S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 25, 2009

Introduced by M. of A. WEINSTEIN, CLARK, N. RIVERA, LIFTON -- Multi-Sponsored by -- M. of A. BARRA, BENJAMIN, BING, CYMBROWITZ, DESTITO, EDDINGTON, FARRELL, FIELDS, GALEF, HOOPER, JAFFEE, JOHN, McENENY, MOLINARO, NOLAN, PAULIN, REILLY, SCHROEDER, SEMINERIO, TITUS, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to the temporary suspension of the parental rights of persons convicted of certain felonies and incarcerated as a result thereof

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

Section 1. The penal law is amended by adding a new section 70.50 to read as follows:

S 70.50 TEMPORARY SUSPENSION OF PARENTAL RIGHTS UPON CONVICTION FOR CERTAIN FELONIES.

1. UPON CONVICTION OF ANY FELONY DEFINED IN ARTICLE ONE HUNDRED THIRTY OR TWO HUNDRED SIXTY-THREE, OR SECTION 255.25, 255.26 OR 255.27 OF THIS CHAPTER, WHERE THE DEFENDANT IS SENTENCED TO A PERIOD OF INCARCERATION, THE COURT SHALL CONSIDER THE EVALUATION REQUIRED BY PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION 390.30 OF THE CRIMINAL PROCEDURE LAW AND SHALL, IN THE COURT'S DISCRETION, IMPOSE A TEMPORARY SUSPENSION OF THE DEFENDANT'S PARENTAL RIGHTS.

2. ANY TEMPORARY SUSPENSION OF PARENTAL RIGHTS PURSUANT TO THIS SECTION SHALL NOT BE AN INDEPENDENT FACTOR TO COMMENCE A PROCEEDING UNDER ARTICLE TEN OF THE FAMILY COURT ACT.

3. UNLESS OTHERWISE STATED IN THE COURT'S ORDER OF TEMPORARY SUSPENSION OF PARENTAL RIGHTS, SUCH SUSPENSION SHALL CONTINUE UNTIL FURTHER ORDER OF A COURT OF COMPETENT JURISDICTION.

4. IN ADDITION TO THE AUTHORITY OF THE COURT TO TEMPORARILY SUSPEND PARENTAL RIGHTS ASSOCIATED WITH CUSTODY AND VISITATION, THE COURT SHALL HAVE THE ADDITIONAL AUTHORITY TO LIMIT OR SUSPEND THE MANNER OF THE

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

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DEFENDANT'S CONTACT WITH THE CHILD OR CHILDREN PENDING THE TEMPORARY SUSPENSION OF PARENTAL RIGHTS.

5. ANY TEMPORARY SUSPENSION OF PARENTAL RIGHTS IMPOSED UNDER THIS SECTION SHALL NOT BE THE SUBJECT OF A PLEA AGREEMENT. THE DEFENDANT SHALL HAVE THE RIGHT TO INDEPENDENTLY APPEAL THE ORDER OF TEMPORARY SUSPENSION OF PARENTAL RIGHTS, NOTWITHSTANDING ANY WAIVER OF APPEAL IN CONJUNCTION WITH THE UNDERLYING CONVICTION.

S 2. Subdivision 3 of section 390.30 of the criminal procedure law is amended by adding a new paragraph (c) to read as follows:

(C) THE REPORT SHALL ALSO CONTAIN AN EVALUATION OF THE APPROPRIATENESS OF THE DEFENDANT'S PARENTAL RIGHTS IF ANY. THE EVALUATION SHALL INCLUDE, BUT NOT BE LIMITED TO, CONSIDERATION OF THE CRIME OF WHICH THE DEFENDANT HAS BEEN CONVICTED, PRIOR CRIMINAL HISTORY, AGE OF THE CHILD OR CHILDREN, THE HISTORY OF THE DEFENDANT'S RELATIONSHIP WITH THE CHILDREN, THE DEFENDANT'S HISTORY OF SUBSTANCE ABUSE, INCLUDING ALCOHOL ABUSE, THE DEFENDANT'S HISTORY OF DOMESTIC VIOLENCE OR OTHER VIOLENT ACTS, THE LENGTH OF THE SENTENCE, THE DESIRES OF THE PERSON WITH WHOM THE CHILDREN ARE TO RESIDE DURING THE PERIOD OF INCARCERATION, THE EXISTENCE AND OPINION OF A CUSTODIAL PARTY, AND THE BEST INTERESTS OF THE CHILD OR CHILDREN.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.