

5882

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. ESPAILLAT -- 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The domestic relations law is amended by adding a new arti-
2 cle 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

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

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1 SHALL BE SIGNED BY, OR AT THE DIRECTION OF, THE APPOINTING PARENT IN THE
2 PRESENCE OF AT LEAST TWO CREDIBLE WITNESSES, AT LEAST EIGHTEEN YEARS OF
3 AGE, NEITHER OF WHOM IS RELATED TO THE PARENT NOR THE PERSON APPOINTED
4 AS THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE PERSON APPOINTED AS THE
5 SHORT-TERM MILITARY SERVICE GUARDIAN SHALL ALSO SIGN THE WRITTEN INSTRU-
6 MENT, BUT NEED NOT SIGN AT THE SAME TIME AS THE APPOINTING PARENT.

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

10 (A) WHO HAS JOINT CUSTODY OF THE CHILD,
11 (B) WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED,
12 (C) WHOSE WHEREABOUTS ARE KNOWN, AND
13 (D) WHO IS WILLING AND ABLE TO MAKE AND CARRY OUT DAY-TO-DAY CHILD
14 CARE DECISIONS CONCERNING THE MINOR, UNLESS THE NON-APPOINTING PARENT
15 CONSENTS TO THE APPOINTMENT BY SIGNING THE WRITTEN INSTRUMENT OF
16 APPOINTMENT.

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

23 (A) THE LAST KNOWN ADDRESS OF THE OTHER LIVING PARENT,
24 (B) THE COURT WHICH ISSUED THE ORDER THAT AWARDED PHYSICAL CUSTODY OF
25 THE CHILD TO THE APPOINTING PARENT,
26 (C) THE COURT (IF DIFFERENT FROM THE COURT THAT AWARDED PHYSICAL
27 CUSTODY OF THE CHILD TO THE APPOINTING PARENT) WHICH ISSUED THE LAST
28 ORDER THAT CONCERNS THE CHILD, THE CHILD'S SUPPORT, OR CUSTODY OF OR
29 VISITATION WITH THE CHILD, AND
30 (D) IF THERE IS NO COURT ORDER, THEN TO THE COURT CLERK IN THE COUNTY
31 IN WHICH THE CHILD RESIDES.

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

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

1 6. THE APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN OR
2 SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN DOES NOT AFFECT THE
3 RIGHTS OF THE OTHER PARENT IN THE MINOR.

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

6 APPOINTMENT OF SHORT-TERM MILITARY SERVICE GUARDIAN

7 IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS

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

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

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

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

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

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

34 () OTHER (INSERT OTHER).

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

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

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

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

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

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

50 SIGNED: (APPOINTING PARENT)

51 6. WITNESSES. I SAW THE APPOINTING PARENT SIGN THIS INSTRUMENT OR I
52 SAW THE PARENT DIRECT SOMEONE TO SIGN THIS INSTRUMENT FOR THE PARENT.
53 THEN I SIGNED THIS INSTRUMENT AS A WITNESS IN THE PRESENCE OF THE
54 PARENT. I AM NOT APPOINTED IN THIS INSTRUMENT TO ACT AS THE SHORT-TERM
55 MILITARY SERVICE GUARDIAN FOR THE CHILD. I AM NOT RELATED TO THE PARENT

1 OR TO THE PERSON APPOINTED AS THE SHORT-TERM MILITARY SERVICE GUARDIAN.
2 (INSERT SPACE FOR NAMES, ADDRESSES, AND SIGNATURES OF TWO (2) WITNESSES)

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

6 SIGNED: (SHORT-TERM MILITARY SERVICE GUARDIAN)

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

11 SIGNED: (CONSENTING PARENT)

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

21 SWORN STATEMENT OF MAILING

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

29 (1) (NAME OF OTHER LIVING PARENT) (INSERT ADDRESS OF OTHER LIVING
30 PARENT);

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

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

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

38 DATE AND SIGNATURE. DATED THIS (INSERT DAY) DAY OF (INSERT MONTH AND
39 YEAR).

40 SIGNED: (DESIGNATING PARENT OR GUARDIAN)

41 COUNTY OF _____

42 STATE OF _____

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

49 (SEAL)

50 SIGNED (NAME OF NOTARY PUBLIC)

51 (PRINTED NAME OF NOTARY PUBLIC)

52 S 92. DUTIES OF A SHORT-TERM MILITARY SERVICE GUARDIAN OF A MINOR. 1.
53 IMMEDIATELY UPON THE EFFECTIVE DATE OR THE APPOINTMENT OF A SHORT-TERM
54 MILITARY SERVICE GUARDIAN, THE SHORT-TERM MILITARY SERVICE GUARDIAN
55 SHALL ASSUME ALL DUTIES AS SHORT-TERM MILITARY SERVICE GUARDIAN OF THE
56 MINOR AS PROVIDED IN THIS SECTION. THE SHORT-TERM MILITARY SERVICE GUAR-

1 DIAN OF THE PERSON SHALL HAVE AUTHORITY TO ACT AS SHORT-TERM MILITARY
2 SERVICE GUARDIAN WITHOUT DIRECTION OF COURT, FOR THE DURATION OF THE
3 APPOINTMENT WHICH IN NO CASE SHALL EXCEED A PERIOD OF ONE HUNDRED EIGHTY
4 DAYS. THE AUTHORITY OF THE SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE
5 LIMITED OR TERMINATED BY A COURT OF COMPETENT JURISDICTION.

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

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

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

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