

S. 5473

A. 7931

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

May 25, 2011

IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

IN ASSEMBLY -- Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the domestic relations law, the family court act and the criminal procedure law, in relation to child support obligations of inmates; and to amend section 13 of chapter 182 of the laws of 2010 amending the tax law, the family court act, the domestic relations law and the social services law relating to the modification of child support orders, employer reporting of new hires and quarterly earnings, work programs and the noncustodial earned income tax credit, in relation to the effectiveness of certain provisions thereof

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

1 Section 1. The correction law is amended by adding a new section 149-a
2 to read as follows:
3 S 149-A. NOTIFICATION TO INMATES OF THEIR ABILITY TO SEEK MODIFICA-
4 TIONS OF AN ORDER OF CHILD SUPPORT. NOTWITHSTANDING ANY PROVISION OF LAW
5 TO THE CONTRARY, THE DEPARTMENT SHALL NOTIFY ALL INMATES RESIDING IN A
6 CORRECTIONAL FACILITY WITHIN THE STATE OF NEW YORK OF THE POSSIBILITY
7 THAT THEY MAY BE ABLE TO MODIFY AN EXISTING CHILD SUPPORT ORDER BASED ON
8 A "SUBSTANTIAL CHANGE IN CIRCUMSTANCES" IN ACCORDANCE WITH SECTION TWO
9 HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR
10 HUNDRED FIFTY-ONE OF THE FAMILY COURT ACT.
11 S 2. Paragraphs (d), (g) and (i) of subdivision 1-b of section 240 of
12 the domestic relations law, paragraphs (d) and (i) as added by chapter
13 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of
14 the laws of 1992, are amended to read as follows:

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

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1 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-
2 sion, where the annual amount of the basic child support obligation
3 would reduce the non-custodial parent's income below the poverty income
4 guidelines amount for a single person as reported by the federal depart-
5 ment of health and human services[, the basic child support obligation
6 shall be twenty-five dollars per month or the difference between the
7 non-custodial parent's income and the self-support reserve, whichever is
8 greater], OR IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION
9 IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDER-
10 ATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION,
11 THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE
12 CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwithstanding
13 the provisions of paragraph (c) of this subdivision, where the annual
14 amount of the basic child support obligation would reduce the non-custo-
15 dial parent's income below the self-support reserve but not below the
16 poverty income guidelines amount for a single person as reported by the
17 federal department of health and human services, the basic child support
18 obligation shall be fifty dollars per month or the difference between
19 the non-custodial parent's income and the self-support reserve, whichev-
20 er is greater, IN ADDITION TO ANY AMOUNTS THAT THE COURT MAY, IN ITS
21 DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX
22 AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

23 (g) Where the court finds that the non-custodial parent's pro rata
24 share of the basic child support obligation is unjust or inappropriate,
25 the court shall order the non-custodial parent to pay such amount of
26 child support as the court finds just and appropriate, and the court
27 shall set forth, in a written order, the factors it considered; the
28 amount of each party's pro rata share of the basic child support obli-
29 gation; and the reasons that the court did not order the basic child
30 support obligation. Such written order may not be waived by either
31 party or counsel; provided, however, and notwithstanding any other
32 provision of law, the court shall not find that the non-custodial
33 parent's pro rata share of such obligation is unjust or inappropriate on
34 the basis that such share exceeds the portion of a public assistance
35 grant which is attributable to a child or children. [In no instance
36 shall the court order child support below twenty-five dollars per
37 month.] Where the non-custodial parent's income is less than or equal to
38 the poverty income guidelines amount for a single person as reported by
39 the federal department of health and human services, unpaid child
40 support arrears in excess of five hundred dollars shall not accrue.

41 (i) Where either or both parties are unrepresented, the court shall
42 not enter an order or judgment other than a temporary order pursuant to
43 section two hundred thirty-seven of this article, that includes a
44 provision for child support unless the unrepresented party or parties
45 have received a copy of the child support standards chart promulgated by
46 the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISA-
47 BILITY ASSISTANCE pursuant to subdivision two of section one hundred
48 eleven-i of the social services law. Where either party is in receipt of
49 child support enforcement services through the local social services
50 district, the local social services district child support enforcement
51 unit shall advise such party of the amount derived from application of
52 the child support percentage and that such amount serves as a starting
53 point for the determination of the child support award, and shall
54 provide such party with a copy of the child support standards chart. [In
55 no instance shall the court approve any voluntary support agreement or

1 compromise that includes an amount for child support less than twenty-
2 five dollars per month.]

3 S 3. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of
4 the family court act, paragraphs (d) and (i) as amended by chapter 567
5 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the
6 laws of 1992, are amended to read as follows:

7 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-
8 sion, where the annual amount of the basic child support obligation
9 would reduce the non-custodial parent's income below the poverty income
10 guidelines amount for a single person as reported by the federal depart-
11 ment of health and human services, [the basic child support obligation
12 shall be twenty-five dollars per month or the difference between the
13 non-custodial parent's income and the self-support reserve, whichever is
14 greater]OR IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION
15 IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDER-
16 ATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION,
17 THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT
18 OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwith-
19 standing the provisions of paragraph (c) of this subdivision, where the
20 annual amount of the basic child support obligation would reduce the
21 non-custodial parent's income below the self-support reserve but not
22 below the poverty income guidelines amount for a single person as
23 reported by the federal department of health and human services, the
24 basic child support obligation shall be fifty dollars per month or the
25 difference between the non-custodial parent's income and the self-sup-
26 port reserve, whichever is greater, IN ADDITION TO ANY AMOUNTS THAT THE
27 COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS
28 FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

29 (g) Where the court finds that the non-custodial parent's pro rata
30 share of the basic child support obligation is unjust or inappropriate,
31 the court shall order the non-custodial parent to pay such amount of
32 child support as the court finds just and appropriate, and the court
33 shall set forth, in a written order, the factors it considered; the
34 amount of each party's pro rata share of the basic child support obli-
35 gation; and the reasons that the court did not order the basic child
36 support obligation. Such written order may not be waived by either
37 party or counsel; provided, however, and notwithstanding any other
38 provision of law, including but not limited to section four hundred
39 fifteen of this [act] PART, the court shall not find that the non-custo-
40 dial parent's pro rata share of such obligation is unjust or inappropri-
41 ate on the basis that such share exceeds the portion of a public assist-
42 ance grant which is attributable to a child or children. [In no instance
43 shall the court order child support below twenty-five dollars per
44 month.] Where the non-custodial parent's income is less than or equal to
45 the poverty income guidelines amount for a single person as reported by
46 the federal department of health and human services, unpaid child
47 support arrears in excess of five hundred dollars shall not accrue.

48 (i) Where either or both parties are unrepresented, the court shall
49 not enter an order or judgment other than a temporary order pursuant to
50 section two hundred thirty-seven of [this article] THE DOMESTIC
51 RELATIONS LAW, that includes a provision for child support unless the
52 unrepresented party or parties have received a copy of the child support
53 standards chart promulgated by the commissioner of [social services] THE
54 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision
55 two of section one hundred eleven-i of the social services law. Where
56 either party is in receipt of child support enforcement services through

1 the local social services district, the local social services district
2 child support enforcement unit shall advise such party of the amount
3 derived from application of the child support percentage and that such
4 amount serves as a starting point for the determination of the child
5 support award, and shall provide such party with a copy of the child
6 support standards chart. [In no instance shall the court approve any
7 voluntary support agreement or compromise that includes an amount for
8 child support less than twenty-five dollars per month.]

9 S 4. Subdivision 1 of section 390.30 of the criminal procedure law is
10 amended to read as follows:

11 1. The investigation. The pre-sentence investigation consists of the
12 gathering of information with respect to the circumstances attending the
13 commission of the offense, the defendant's history of delinquency or
14 criminality, and the defendant's social history, employment history,
15 family situation, economic status, INCLUDING CHILD SUPPORT OBLIGATIONS,
16 education, and personal habits. Such investigation may also include any
17 other matter which the agency conducting the investigation deems rele-
18 vant to the question of sentence, and must include any matter the court
19 directs to be included.

20 S 5. Subdivision 9 of part B of section 236 of the domestic relations
21 law is amended by adding a new paragraph e to read as follows:

22 E. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON AN
23 APPLICATION FOR A MODIFICATION OF CHILD SUPPORT PURSUANT TO THIS SUBDI-
24 VISION, THE COURT IN ITS DISCRETION, MAY ISSUE AN ORDER DIRECTING THAT
25 AN ORDER FOR PAYMENT OF CHILD SUPPORT BE STAYED FOR A PERIOD OF UP TO
26 ONE HUNDRED EIGHTY DAYS FOLLOWING THE RELEASE OF A NON-CUSTODIAL PARENT
27 FROM A PERIOD OF INCARCERATION. ARREARS SHALL ACCRUE DURING SUCH PERI-
28 OD. THE ORIGINAL ORDER, OR ANY MODIFIED ORDER SHALL BE ENFORCEABLE AT
29 THE END OF SUCH STAY.

30 S 6. Section 13 of chapter 182 of the laws of 2010 amending the tax
31 law, the family court act, the domestic relations law and the social
32 services law relating to the modification of child support orders,
33 employer reporting of new hires and quarterly earnings, work programs
34 and the noncustodial earned income tax credit is amended to read as
35 follows:

36 S 13. This act shall take effect on the ninetieth day after it shall
37 have become law; provided however, that sections six and seven of this
38 act shall apply to any action or proceeding to modify any order of child
39 support entered on or after the effective date of this act except that
40 if the child support order incorporated without merging a valid agree-
41 ment or stipulation of the parties, the amendments regarding the modifi-
42 cation of a child support order set forth in sections six and seven of
43 this act shall only apply if the incorporated agreement or stipulation
44 was executed on or after this act's effective date, AND EXCEPT THAT
45 SECTIONS SIX AND SEVEN OF THIS ACT SHALL APPLY TO ANY ACTION OR PROCEED-
46 ING TO MODIFY A CHILD SUPPORT ORDER ENTERED AGAINST ANY PERSON WHO IS AN
47 INMATE IN A CORRECTIONAL FACILITY IN THIS STATE WHOSE INCARCERATION
48 BEGAN PRIOR TO THE EFFECTIVE DATE OF THIS ACT; provided however, that
49 sections three and four of this act shall take effect on the three
50 hundred sixty-fifth day after it shall have become a law.

51 S 7. This act shall take effect on the ninetieth day after it shall
52 have become a law.