

2921

2011-2012 Regular Sessions

I N   S E N A T E

February 3, 2011

---

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, in relation to allowing a person acting as de facto parent to apply to the supreme 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. Subdivision (a) of section 70 of the domestic relations  
2     law, as amended by chapter 457 of the laws of 1988, is amended and a new  
3     subdivision (c) is added to read as follows:  
4     (a) Where a minor child is residing within this state, either parent  
5     OR DE FACTO PARENT may apply to the supreme court for a writ of habeas  
6     corpus to have such minor child brought before such court; and on the  
7     return thereof, the court, on due consideration, may award the natural  
8     guardianship, charge and custody of such child to either parent OR DE  
9     FACTO PARENT for such time, under such regulations and restrictions, and  
10    with such provisions and directions, as the case may require, and may at  
11    any time thereafter vacate or modify such order. In all cases there  
12    shall be no prima facie right to the custody of the child in either  
13    parent OR DE FACTO PARENT, but the court shall determine solely what is  
14    for the best interest of the child, and what will best promote [its] HIS  
15    OR HER welfare and happiness, and make award accordingly.  
16    (C) FOR PURPOSES OF THIS SECTION, DE FACTO PARENT SHALL MEAN A PERSON  
17    WHO (I) HAS A RELATIONSHIP WITH SUCH MINOR CHILD THAT WAS FORMED WITH  
18    THE CONSENT OF THE LEGAL PARENT AND FOSTERED BY SUCH LEGAL PARENT; (II)  
19    LIVED WITH SUCH MINOR CHILD; (III) PERFORMED PARENTAL FUNCTIONS FOR SUCH  
20    MINOR CHILD TO A SIGNIFICANT DEGREE; AND (IV) FORMED A PARENT-CHILD BOND  
21    WITH SUCH MINOR CHILD. A RELATIONSHIP BASED UPON PAYMENT BY THE LEGAL  
22    PARENT SHALL PRECLUDE A PERSON FROM ESTABLISHING DE FACTO PARENT STATUS.  
23    S 2. This act shall take effect immediately.

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

LBD02330-01-1