

4278

2009-2010 Regular Sessions

I N A S S E M B L Y

February 2, 2009

Introduced by M. of A. CROUCH -- Multi-Sponsored by -- M. of A.
BACALLES, BURLING, FINCH, OAKS, RAIA -- read once and referred to the
Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in
relation to the granting of custody of a minor

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

1 Section 1. Section 240 of the domestic relations law is amended by
2 adding a new subdivision 6 to read as follows:
3 6. NOTWITHSTANDING ANY OTHER PROVISION OF ANY LAW TO THE CONTRARY, NO
4 COURT SHALL AWARD CUSTODY TO OR ALLOW UNSUPERVISED VISITATION WITH A
5 PARENT OR ANY OTHER PERSON WHO HAS BEEN CONVICTED OF VIOLATING SECTION
6 130.20 (SEXUAL MISCONDUCT); 130.25 (RAPE IN THE THIRD DEGREE); 130.30
7 (RAPE IN THE SECOND DEGREE); 130.35 (RAPE IN THE FIRST DEGREE); 130.40
8 (CRIMINAL SEXUAL ACT IN THE THIRD DEGREE); 130.45 (CRIMINAL SEXUAL ACT
9 IN THE SECOND DEGREE); 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE);
10 130.55 (SEXUAL ABUSE IN THE THIRD DEGREE); 130.60 (SEXUAL ABUSE IN THE
11 SECOND DEGREE); 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); 130.67
12 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (AGGRAVATED SEXU-
13 AL ABUSE IN THE FIRST DEGREE); 255.25 (INCEST IN THE THIRD DEGREE);
14 255.26 (INCEST IN THE SECOND DEGREE); 255.27 (INCEST IN THE FIRST
15 DEGREE); 263.05 (USE OF A CHILD IN A SEXUAL PERFORMANCE); 263.10
16 (PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD); 263.15 (PROMOTING
17 A SEXUAL PERFORMANCE BY A CHILD); 235.21 (DISSEMINATING INDECENT MATERI-
18 AL TO MINORS IN THE SECOND DEGREE); 235.22 (DISSEMINATING INDECENT MATE-
19 RIAL TO MINORS IN THE FIRST DEGREE); 230.30 (PROMOTING PROSTITUTION IN
20 THE SECOND DEGREE); 230.32 (PROMOTING PROSTITUTION IN THE FIRST DEGREE);
21 OR SUBDIVISION TWO OF SECTION 230.25 (PROMOTING PROSTITUTION IN THE
22 THIRD DEGREE) OF THE PENAL LAW, UNLESS THE COURT FINDS THAT THERE IS NO
23 SIGNIFICANT RISK TO THE CHILD.

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

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1 S 2. Subdivision (a) of section 70 of the domestic relations law, as
2 amended by chapter 457 of the laws of 1988, is amended to read as
3 follows:

4 (a) Where a minor child is residing within this state, either parent
5 may apply to the supreme court for a writ of habeas corpus to have such
6 minor child brought before such court; and on the return thereof, the
7 court, on due consideration, may award the natural guardianship, charge
8 and custody of such child to either parent for such time, under such
9 regulations and restrictions, and with such provisions and directions,
10 as the case may require, and may at any time thereafter vacate or modify
11 such order. In all cases there shall be no prima facie right to the
12 custody of the child in either parent, but the court shall determine
13 solely what is for the best interest of the child, and what will best
14 promote its welfare and happiness, and make award accordingly SUBJECT,
15 HOWEVER, TO THE PROVISIONS OF SUBDIVISION SIX OF SECTION TWO HUNDRED
16 FORTY OF THIS CHAPTER.

17 S 3. Subdivisions (a), (b) and (c) of section 651 of the family court
18 act, subdivisions (a) and (c) as amended by chapter 85 of the laws of
19 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003,
20 are amended to read as follows:

21 (a) When referred from the supreme court or county court to the family
22 court, the family court has jurisdiction to determine, in accordance
23 with subdivision one of section two hundred forty of the domestic
24 relations law and with the same powers possessed by the supreme court in
25 addition to its own powers, habeas corpus proceedings and proceedings
26 brought by petition and order to show cause, for the determination of
27 the custody or visitation of minors SUBJECT, HOWEVER, TO THE LIMITATIONS
28 SET FORTH IN SUBDIVISION SIX OF SECTION TWO HUNDRED FORTY OF THE DOMES-
29 TIC RELATIONS LAW REGARDING THE AWARDING OF CUSTODY OR UNSUPERVISED
30 VISITATION TO A PERSON WHO HAS BEEN CONVICTED OF ANY OF THE OFFENSES
31 ENUMERATED IN SUCH SUBDIVISION.

32 (b) When initiated in the family court, the family court has jurisdic-
33 tion to determine, in accordance with subdivision one of section two
34 hundred forty of the domestic relations law and with the same powers
35 possessed by the supreme court in addition to its own powers, habeas
36 corpus proceedings and proceedings brought by petition and order to show
37 cause, for the determination of the custody or visitation of minors,
38 including applications by a grandparent or grandparents for visitation
39 or custody rights pursuant to section seventy-two or two hundred forty
40 of the domestic relations law SUBJECT, HOWEVER, TO THE LIMITATIONS SET
41 FORTH IN SUBDIVISION SIX OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC
42 RELATIONS LAW REGARDING THE AWARDING OF CUSTODY OR UNSUPERVISED VISITA-
43 TION TO A PERSON WHO HAS BEEN CONVICTED OF ANY OF THE OFFENSES ENUMER-
44 ATED IN SUCH SUBDIVISION.

45 (c) When initiated in the family court pursuant to a petition under
46 part eight of article ten of this act or section three hundred fifty-
47 eight-a of the social services law, the family court has jurisdiction to
48 enforce or modify orders or judgments of the supreme court relating to
49 the visitation of minors in foster care, notwithstanding any limitation
50 contained in subdivision (b) of section four hundred sixty-seven of this
51 act BUT SUBJECT, HOWEVER, TO THE LIMITATIONS SET FORTH IN SUBDIVISION
52 SIX OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW REGARDING
53 THE AWARDING OF CUSTODY OR UNSUPERVISED VISITATION TO A PERSON WHO HAS
54 BEEN CONVICTED OF ANY OF THE OFFENSES ENUMERATED IN SUCH SUBDIVISION.

55 S 4. This act shall take effect immediately.