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

4946

2011-2012 Regular Sessions

I N A S S E M B L Y

February 9, 2011

Introduced by M. of A. MAYERSOHN, GALEF, CUSICK, P. RIVERA -- Multi-Sponsored by -- M. of A. BURLING, CROUCH, CYMBROWITZ, FINCH, FITZPATRICK, HOOPER, KOLB, McENENY, J. MILLER, NOLAN, PHEFFER, RAMOS, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Children and Families

AN ACT to amend the domestic relations law and the family court act, in relation to the custody of children by parents or guardians who have committed certain homicidal offenses

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

Section 1. Subdivision 1-c of section 240 of the domestic relations law, as added by chapter 150 of the laws of 1998, paragraph (a) as amended by chapter 378 of the laws of 1999 and paragraph (c) as amended by chapter 41 of the laws of 2010, is amended to read as follows:

1-c. (a) Notwithstanding any other provision of this chapter to the contrary, no court shall make an order providing for visitation or custody to a person who has been convicted of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, of a parent, legal custodian, legal guardian, sibling , half-sibling or step-sibling of any child who is the subject of the proceeding. Pending determination of a petition for visitation or custody, such child shall not visit and no person shall visit with such child present, such person who has been convicted of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE in this state, or convicted of [and] AN offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY

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

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NEGLIGENT HOMICIDE, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding [without the consent of such child's custodian or legal guardian].

(b) Notwithstanding paragraph (a) of this subdivision a court may order visitation or custody where:

(i) (A) such child is [of suitable] AT LEAST FIFTEEN YEARS OF age [to signify assent] and such child assents to such visitation or custody; or

(B) [if such child is not of suitable age to signify assent, the child's custodian or legal guardian assents to such order; or

(C)] the person who has been convicted of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, or an offense in another jurisdiction which if committed in this state, would constitute either murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, can prove by a preponderance of the evidence that:

(1) he or she, or a family or household member of either party, was a victim of domestic violence by the victim of such [murder] HOMICIDE; and

(2) the domestic violence was causally related to the commission of such [murder] HOMICIDE; and

(ii) the court finds that such visitation or custody is in the best interests of the child.

(c) For the purpose of making a determination pursuant to clause [(C)] (B) of subparagraph (i) of paragraph (b) of this subdivision, the court shall not be bound by the findings of fact, conclusions of law or ultimate conclusion as determined by the proceedings leading to the conviction of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE in this state or of an offense in another jurisdiction which, if committed in this state, would constitute murder in either the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, of a parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding. In all proceedings under this section, an attorney shall be appointed for the child.

S 2. Section 1085 of the family court act, as amended by chapter 378 of the laws of 1999 and subdivision 4 as amended by chapter 41 of the laws of 2010, is amended to read as follows:

S 1085. Visitation and custody rights unenforceable; murder of parent, custodian, guardian, or child. 1. No visitation or custody order shall be enforceable under this part by a person who has been convicted of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of the child unless:

(i) (A) such child is [of suitable] AT LEAST FIFTEEN YEARS OF age [to signify assent] and such child assents to such visitation or custody; or

(B) [if such child is not of suitable age to signify assent the child's custodian or legal guardian assents to such order; or

(C)] the person who has been convicted of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, or an offense in another jurisdiction which if committed in this state, would constitute either murder in the first or

second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, can prove by a preponderance of the evidence that:

(1) he or she, or a family or household member of either party, was a victim of domestic violence by the victim of such [murder] HOMICIDE; and

(2) the domestic violence was causally related to the commission of such [murder] HOMICIDE; and

(ii) the court finds that such visitation or custody is in the best interest of the child.

2. Pending determination of a petition for visitation or custody such child shall not visit and no person shall visit, with such child present, such person, legal guardian or legal custodian who has been convicted of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE in this state, or an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, of the other parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of such child[, without the consent of such child's custodian or legal guardian].

3. Nothing contained in this section shall be construed to require a court, without petition from any of the interested parties, to review a previously issued order of visitation or custody or denial of such petition.

4. For the purposes of making a determination pursuant to subparagraph [(C)] (B) of paragraph (i) of subdivision one of this section, the court shall not be bound by the findings of fact, conclusions of law or ultimate conclusion as determined by the proceedings leading to the conviction of murder in the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE in this state or of an offense in another jurisdiction which, if committed in this state, would constitute murder in either the first or second degree, MANSLAUGHTER IN THE FIRST OR SECOND DEGREE, OR CRIMINALLY NEGLIGENT HOMICIDE, of a parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding. In all proceedings under this section, an attorney shall be appointed for the child.

S 3. This act shall take effect immediately.