

1254

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. HAWLEY, KOLB -- 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 476 of the laws of 2009, 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

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

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

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

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

33 S 3. This act shall take effect immediately.