

4640

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. MONTGOMERY, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in relation to preventing the unnecessary removal of children from a custodial parent who is the victim of domestic violence without further evidence of neglect by such parent

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

- 1 Section 1. Section 1022 of the family court act is amended by adding a
2 new subdivision (g) to read as follows:
3 (G) THERE SHALL BE A PRESUMPTION THAT A CUSTODIAL PARENT OR PERSON
4 LEGALLY RESPONSIBLE FOR A CHILD IS A FIT PARENT AND CAPABLE OF RAISING
5 SUCH CHILD OR CHILDREN IN A SAFE AND APPROPRIATE MANNER. AN ALLEGATION
6 OR FINDING THAT THE CUSTODIAL PARENT OR PERSON LEGALLY RESPONSIBLE FOR
7 THE CHILD WAS THE VICTIM OF DOMESTIC VIOLENCE SHALL BE INSUFFICIENT TO
8 ESTABLISH AN IMMINENT RISK TO THE CHILD'S LIFE OR HEALTH WITHOUT FURTHER
9 EVIDENCE THAT THE CHILD HAS BEEN ABUSED OR NEGLECTED BY THE VICTIM OF
10 THE DOMESTIC VIOLENCE.
11 S 2. Section 1024 of the family court act is amended by adding a new
12 subdivision (a-1) to read as follows:
13 (A-1) THERE SHALL BE A PRESUMPTION THAT A CUSTODIAL PARENT OR PERSON
14 LEGALLY RESPONSIBLE FOR A CHILD IS A FIT PARENT AND CAPABLE OF RAISING
15 SUCH CHILD OR CHILDREN IN A SAFE AND APPROPRIATE MANNER. AN ALLEGATION
16 OR FINDING THAT THE CUSTODIAL PARENT OR PERSON LEGALLY RESPONSIBLE FOR
17 THE CHILD WAS THE VICTIM OF DOMESTIC VIOLENCE SHALL BE INSUFFICIENT TO
18 ESTABLISH AN IMMINENT RISK TO THE CHILD'S LIFE OR HEALTH WITHOUT FURTHER
19 EVIDENCE THAT THE CHILD HAS BEEN ABUSED OR NEGLECTED BY THE VICTIM OF
20 THE DOMESTIC VIOLENCE.
21 S 3. Section 1028 of the family court act is amended by adding a new
22 subdivision (g) to read as follows:

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

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1 (G) THERE SHALL BE A PRESUMPTION THAT A CUSTODIAL PARENT OR PERSON
2 LEGALLY RESPONSIBLE FOR A CHILD IS A FIT PARENT AND CAPABLE OF RAISING
3 SUCH CHILD OR CHILDREN IN A SAFE AND APPROPRIATE MANNER. AN ALLEGATION
4 OR FINDING THAT THE CUSTODIAL PARENT OR PERSON LEGALLY RESPONSIBLE FOR
5 THE CHILD WAS THE VICTIM OF DOMESTIC VIOLENCE SHALL BE INSUFFICIENT TO
6 ESTABLISH AN IMMINENT RISK TO THE CHILD'S LIFE OR HEALTH WITHOUT FURTHER
7 EVIDENCE THAT THE CHILD HAS BEEN ABUSED OR NEGLECTED BY THE VICTIM OF
8 THE DOMESTIC VIOLENCE.

9 S 4. Subparagraph (B) of paragraph (i) of subdivision 4-a of section
10 371 of the social services law, as amended by chapter 984 of the laws of
11 1981, is amended to read as follows:

12 (B) in providing the child with proper supervision or guardianship, by
13 unreasonably inflicting or allowing to be inflicted harm, or a substan-
14 tial risk thereof, including the infliction of excessive corporal
15 punishment; or by misusing a drug or drugs; or by misusing alcoholic
16 beverages to the extent that he loses self-control of his actions; or by
17 any other acts of a similarly serious nature requiring the aid of the
18 court; provided, however, that where the respondent is voluntarily and
19 regularly participating in a rehabilitative program, evidence that the
20 respondent has repeatedly misused a drug or drugs or alcoholic beverages
21 to the extent that he loses self-control of his actions shall not estab-
22 lish that the child is a neglected child in the absence of evidence
23 establishing that the child's physical, mental or emotional condition
24 has been impaired or is in imminent danger of becoming impaired as set
25 forth in THIS paragraph [(i) of this subdivision], AND PROVIDED FURTHER,
26 THAT A CHILD SHALL NOT BE FOUND TO BE A NEGLECTED CHILD ON THE GROUNDS
27 THAT THE CUSTODIAL PARENT OR PERSON LEGALLY RESPONSIBLE FOR SUCH CHILD
28 IS A VICTIM OF DOMESTIC VIOLENCE UNLESS: THE CHILD EXPERIENCED THE
29 DOMESTIC VIOLENCE; IT IS ESTABLISHED BY EXPERT TESTIMONY THAT THE
30 SUBJECT CHILD WAS HARMED BY THE DOMESTIC VIOLENCE AND THAT THE SAFETY
31 RISK TO THE CHILD OUTWEIGHS THE RISKS ASSOCIATED WITH BEING SEPARATED
32 FROM THE CHILD'S CUSTODIAL PARENT; AND THE VICTIM WAS PROVIDED WITH
33 PREVENTIVE SERVICES THAT ARE APPROPRIATE, ACCESSIBLE AND SAFE INCLUDING,
34 BUT NOT LIMITED TO, REMOVAL OF THE BATTERER, ARREST AND PROSECUTION OF
35 THE BATTERER, PROVISION OF SAFE HOUSING AND ALTERNATIVE FINANCIAL
36 SUPPORT, AND THE VICTIM FAILED TO UTILIZE SUCH SERVICES AND IT IS DETER-
37 MINED THAT THE CHILD HAS BEEN HARMED OR PUT AT RISK BY SUCH FAILURE; or

38 S 5. Subparagraph (B) of paragraph (i) of subdivision (f) of section
39 1012 of the family court act, as amended by chapter 984 of the laws of
40 1981, is amended to read as follows:

41 (B) in providing the child with proper supervision or guardianship, by
42 unreasonably inflicting or allowing to be inflicted harm, or a substan-
43 tial risk thereof, including the infliction of excessive corporal
44 punishment; or by misusing a drug or drugs; or by misusing alcoholic
45 beverages to the extent that he loses self-control of his actions; or by
46 any other acts of a similarly serious nature requiring the aid of the
47 court; provided, however, that where the respondent is voluntarily and
48 regularly participating in a rehabilitative program, evidence that the
49 respondent has repeatedly misused a drug or drugs or alcoholic beverages
50 to the extent that he loses self-control of his actions shall not estab-
51 lish that the child is a neglected child in the absence of evidence
52 establishing that the child's physical, mental or emotional condition
53 has been impaired or is in imminent danger of becoming impaired as set
54 forth in THIS paragraph [(i) of this subdivision], AND PROVIDED FURTHER,
55 THAT A CHILD SHALL NOT BE FOUND TO BE A NEGLECTED CHILD ON THE GROUNDS
56 THAT THE CUSTODIAL PARENT OR PERSON LEGALLY RESPONSIBLE FOR SUCH CHILD

1 IS A VICTIM OF DOMESTIC VIOLENCE UNLESS: THE CHILD EXPERIENCED THE
2 DOMESTIC VIOLENCE AND THAT THE SAFETY RISK TO THE CHILD OUTWEIGHS THE
3 RISKS ASSOCIATED WITH BEING SEPARATED FROM THE CHILD'S CUSTODIAL PARENT;
4 IT IS ESTABLISHED BY EXPERT TESTIMONY THAT THE SUBJECT CHILD WAS HARMED
5 BY THE DOMESTIC VIOLENCE; AND THE VICTIM WAS PROVIDED WITH PREVENTIVE
6 SERVICES THAT ARE APPROPRIATE, ACCESSIBLE AND SAFE INCLUDING, BUT NOT
7 LIMITED TO, REMOVAL OF THE BATTERER, ARREST AND PROSECUTION OF THE
8 BATTERER, PROVISION OF SAFE HOUSING AND ALTERNATIVE FINANCIAL SUPPORT,
9 AND THE VICTIM FAILED TO UTILIZE SUCH SERVICES AND IT IS DETERMINED THAT
10 THE CHILD HAS BEEN HARMED OR PUT AT RISK BY SUCH FAILURE; or
11 S 6. This act shall take effect immediately.