

4079

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. HAWLEY, KOLB, ERRIGO -- Multi-Sponsored by -- M.
of A. TOWNSEND -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to determi-
nations of child custody in matrimonial actions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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

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

LBD03474-01-9

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

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

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

30 S 3. This act shall take effect immediately.