

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

700--A

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, GOTTFRIED, HEVESI, GALEF, PHEFFER, KELLNER, JAFFEE, MILLMAN, TITONE -- Multi-Sponsored by -- M. of A. GABRYSZAK, JEFFRIES, MAISEL, SCHIMEL, SWEENEY, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to determining parentage of a child for purposes of applying to the supreme court or family court for a writ of habeas corpus

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

1 Section 1. Section 70 of the domestic relations law, as amended by
2 chapter 457 of the laws of 1988, is amended to read as follows:
3 S 70. Habeas corpus for child detained by parent. (a) Where a minor
4 child is residing within this state, either parent may apply to the
5 supreme court OR FAMILY COURT for a writ of habeas corpus to have such
6 minor child brought before such court; and on the return thereof, the
7 court, on due consideration, may award the natural guardianship, charge
8 and custody of such child to either parent for such time, under such
9 regulations and restrictions, and with such provisions and directions,
10 as the case may require, and may at any time thereafter vacate or modify
11 such order. In all cases there shall be no prima facie right to the
12 custody of the child in either parent, but the court shall determine
13 solely what is for the best interest of the child, and what will best
14 promote [its] HIS OR HER welfare and happiness, and make award accord-
15 ingly.
16 (b) Any order under this section which applies to rights of visitation
17 with a child remanded or placed in the care of a person, official, agen-
18 cy or institution pursuant to article ten of the family court act or
19 pursuant to an instrument approved under section three hundred fifty-

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

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1 eight-a of the social services law, shall be enforceable pursuant to the
2 provisions of part eight of article ten of such act, sections three
3 hundred fifty-eight-a and three hundred eighty-four-a of the social
4 services law and other applicable provisions of law against any person
5 or official having care and custody, or temporary care and custody, of
6 such child.

7 (C) FOR PURPOSES OF THIS SECTION, THE TERM PARENT SHALL INCLUDE: (I)
8 AN INDIVIDUAL WHO IS THE BIRTH OR GENETIC PARENT OF SUCH MINOR CHILD,
9 (II) AN INDIVIDUAL WHO HAS LEGALLY ADOPTED SUCH MINOR CHILD, (III) AN
10 INDIVIDUAL WHO IS ADJUDICATED TO BE THE PARENT OF SUCH MINOR CHILD, (IV)
11 AN INDIVIDUAL WHO IS A PARENT OF SUCH MINOR CHILD PURSUANT TO THIS
12 SECTION OR OTHER LEGAL PRESUMPTION, (V) AN INDIVIDUAL WHO IS A PARENT OF
13 SUCH MINOR CHILD PURSUANT TO AN ACKNOWLEDGEMENT OF PARENTAGE, OR (VI) AN
14 INDIVIDUAL WHO IS A PARENT OF SUCH MINOR CHILD PURSUANT TO SUBDIVISION
15 (D) OR (E) OF THIS SECTION.

16 (D) FOR PURPOSES OF THIS SECTION, A PARENT SHALL INCLUDE A PERSON WHO
17 MUTUALLY CONSENTS WITH A WOMAN TO BE A PARENT OF HER CHILD CONCEIVED
18 USING DONOR SPERM, PROVIDED THAT SUCH AGREEMENT IS NOT IN CONTRAVENTION
19 OF ARTICLE EIGHT OF THIS CHAPTER REGARDING SURROGATE PARENTING.

20 (I) CONSENT BY A WOMAN AND A PERSON WHO INTENDS TO BE A PARENT OF A
21 CHILD BORN TO THE WOMAN USING DONOR SPERM SHALL BE IN WRITING SIGNED BY
22 THE WOMAN AND THE INTENDED PARENT BEFORE OR AFTER THE BIRTH OF THE
23 CHILD.

24 (II) FAILURE OF AN INDIVIDUAL TO SIGN A CONSENT AS PROVIDED IN PARA-
25 GRAPH (I) OF THIS SUBDIVISION SHALL NOT PRECLUDE A FINDING OF THE INDI-
26 VIDUAL'S PARENTAGE OF THE CHILD IF THE WOMAN AND THE INDIVIDUAL RESIDED
27 TOGETHER IN THE SAME HOUSEHOLD WITH THE CHILD AND OPENLY HELD THE CHILD
28 OUT AS THEIR OWN.

29 (III) AN INDIVIDUAL WHO DONATES SPERM FOR USE TO CONCEIVE A CHILD BY
30 ANOTHER PERSON, OTHER THAN THE DONOR'S SPOUSE OR DOMESTIC PARTNER AS
31 DEFINED IN SECTION TWENTY-EIGHT HUNDRED FIVE-Q OF THE PUBLIC HEALTH LAW,
32 IS NOT A PARENT OF A CHILD THEREBY CONCEIVED UNLESS THE DONOR AND THE
33 PERSON AGREE IN WRITING THAT THE DONOR SHALL BE A PARENT. NOTWITHSTAND-
34 ING ANY OTHER PROVISION OF LAW, GENETIC TEST RESULTS SHALL NOT ESTABLISH
35 PARENTAGE OF A SPERM DONOR UNLESS THE DONOR IS THE SPOUSE OR DOMESTIC
36 PARTNER OF THE CHILD'S MOTHER, OR THE DONOR AND THE CHILD'S MOTHER AGREE
37 IN WRITING THAT THE DONOR SHALL BE A PARENT.

38 (E) FOR PURPOSES OF THIS SECTION, A PARENT SHALL ALSO INCLUDE A PERSON
39 WHO DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT (I) THE PARENT OF
40 SUCH MINOR CHILD CONSENTED TO THE PERSON'S FORMATION OF A PARENT-CHILD
41 RELATIONSHIP WITH THE CHILD, SUCH CONSENT TO BE EXPRESSED IN WRITTEN
42 FORM, INCLUDING BUT NOT LIMITED TO, ANY OF THE FOLLOWING EXAMPLES: A
43 BIRTH CERTIFICATE, A SIGNED LETTER AGREEMENT, AN EXECUTED CONTRACT, A
44 BIRTH ANNOUNCEMENT, A RELIGIOUS CEREMONY DOCUMENT, OR A SCHOOL OR
45 MEDICAL RECORD; (II) THE PERSON RESIDED IN THE SAME HOUSEHOLD WITH THE
46 CHILD FOR A LENGTH OF TIME SUFFICIENT, GIVEN THE AGE OF THE CHILD, TO
47 HAVE ESTABLISHED WITH THE CHILD A BONDED, DEPENDENT RELATIONSHIP
48 PARENTAL IN NATURE; (III) THE PERSON PERFORMED PARENTAL FUNCTIONS FOR
49 THE CHILD TO A SIGNIFICANT DEGREE; AND (IV) THE PERSON FORMED A PARENT-
50 CHILD BOND WITH THE CHILD. A PARENT UNDER THIS SUBDIVISION SHALL NOT
51 INCLUDE A GRANDPARENT OF SUCH MINOR CHILD, A PERSON WHOSE RELATIONSHIP
52 WITH THE CHILD IS BASED UPON PAYMENT BY THE PARENT, OR A PERSON WHO HAS
53 NOT AT ANY TIME BEEN IN A COMMITTED RELATIONSHIP WITH THE PARENT OF THE
54 CHILD.

55 (F) A PARENT UNDER SUBDIVISION (C), (D) OR (E) OF THIS SECTION SHALL
56 BE DEEMED TO BE THE LEGAL PARENT OF SUCH MINOR CHILD FOR ALL PURPOSES.

1 (G) THIS SECTION IS HEREBY DECLARED TO BE A REMEDIAL STATUTE AND IS TO
2 BE CONSTRUED LIBERALLY TO SECURE THE BENEFICIAL INTERESTS AND PURPOSES
3 THEREOF IN THE BEST INTERESTS OF THE CHILD.

4 S 2. This act shall take effect immediately and shall apply to all
5 proceedings filed pursuant to section 70 of the domestic relations law,
6 whether pending as of the effective date of this act or filed thereaft-
7 er.