

3865

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Court Administration) -- 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 notices to non-marital fathers in adoption, surrenders and termination of parental rights proceedings and consents to adoptions in family and surrogate's courts

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

1 Section 1. Paragraphs (d) and (e) of subdivision 1 of section 111 of
2 the domestic relations law, as amended by chapter 575 of the laws of
3 1980, are amended to read as follows:
4 (d) Of the father, whether adult or infant, of a child born out-of-
5 wedlock and [placed with the adoptive parents] more than six months
6 [after birth] OLD AT THE TIME OF THE FILING OF A PETITION TO TERMINATE
7 PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION
8 FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO
9 ADOPTION OR PETITION FOR ADOPTION, WHICHEVER IS EARLIEST, but only if
10 such father shall have:
11 (I) BEEN NAMED AS THE FATHER ON THE CHILD'S BIRTH CERTIFICATE; OR
12 (II) BEEN ADJUDICATED AS THE FATHER BY A COURT IN THE STATE OF NEW
13 YORK; OR
14 (III) BEEN ADJUDICATED BY A COURT OF ANOTHER STATE OR TERRITORY OF THE
15 UNITED STATES TO BE THE FATHER OF THE CHILD, WHEN A CERTIFIED COPY OF
16 THE COURT ORDER HAS BEEN FILED WITH THE PUTATIVE FATHER REGISTRY, PURSU-
17 ANT TO SECTION THREE HUNDRED SEVENTY-TWO-C OF THE SOCIAL SERVICES LAW;
18 OR
19 (IV) ACKNOWLEDGED PATERNITY IN A FORM DULY EXECUTED PURSUANT TO
20 SECTION FORTY-ONE HUNDRED THIRTY-FIVE-B OF THE PUBLIC HEALTH LAW OR IN A
21 FORM RECOGNIZED BY THE STATE OR TERRITORY OF THE UNITED STATES IN WHICH

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

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1 IT WAS EXECUTED TO HAVE THE FORCE AND EFFECT OF AN ORDER OF PATERNITY OR
2 FILIATION; OR

3 (V) maintained substantial and continuous or repeated contact with the
4 child as manifested by [: (i)] the payment by the father toward the
5 support of the child of a fair and reasonable sum, according to the
6 father's means, and either

7 [(ii)] A. the father's visiting the child at least [monthly] TWICE PER
8 MONTH when physically and financially able to do so and not prevented
9 from doing so by the person or authorized agency having lawful custody
10 of the child, or

11 [(iii)] B. the father's regular communication with the child or with
12 the person or agency having the care or custody of the child, when phys-
13 ically and financially unable to visit the child or prevented from doing
14 so by the person or authorized agency having lawful custody of the
15 child. [The] FOR PURPOSES OF THIS SUBPARAGRAPH, THE subjective intent of
16 the father, whether expressed or otherwise, unsupported by evidence of
17 acts specified in this paragraph manifesting such intent, shall not
18 preclude a determination that the father failed to maintain substantial
19 and continuous or repeated contact with the child. In making such a
20 determination, the court shall not require a showing of diligent efforts
21 by any person or agency to encourage the father to perform the acts
22 specified in this paragraph.

23 (VI) A father, whether adult or infant, of a child born out-of-wed-
24 lock, who openly lived with the child for a period of six months [within
25 the one year period] immediately preceding the EARLIER OF THE placement
26 of the child for adoption OR PLACEMENT OF THE CHILD IN FOSTER CARE and
27 who during such period openly held himself out to be the father of such
28 child shall be deemed to have maintained substantial and continuous
29 contact with the child for the purpose of this [subdivision] PARAGRAPH.

30 (e) Of the father, whether adult or infant, of a child born out-of-
31 wedlock who is under the age of six months [at the time he is placed for
32 adoption] OLD AT THE TIME OF THE FILING OF A PETITION TO TERMINATE
33 PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION
34 FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO
35 ADOPTION OR PETITION FOR ADOPTION, WHICHEVER IS EARLIEST, but only if:

36 (i) such father openly lived with the child or the child's mother for a
37 continuous period of six months immediately preceding the placement of
38 the child for adoption; and (ii) such father openly held himself out to
39 be the father of such child during such period; and (iii) such father
40 paid a fair and reasonable sum, in accordance with his means, for the
41 medical, hospital and nursing expenses incurred in connection with the
42 mother's pregnancy or with the birth of the child.

43 S 2. Subdivisions 1 and 2 of section 111-a of the domestic relations
44 law, subdivision 1 as amended by chapter 353 of the laws of 1993, subdi-
45 vision 2 as added by chapter 665 of the laws of 1976, paragraph (e) of
46 subdivision 2 as amended by chapter 862 of the laws of 1977 and para-
47 graphs (f) and (g) as amended and paragraph and (h) of subdivision 2 as
48 added by chapter 575 of the laws of 1980, are amended to read as
49 follows:

50 1. Notwithstanding any inconsistent provisions of this or any other
51 law, and in addition to the notice requirements of any law pertaining to
52 persons other than those specified in subdivision two of this section,
53 notice as provided herein shall be given to the persons specified in
54 subdivision two of this section of any adoption proceeding initiated
55 pursuant to this article or of any proceeding initiated pursuant to
56 section one hundred fifteen-b OF THIS ARTICLE relating to the revocation

1 of an adoption consent, when such proceeding involves a child born out-
2 of-wedlock provided, however, that such notice shall not be required to
3 be given to any person who previously has been given notice of any
4 [proceeding] PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO
5 EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL
6 SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION involving the child[,
7 pursuant to section three hundred eighty-four-c of the social services
8 law,] and provided further that notice in an adoption proceeding, pursu-
9 ant to this section shall not be required to be given to any person who
10 has previously received notice of any proceeding pursuant to section one
11 hundred fifteen-b OF THIS ARTICLE. In addition to such other require-
12 ments as may be applicable to the petition in any proceeding in which
13 notice must be given pursuant to this section, the petition shall set
14 forth the names and last known addresses of all persons required to be
15 given notice of the proceeding, pursuant to this section, and there
16 shall be shown by the petition or by affidavit or other proof satisfac-
17 tory to the court that there are no persons other than those set forth
18 in the petition who are entitled to notice. For the purpose of determin-
19 ing persons entitled to notice of adoption proceedings initiated pursu-
20 ant to this article, persons specified in subdivision two of this
21 section shall not include any person who has been convicted of rape in
22 the first degree involving forcible compulsion, under subdivision one of
23 section 130.35 of the penal law, when the child who is the subject of
24 the proceeding was conceived as a result of such rape.

25 2. Persons entitled to notice, pursuant to subdivision one of this
26 section, shall include:

27 (a) [any person adjudicated by a court in this state to be the father
28 of the child;

29 (b) any person adjudicated by a court of another state or territory of
30 the United States to be the father of the child, when a certified copy
31 of the court order has been filed with the putative father registry,
32 pursuant to section three hundred seventy-two-c of the social services
33 law;

34 (c)] any person who has timely filed an unrevoked notice of intent to
35 claim paternity of the child, pursuant to section three hundred seven-
36 ty-two-c of the social services law;

37 [(d) any person who is recorded on the child's birth certificate as
38 the child's father;

39 (e)] (B) any person who is openly living with the child and the
40 child's mother at the time the proceeding is initiated and who is hold-
41 ing himself out to be the child's father;

42 [(f)] (C) any person who has been identified as the child's father by
43 the mother in written, sworn statement;

44 [(g)] (D) any person who was married to the child's mother within six
45 months subsequent to the birth of the child and prior to the execution
46 of a surrender instrument or the initiation of a proceeding pursuant to
47 section three hundred eighty-four-b of the social services law; [and

48 (h) any person who has filed with the putative father registry an
49 instrument acknowledging paternity of the child, pursuant to section
50 4-1.2 of the estates, powers and trusts law]

51 (E) ANY PERSON WHO, SUBSEQUENT TO THE CHILD'S MOST RECENT ENTRY INTO
52 FOSTER CARE, HAS FILED AND SERVED A CUSTODY PETITION UPON THE AGENCY
53 HAVING CARE AND CUSTODY OF THE CHILD AND WHO APPEARED IN COURT ON THAT
54 PETITION ON THE DATE FOR RETURN OF PROCESS; AND

55 (F) ANY PERSON IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR
56 FILIATION OR AN ACKNOWLEDGEMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS

1 BEEN DETERMINED BY THE COURT TO BE ENTITLED TO COMITY IN THIS STATE,
2 PROVIDED THAT IN SUCH CASE, THE COURT SHALL DETERMINE WHETHER SUCH
3 PERSON IS ENTITLED TO CONSENT TO THE ADOPTION PURSUANT TO SECTION ONE
4 HUNDRED ELEVEN OF THIS TITLE OR IS SOLELY ENTITLED TO NOTICE PURSUANT TO
5 THIS SECTION.

6 S 3. Subdivisions 1 and 2 of section 384-c of the social services law,
7 subdivision 1 as amended by chapter 18 of the laws of 1979, subdivision
8 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivi-
9 sion 2 as amended by chapter 862 of the laws of 1977 and paragraphs (f)
10 and (g) as amended and paragraph (h) of subdivision 2 as added by chap-
11 ter 575 of the laws of 1980, are amended to read as follows:

12 1. Notwithstanding any inconsistent provision of this or any other
13 law, and in addition to the notice requirements of any law pertaining to
14 persons other than those specified in subdivision two of this section,
15 notice as provided herein shall be given to the persons specified in
16 subdivision two of this section of any [proceeding initiated pursuant to
17 sections three hundred fifty-eight-a, three hundred eighty-four, and
18 three hundred eighty-four-b of this chapter,] PETITION TO TERMINATE
19 PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION
20 FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO
21 ADOPTION involving [a] THE child IF THE CHILD WAS born out-of-wedlock.
22 Persons specified in subdivision two of this section shall not include
23 any person who has been convicted of rape in the first degree involving
24 forcible compulsion, under subdivision one of section 130.35 of the
25 penal law, when the child who is the subject of the proceeding was
26 conceived as a result of such rape.

27 2. Persons entitled to notice, pursuant to subdivision one of this
28 section, shall include:

29 (a) [any person adjudicated by a court in this state to be the father
30 of the child;

31 (b) any person adjudicated by a court of another state or territory of
32 the United States to be the father of the child, when a certified copy
33 of the court order has been filed with the putative father registry,
34 pursuant to section three hundred seventy-two-c of this chapter;

35 (c)] any person who has timely filed an unrevoked notice of intent to
36 claim paternity of the child, pursuant to section three hundred seven-
37 ty-two-c of this chapter;

38 [(d) any person who is recorded on the child's birth certificate as
39 the child's father;

40 (e)] (B) any person who is openly living with the child and the
41 child's mother at the time the proceeding is initiated or at the time
42 the child was placed in the care of an authorized agency, and who is
43 holding himself out to be the child's father;

44 [(f)] (C) any person who has been identified as the child's father by
45 the mother in written, sworn statement;

46 [(g)] (D) any person who was married to the child's mother within six
47 months subsequent to the birth of the child and prior to the execution
48 of a surrender instrument or the initiation of a proceeding pursuant to
49 section three hundred eighty-four-b OF THIS CHAPTER; [and

50 (h) any person who has filed with the putative father registry an
51 instrument acknowledging paternity of the child, pursuant to section
52 4-1.2 of the estates, powers and trusts law]

53 (E) ANY PERSON WHO, SUBSEQUENT TO THE CHILD'S MOST RECENT ENTRY INTO
54 FOSTER CARE, HAS FILED AND SERVED A CUSTODY PETITION UPON THE AGENCY
55 HAVING CARE AND CUSTODY OF THE CHILD AND WHO APPEARED IN COURT ON THAT
56 PETITION ON THE DATE FOR RETURN OF PROCESS; AND

1 (F) ANY PERSON IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR
2 FILIATION OR AN ACKNOWLEDGMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS
3 BEEN DETERMINED BY THE COURT TO BE ENTITLED TO COMITY IN THIS STATE,
4 PROVIDED THAT IN SUCH CASE, THE COURT SHALL DETERMINE WHETHER SUCH
5 PERSON IS ENTITLED TO CONSENT TO THE ADOPTION PURSUANT TO SECTION ONE
6 HUNDRED ELEVEN OF THE DOMESTIC RELATIONS LAW OR IS SOLELY ENTITLED TO
7 NOTICE PURSUANT TO THIS SECTION AND SECTION ONE HUNDRED ELEVEN-A OF THE
8 DOMESTIC RELATIONS LAW.

9 S 4. This act shall take effect on the ninetieth day after it shall
10 have become a law and shall apply to petitions for adoption, termination
11 of parental rights, approvals of extra-judicial surrenders or extra-ju-
12 dicial consents to adoption or applications to execute judicial surren-
13 ders filed on or after such effective date; provided, however, that this
14 act shall not apply to cases in which judicial determinations had been
15 made prior to such effective date regarding putative fathers entitled to
16 consent to adopt or to notice of adoption, termination of parental
17 rights, approvals of extra-judicial surrenders or extra-judicial
18 consents to adoption or applications to execute judicial surrenders.