

7523

I N S E N A T E

April 19, 2010

Introduced by Sen. RANZENHOFER -- 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, in relation to determinations of child custody in matrimonial actions

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

1 Section 1. Section 70 of the domestic relations law is amended by  
2 adding a new subdivision (c) to read as follows:

3 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
4 COURT SHALL NOT CONSIDER THE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF  
5 THE ARMED FORCES OF THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE  
6 STATE OF NEW YORK AS A DETRIMENTAL FACTOR TO THE AWARDING OF CUSTODY OF  
7 A CHILD WHERE A SUITABLE CHILD CARE PLAN FOR THE PERIOD OF SUCH DEPLOY-  
8 MENT HAS BEEN PRESENTED TO THE COURT BY THE PETITIONING PARENT.

9 S 2. Paragraph (a) of subdivision 1 of section 240 of the domestic  
10 relations law, as amended by chapter 538 of the laws of 2008, is amended  
11 and a new subdivision 1-d is added to read as follows:

12 (a) In any action or proceeding brought (1) to annul a marriage or to  
13 declare the nullity of a void marriage, or (2) for a separation, or (3)  
14 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-  
15 tion and order to show cause, the custody of or right to visitation with  
16 any child of a marriage, the court shall require verification of the  
17 status of any child of the marriage with respect to such child's custody  
18 and support, including any prior orders, and shall enter orders for  
19 custody and support as, in the court's discretion, justice requires,  
20 having regard to the circumstances of the case and of the respective  
21 parties and to the best interests of the child and subject to the  
22 provisions of [subdivision] SUBDIVISIONS one-c AND ONE-D of this  
23 section. Where either party to an action concerning custody of or a  
24 right to visitation with a child alleges in a sworn petition or  
25 complaint or sworn answer, cross-petition, counterclaim or other sworn  
26 responsive pleading that the other party has committed an act of domes-  
27 tic violence against the party making the allegation or a family or  
28 household member of either party, as such family or household member is

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

LBD03474-01-9

1 defined in article eight of the family court act, and such allegations  
2 are proven by a preponderance of the evidence, the court must consider  
3 the effect of such domestic violence upon the best interests of the  
4 child, together with such other facts and circumstances as the court  
5 deems relevant in making a direction pursuant to this section. If a  
6 parent makes a good faith allegation based on a reasonable belief  
7 supported by facts that the child is the victim of child abuse, child  
8 neglect, or the effects of domestic violence, and if that parent acts  
9 lawfully and in good faith in response to that reasonable belief to  
10 protect the child or seek treatment for the child, then that parent  
11 shall not be deprived of custody, visitation or contact with the child,  
12 or restricted in custody, visitation or contact, based solely on that  
13 belief or the reasonable actions taken based on that belief. If an alle-  
14 gation that a child is abused is supported by a preponderance of the  
15 evidence, then the court shall consider such evidence of abuse in deter-  
16 mining the visitation arrangement that is in the best interest of the  
17 child, and the court shall not place a child in the custody of a parent  
18 who presents a substantial risk of harm to that child. An order direct-  
19 ing the payment of child support shall contain the social security  
20 numbers of the named parties. In all cases there shall be no prima facie  
21 right to the custody of the child in either parent. Such direction  
22 shall make provision for child support out of the property of either or  
23 both parents. The court shall make its award for child support pursuant  
24 to subdivision one-b of this section. Such direction may provide for  
25 reasonable visitation rights to the maternal and/or paternal grandpar-  
26 ents of any child of the parties. Such direction as it applies to rights  
27 of visitation with a child remanded or placed in the care of a person,  
28 official, agency or institution pursuant to article ten of the family  
29 court act, or pursuant to an instrument approved under section three  
30 hundred fifty-eight-a of the social services law, shall be enforceable  
31 pursuant to part eight of article ten of the family court act and  
32 sections three hundred fifty-eight-a and three hundred eighty-four-a of  
33 the social services law and other applicable provisions of law against  
34 any person having care and custody, or temporary care and custody, of  
35 the child. Notwithstanding any other provision of law, any written  
36 application or motion to the court for the establishment, modification  
37 or enforcement of a child support obligation for persons not in receipt  
38 of public assistance and care must contain either a request for child  
39 support enforcement services which would authorize the collection of the  
40 support obligation by the immediate issuance of an income execution for  
41 support enforcement as provided for by this chapter, completed in the  
42 manner specified in section one hundred eleven-g of the social services  
43 law; or a statement that the applicant has applied for or is in receipt  
44 of such services; or a statement that the applicant knows of the avail-  
45 ability of such services, has declined them at this time and where  
46 support enforcement services pursuant to section one hundred eleven-g of  
47 the social services law have been declined that the applicant under-  
48 stands that an income deduction order may be issued pursuant to subdivi-  
49 sion (c) of section fifty-two hundred forty-two of the civil practice  
50 law and rules without other child support enforcement services and that  
51 payment of an administrative fee may be required. The court shall  
52 provide a copy of any such request for child support enforcement  
53 services to the support collection unit of the appropriate social  
54 services district any time it directs payments to be made to such  
55 support collection unit. Additionally, the copy of any such request  
56 shall be accompanied by the name, address and social security number of

1 the parties; the date and place of the parties' marriage; the name and  
2 date of birth of the child or children; and the name and address of the  
3 employers and income payors of the party from whom child support is  
4 sought or from the party ordered to pay child support to the other  
5 party. Such direction may require the payment of a sum or sums of money  
6 either directly to the custodial parent or to third persons for goods or  
7 services furnished for such child, or for both payments to the custodial  
8 parent and to such third persons; provided, however, that unless the  
9 party seeking or receiving child support has applied for or is receiving  
10 such services, the court shall not direct such payments to be made to  
11 the support collection unit, as established in section one hundred  
12 eleven-h of the social services law. Every order directing the payment  
13 of support shall require that if either parent currently, or at any time  
14 in the future, has health insurance benefits available that may be  
15 extended or obtained to cover the child, such parent is required to  
16 exercise the option of additional coverage in favor of such child and  
17 execute and deliver to such person any forms, notices, documents or  
18 instruments necessary to assure timely payment of any health insurance  
19 claims for such child.

20 1-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
21 COURT SHALL NOT CONSIDER THE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF  
22 THE ARMED FORCES OF THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE  
23 STATE OF NEW YORK AS A DETRIMENTAL FACTOR TO THE AWARDING OF CUSTODY OF  
24 A CHILD TO A PETITIONING PARENT WHERE A SUITABLE CHILD CARE PLAN FOR THE  
25 PERIOD OF SUCH DEPLOYMENT HAS BEEN PRESENTED TO THE COURT BY SUCH  
26 PARENT.

27 S 3. This act shall take effect immediately.