

5902

2009-2010 Regular Sessions

I N S E N A T E

June 18, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the domestic relations law and the family court act, in relation to the child support obligation of indigent non-custodial parents

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

1 Section 1. Paragraphs (d), (g) and (i) of subdivision 1-b of section
2 240 of the domestic relations law, paragraphs (d) and (i) as added by
3 chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter
4 41 of the laws of 1992, are amended to read as follows:
5 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-
6 sion, where the annual amount of the basic child support obligation
7 would reduce the non-custodial parent's income below the poverty income
8 guidelines amount for a single person as reported by the federal depart-
9 ment of health and human services, the basic child support obligation
10 shall be twenty-five dollars per month [or the difference between the
11 non-custodial parent's income and the self-support reserve, whichever is
12 greater], PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC
13 CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL
14 BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F)
15 OF THIS SUBDIVISION, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO
16 PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPRO-
17 PRIATE. Notwithstanding the provisions of paragraph (c) of this subdivi-
18 sion, where the annual amount of the basic child support obligation
19 would reduce the non-custodial parent's income below the self-support
20 reserve but not below the poverty income guidelines amount for a single
21 person as reported by the federal department of health and human
22 services, the basic child support obligation shall be fifty dollars per
23 month or the difference between the non-custodial parent's income and

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

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1 the self-support reserve, whichever is greater, IN ADDITION TO ANY
2 AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH
3 SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS
4 SUBDIVISION.

5 (g) Where the court finds that the non-custodial parent's pro rata
6 share of the basic child support obligation is unjust or inappropriate,
7 the court shall order the non-custodial parent to pay such amount of
8 child support as the court finds just and appropriate, and the court
9 shall set forth, in a written order, the factors it considered; the
10 amount of each party's pro rata share of the basic child support obli-
11 gation; and the reasons that the court did not order the basic child
12 support obligation. Such written order may not be waived by either
13 party or counsel; provided, however, and notwithstanding any other
14 provision of law, the court shall not find that the non-custodial
15 parent's pro rata share of such obligation is unjust or inappropriate on
16 the basis that such share exceeds the portion of a public assistance
17 grant which is attributable to a child or children. [In no instance
18 shall the court order child support below twenty-five dollars per
19 month.] Where the non-custodial parent's income is less than or equal to
20 the poverty income guidelines amount for a single person as reported by
21 the federal department of health and human services, unpaid child
22 support arrears in excess of five hundred dollars shall not accrue.

23 (i) Where either or both parties are unrepresented, the court shall
24 not enter an order or judgment other than a temporary order pursuant to
25 section two hundred thirty-seven of this article, that includes a
26 provision for child support unless the unrepresented party or parties
27 have received a copy of the child support standards chart promulgated by
28 the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISA-
29 BILITY ASSISTANCE pursuant to subdivision two of section one hundred
30 eleven-i of the social services law. Where either party is in receipt of
31 child support enforcement services through the local social services
32 district, the local social services district child support enforcement
33 unit shall advise such party of the amount derived from application of
34 the child support percentage and that such amount serves as a starting
35 point for the determination of the child support award, and shall
36 provide such party with a copy of the child support standards chart. [In
37 no instance shall the court approve any voluntary support agreement or
38 compromise that includes an amount for child support less than twenty-
39 five dollars per month.]

40 S 2. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of
41 the family court act, paragraphs (d) and (i) as added by chapter 567 of
42 the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws
43 of 1992, are amended to read as follows:

44 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-
45 sion, where the annual amount of the basic child support obligation
46 would reduce the non-custodial parent's income below the poverty income
47 guidelines amount for a single person as reported by the federal depart-
48 ment of health and human services, the basic child support obligation
49 shall be twenty-five dollars per month [or the difference between the
50 non-custodial parent's income and the self-support reserve, whichever is
51 greater]; PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC
52 CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL
53 BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F)
54 OF THIS SUBDIVISION, THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT
55 TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND
56 APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this

1 subdivision, where the annual amount of the basic child support obli-
2 gation would reduce the non-custodial parent's income below the self-
3 support reserve but not below the poverty income guidelines amount for a
4 single person as reported by the federal department of health and human
5 services, the basic child support obligation shall be fifty dollars per
6 month or the difference between the non-custodial parent's income and
7 the self-support reserve, whichever is greater, IN ADDITION TO ANY
8 AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH
9 SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS
10 SUBDIVISION.

11 (g) Where the court finds that the non-custodial parent's pro rata
12 share of the basic child support obligation is unjust or inappropriate,
13 the court shall order the non-custodial parent to pay such amount of
14 child support as the court finds just and appropriate, and the court
15 shall set forth, in a written order, the factors it considered; the
16 amount of each party's pro rata share of the basic child support obli-
17 gation; and the reasons that the court did not order the basic child
18 support obligation. Such written order may not be waived by either
19 party or counsel; provided, however, and notwithstanding any other
20 provision of law, including but not limited to section four hundred
21 fifteen of this [act] PART, the court shall not find that the non-custo-
22 dial parent's pro rata share of such obligation is unjust or inappropri-
23 ate on the basis that such share exceeds the portion of a public assist-
24 ance grant which is attributable to a child or children. [In no instance
25 shall the court order child support below twenty-five dollars per
26 month.] Where the non-custodial parent's income is less than or equal to
27 the poverty income guidelines amount for a single person as reported by
28 the federal department of health and human services, unpaid child
29 support arrears in excess of five hundred dollars shall not accrue.

30 (i) Where either or both parties are unrepresented, the court shall
31 not enter an order or judgment other than a temporary order pursuant to
32 section two hundred thirty-seven of [this article] THE DOMESTIC
33 RELATIONS LAW, that includes a provision for child support unless the
34 unrepresented party or parties have received a copy of the child support
35 standards chart promulgated by the commissioner of [social services] THE
36 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision
37 two of section one hundred eleven-i of the social services law. Where
38 either party is in receipt of child support enforcement services through
39 the local social services district, the local social services district
40 child support enforcement unit shall advise such party of the amount
41 derived from application of the child support percentage and that such
42 amount serves as a starting point for the determination of the child
43 support award, and shall provide such party with a copy of the child
44 support standards chart. [In no instance shall the court approve any
45 voluntary support agreement or compromise that includes an amount for
46 child support less than twenty-five dollars per month.]

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