGNED AND DATED BELOW.)

34 4. TERMINATION. THIS APPOINTMENT SHALL TERMINATE ONE HUNDRED EIGHTY  
35 (180) DAYS AFTER THE EFFECTIVE DATE, UNLESS IT TERMINATES SOONER AS  
36 DETERMINED BY THE EVENT OR DATE I HAVE INDICATED BELOW: (CHECK ONE IF  
37 YOU WISH IT TO BE APPLICABLE)

38 ( ) ON THE DATE THAT I STATE IN WRITING THAT I AM WILLING AND ABLE TO  
39 MAKE AND CARRY OUT DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE CHILD.

40 ( ) ON THE DATE WHICH IS (STATE A NUMBER OF DAYS, BUT NO MORE THAN ONE  
41 HUNDRED EIGHTY (180) DAYS) DAYS AFTER THE EFFECTIVE DATE.

42 ( ) OTHER: (INSERT OTHER). (NOTE: IF THIS ITEM IS NOT COMPLETED, THE  
43 APPOINTMENT WILL BE EFFECTIVE FOR A PERIOD OF ONE HUNDRED EIGHTY (180)  
44 DAYS, BEGINNING ON THE EFFECTIVE DATE.)

45 5. DATE AND SIGNATURE OF APPOINTING PARENT. THIS APPOINTMENT IS MADE  
46 THIS (INSERT DAY) DAY OF (INSERT MONTH AND YEAR).

47 SIGNED: (APPOINTING PARENT)

48 6. WITNESSES. I SAW THE APPOINTING PARENT SIGN THIS INSTRUMENT OR I  
49 SAW THE PARENT DIRECT SOMEONE TO SIGN THIS INSTRUMENT FOR THE PARENT.  
50 THEN I SIGNED THIS INSTRUMENT AS A WITNESS IN THE PRESENCE OF THE  
51 PARENT. I AM NOT APPOINTED IN THIS INSTRUMENT TO ACT AS THE SHORT-TERM  
52 MILITARY SERVICE GUARDIAN FOR THE CHILD. I AM NOT RELATED TO THE PARENT  
53 OR TO THE PERSON APPOINTED AS THE SHORT-TERM MILITARY SERVICE GUARDIAN.  
54 (INSERT SPACE FOR NAMES, ADDRESSES, AND SIGNATURES OF TWO (2) WITNESSES)

1 7. ACCEPTANCE OF SHORT-TERM MILITARY SERVICE GUARDIAN. I ACCEPT THIS  
2 APPOINTMENT AS SHORT-TERM MILITARY SERVICE GUARDIAN ON THIS (INSERT DAY)  
3 DAY OF (INSERT MONTH AND YEAR).

4 SIGNED: (SHORT-TERM MILITARY SERVICE GUARDIAN)

5 8. CONSENT OF CHILD'S OTHER PARENT-IF APPLICABLE. I (INSERT NAME OF  
6 THE CHILD'S OTHER LIVING PARENT), CURRENTLY RESIDING AT (INSERT ADDRESS  
7 OF CHILD'S OTHER LIVING PARENT), HEREBY CONSENT TO THIS APPOINTMENT ON  
8 THIS (INSERT DAY) DAY OF (INSERT MONTH AND YEAR).

9 SIGNED: (CONSENTING PARENT)

10 (NOTE: THE SIGNATURE OF A CONSENTING PARENT IS NOT NECESSARY IF ONE OF  
11 THE FOLLOWING APPLIES: (I) THE OTHER PARENT DOES NOT HAVE JOINT CUSTODY  
12 OF THE CHILD; (II) THE CHILD'S OTHER PARENT HAS DIED; OR (III) THE  
13 WHEREABOUTS OF THE CHILD'S OTHER PARENT ARE NOT KNOWN; OR (IV) THE  
14 CHILD'S OTHER PARENT IS NOT WILLING OR ABLE TO MAKE AND CARRY OUT  
15 DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE CHILD; (V) THE CHILD'S  
16 PARENTS WERE NEVER MARRIED AND NO COURT HAS ISSUED AN ORDER ESTABLISHING  
17 PARENTAGE; OR (VI) THE PARENTAL RIGHTS OF THE CHILD'S OTHER PARENT HAVE  
18 BEEN TERMINATED BY A COURT ORDER.)

19 SWORN STATEMENT OF MAILING

20 I (INSERT NAME OF APPOINTING PARENT), CURRENTLY RESIDING AT (INSERT  
21 ADDRESS OF APPOINTING PARENT), DELIVERED A SIGNED AND DATED COPY OF THE  
22 ATTACHED APPOINTMENT OF SHORT-TERM MILITARY SERVICE GUARDIAN BY DEPOSIT-  
23 ING IT IN A UNITED STATES POST OFFICE OR POST OFFICE BOX, ENCLOSED IN AN  
24 ENVELOPE, PLAINLY ADDRESSED TO EACH PERSON OR OFFICE AT THE APPROPRIATE  
25 ADDRESS LISTED BELOW, WITH POSTAGE FULLY PREPAID FOR DELIVERY BY CERTI-  
26 FIED OR REGISTERED MAIL TO:

27 (1) (NAME OF OTHER LIVING PARENT) (INSERT ADDRESS OF OTHER LIVING  
28 PARENT);

29 (2) NAME OF THE COURT WHICH ISSUED THE ORDER THAT AWARDED PHYSICAL  
30 CUSTODY OF THE CHILD TO THE APPOINTING PARENT (INSERT ADDRESS OF COURT);

31 (3) THE COURT WHICH ISSUED THE LAST ORDER THAT CONCERNS THE CHILD, THE  
32 CHILD'S SUPPORT, CUSTODY OR VISITATION WITH THE CHILD (INSERT ADDRESS OF  
33 COURT); AND

34 (4) IF THERE IS NO COURT ORDER, THEN TO THE COURT CLERK IN THE COUNTY  
35 IN WHICH THE CHILD RESIDES (INSERT ADDRESS OF COURT CLERK)

36 DATE AND SIGNATURE. DATED THIS (INSERT DAY) DAY OF (INSERT MONTH AND  
37 YEAR).

38 SIGNED: (DESIGNATING PARENT OR GUARDIAN)

39 COUNTY OF \_\_\_\_\_

40 STATE OF \_\_\_\_\_

41 ON THIS (INSERT DAY) OF (INSERT MONTH AND YEAR) AT (INSERT CITY AND  
42 STATE), (INSERT NAME OF APPOINTING PARENT), APPEARED BEFORE ME, A NOTARY  
43 PUBLIC OF AND FOR THE COUNTY AND STATE FIRST ABOVE WRITTEN AND IDENTI-  
44 FIED HIMSELF OR HERSELF TO BE OR PERSONALLY KNOWN TO ME TO BE, (INSERT  
45 NAME OF APPOINTING PARENT) AND BEING FIRST DULY SWORN, SIGNED HIS OR HER  
46 SIGNATURE ABOVE.

47 (SEAL)

48 SIGNED (NAME OF NOTARY PUBLIC)

49 (PRINTED NAME OF NOTARY PUBLIC)

50 S 92. DUTIES OF A SHORT-TERM MILITARY SERVICE GUARDIAN OF A MINOR. 1.  
51 IMMEDIATELY UPON THE EFFECTIVE DATE OR THE APPOINTMENT OF A SHORT-TERM  
52 MILITARY SERVICE GUARDIAN, THE SHORT-TERM MILITARY SERVICE GUARDIAN  
53 SHALL ASSUME ALL DUTIES AS SHORT-TERM MILITARY SERVICE GUARDIAN OF THE  
54 MINOR AS PROVIDED IN THIS SECTION. THE SHORT-TERM MILITARY SERVICE GUAR-  
55 DIAN OF THE PERSON SHALL HAVE AUTHORITY TO ACT AS SHORT-TERM MILITARY  
56 SERVICE GUARDIAN WITHOUT DIRECTION OF COURT, FOR THE DURATION OF THE

1 APPOINTMENT WHICH IN NO CASE SHALL EXCEED A PERIOD OF ONE HUNDRED EIGHTY  
2 DAYS. THE AUTHORITY OF THE SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE  
3 LIMITED OR TERMINATED BY A COURT OF COMPETENT JURISDICTION.

4 2. UNLESS FURTHER SPECIFICALLY LIMITED BY THE INSTRUMENT APPOINTING  
5 THE SHORT-TERM MILITARY SERVICE GUARDIAN, A SHORT-TERM MILITARY SERVICE  
6 GUARDIAN SHALL HAVE THE AUTHORITY TO ACT AS A GUARDIAN OF THE PERSON OF  
7 A MINOR AS PRESCRIBED IN ARTICLE SIX OF THIS CHAPTER, BUT SHALL NOT HAVE  
8 ANY AUTHORITY TO ACT AS GUARDIAN OF THE ESTATE OF A MINOR, EXCEPT THAT A  
9 SHORT-TERM MILITARY SERVICE GUARDIAN SHALL HAVE THE AUTHORITY TO APPLY  
10 FOR AND RECEIVE ON BEHALF OF THE MINOR BENEFITS TO WHICH THE CHILD MAY  
11 BE ENTITLED FROM OR UNDER FEDERAL, STATE OR LOCAL ORGANIZATIONS OR  
12 PROGRAMS.

13 S 2. The military law is amended by adding a new section 255 to read  
14 as follows:

15 S 255. SHORT-TERM MILITARY SERVICE GUARDIAN. NOTWITHSTANDING ANY LAW,  
16 RULE OR REGULATION TO THE CONTRARY, CHILD CUSTODY PROCEEDINGS FILED IN A  
17 COURT OF COMPETENT JURISDICTION IN THIS STATE, INVOLVING A SHORT-TERM  
18 MILITARY SERVICE GUARDIAN SHALL BE GOVERNED BY ARTICLE SIX-A OF THE  
19 DOMESTIC RELATIONS LAW.

20 S 3. This act shall take effect on the one hundred twentieth day after  
21 it shall have become a law.