

4684

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in
relation to allowing modification of child support orders or judgments
for persons whose income has been reduced due to incarceration

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

1 Section 1. Paragraph b of subdivision 9 of part B of section 236 of
2 the domestic relations law, as amended by chapter 354 of the laws of
3 1993, is amended to read as follows:
4 b. Upon application by either party, the court may annul or modify any
5 prior order or judgment as to maintenance or child support, upon a show-
6 ing of the recipient's inability to be self-supporting or a substantial
7 change in circumstance or termination of child support awarded pursuant
8 to section two hundred forty of this article, including financial hard-
9 ship. FOR THE PURPOSES OF MODIFICATION OF ANY PRIOR ORDER OR JUDGMENT
10 OF CHILD SUPPORT, THE COURT MAY, IN ITS DISCRETION, CONSIDER A REDUCTION
11 IN INCOME DUE TO INCARCERATION TO BE A SUBSTANTIAL CHANGE IN CIRCUM-
12 STANCES PROVIDED SUCH INCARCERATION IS NOT THE RESULT OF THE NON-PAYMENT
13 OF CHILD SUPPORT OR AN OFFENSE AGAINST THE CUSTODIAL PARENT OR CHILD
14 WHICH IS THE SUBJECT OF THE ORDER OR JUDGMENT. Where, after the effec-
15 tive date of this part, a separation agreement remains in force no
16 modification of a prior order or judgment incorporating the terms of
17 said agreement shall be made as to maintenance without a showing of
18 extreme hardship on either party, in which event the judgment or order
19 as modified shall supersede the terms of the prior agreement and judg-
20 ment for such period of time and under such circumstances as the court
21 determines. Provided, however, that no modification or annulment shall
22 reduce or annul any arrears of child support which have accrued prior to
23 the date of application to annul or modify any prior order or judgment
24 as to child support. The court shall not reduce or annul any arrears of
25 maintenance which have been reduced to final judgment pursuant to
26 section two hundred forty-four of this [chapter] ARTICLE. No other
27 arrears of maintenance which have accrued prior to the making of such

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

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1 application shall be subject to modification or annulment unless the
2 defaulting party shows good cause for failure to make application for
3 relief from the judgment or order directing such payment prior to the
4 accrual of such arrears and the facts and circumstances constituting
5 good cause are set forth in a written memorandum of decision. Such
6 modification may increase maintenance or child support nunc pro tunc as
7 of the date of application based on newly discovered evidence. Any
8 retroactive amount of maintenance, or child support due shall, except as
9 provided for herein, be paid in one sum or periodic sums, as the court
10 directs, taking into account any temporary or partial payments which
11 have been made. Any retroactive amount of child support due shall be
12 support arrears/past due support. In addition, such retroactive child
13 support shall be enforceable in any manner provided by law including,
14 but not limited to, an execution for support enforcement pursuant to
15 subdivision (b) of section fifty-two hundred forty-one of the civil
16 practice law and rules. When a child receiving support is a public
17 assistance recipient, or the order of support is being enforced or is to
18 be enforced pursuant to section one hundred eleven-g of the social
19 services law, the court shall establish the amount of retroactive child
20 support and notify the parties that such amount shall be enforced by the
21 support collection unit pursuant to an execution for support enforcement
22 as provided for in subdivision (b) of section fifty-two hundred forty-
23 one of the civil practice law and rules, or in such periodic payments as
24 would have been authorized had such an execution been issued. In such
25 case, the court shall not direct the schedule of repayment of retroac-
26 tive support. The provisions of this subdivision shall not apply to a
27 separation agreement made prior to the effective date of this part.

28 S 2. Section 451 of the family court act, as amended by chapter 533 of
29 the laws of 1999, is amended to read as follows:

30 S 451. Continuing jurisdiction. Except as provided in article five-B
31 of this act, the court has continuing jurisdiction over any support
32 proceeding brought under this article until its judgment is completely
33 satisfied and may modify, set aside or vacate any order issued in the
34 course of the proceeding, provided, however, that the modification, set
35 aside or vacatur shall not reduce or annul child support arrears accrued
36 prior to the making of an application pursuant to this section. FOR THE
37 PURPOSES OF MODIFICATION OF ANY PRIOR ORDER OR JUDGMENT OF CHILD
38 SUPPORT, THE COURT MAY, IN ITS DISCRETION, CONSIDER A REDUCTION IN
39 INCOME DUE TO INCARCERATION TO BE A SUBSTANTIAL CHANGE IN CIRCUMSTANCES
40 PROVIDED SUCH INCARCERATION IS NOT THE RESULT OF THE NON-PAYMENT OF
41 CHILD SUPPORT OR AN OFFENSE AGAINST THE CUSTODIAL PARENT OR CHILD WHICH
42 IS THE SUBJECT OF THE ORDER OR JUDGMENT. The court shall not reduce or
43 annul any other arrears unless the defaulting party shows good cause for
44 failure to make application for relief from the judgment or order
45 directing payment prior to the accrual of the arrears, in which case the
46 facts and circumstances constituting such good cause shall be set forth
47 in a written memorandum of decision. A modification may increase support
48 payments nunc pro tunc as of the date of the initial application for
49 support based on newly discovered evidence. Any retroactive amount of
50 support due shall be paid in one lump sum or periodic sums, as the court
51 directs, taking into account any amount of support which has been paid.
52 Upon an application to modify, set aside or vacate an order of support,
53 no hearing shall be required unless such application shall be supported
54 by affidavit and other evidentiary material sufficient to establish a
55 prima facie case for the relief requested.

56 S 3. This act shall take effect immediately.