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

4529

2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

Introduced by M. of A. CROUCH, BURLING, FINCH, OAKS, RAIA -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to the granting of custody of a minor

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

Section 1. Subdivision 5 of section 240 of the domestic relations law, as added by section 103 of chapter 398 of the laws of 1997, is renumbered subdivision 6 and a new subdivision 7 is added to read as follows:

7. NOTWITHSTANDING ANY OTHER PROVISION OF ANY LAW TO THE CONTRARY, NO COURT SHALL AWARD CUSTODY TO OR ALLOW UNSUPERVISED VISITATION WITH A PARENT OR ANY OTHER PERSON WHO HAS BEEN CONVICTED OF VIOLATING SECTION 130.20 (SEXUAL MISCONDUCT); 130.25 (RAPE IN THE THIRD DEGREE); 130.30 (RAPE IN THE SECOND DEGREE); 130.35 (RAPE IN THE FIRST DEGREE); 130.40 (CRIMINAL SEXUAL ACT IN THE THIRD DEGREE); 130.45 (CRIMINAL SEXUAL ACT IN THE SECOND DEGREE); 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); 130.55 (SEXUAL ABUSE IN THE THIRD DEGREE); 130.60 (SEXUAL ABUSE IN THE SECOND DEGREE); 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); 255.25 (INCEST IN THE THIRD DEGREE); 255.26 (INCEST IN THE SECOND DEGREE); 255.27 (INCEST IN THE FIRST DEGREE); 263.05 (USE OF A CHILD IN A SEXUAL PERFORMANCE); 263.10 (PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD); 263.15 (PROMOTING A SEXUAL PERFORMANCE BY A CHILD); 235.21 (DISSEMINATING INDECENT MATERIAL TO MINORS IN THE SECOND DEGREE); 235.22 (DISSEMINATING INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE); 230.30 (PROMOTING PROSTITUTION IN THE SECOND DEGREE); 230.32 (PROMOTING PROSTITUTION IN THE FIRST DEGREE); OR SUBDIVISION TWO OF SECTION 230.25 (PROMOTING PROSTITUTION IN THE THIRD DEGREE) OF THE PENAL LAW, UNLESS THE COURT FINDS THAT THERE IS NO SIGNIFICANT RISK TO THE CHILD.

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

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S 2. Subdivision (a) of section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended to read as follows:

(a) Where a minor child is residing within this state, either parent may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the natural guardianship, charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order. In all cases there shall be no prima facie right to the custody of the child in either parent, but the court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly SUBJECT, HOWEVER, TO THE PROVISIONS OF SUBDIVISION SEVEN OF SECTION TWO HUNDRED FORTY OF THIS CHAPTER.

S 3. Subdivisions (a), (b) and (c) of section 651 of the family court act, subdivisions (a) and (c) as amended by chapter 85 of the laws of 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003, are amended to read as follows:

(a) When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors SUBJECT, HOWEVER, TO THE LIMITATIONS SET FORTH IN SUBDIVISION SEVEN OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW REGARDING THE AWARDING OF CUSTODY OR UNSUPERVISED VISITATION TO A PERSON WHO HAS BEEN CONVICTED OF ANY OF THE OFFENSES ENUMERATED IN SUCH SUBDIVISION.

(b) When initiated in the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors, including applications by a grandparent or grandparents for visitation or custody rights pursuant to section seventy-two or two hundred forty of the domestic relations law SUBJECT, HOWEVER, TO THE LIMITATIONS SET FORTH IN SUBDIVISION SEVEN OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW REGARDING THE AWARDING OF CUSTODY OR UNSUPERVISED VISITATION TO A PERSON WHO HAS BEEN CONVICTED OF ANY OF THE OFFENSES ENUMERATED IN SUCH SUBDIVISION.

(c) When initiated in the family court pursuant to a petition under part eight of article ten of this act or section three hundred fifty-eight-a of the social services law, the family court has jurisdiction to enforce or modify orders or judgments of the supreme court relating to the visitation of minors in foster care, notwithstanding any limitation contained in subdivision (b) of section four hundred sixty-seven of this act BUT SUBJECT, HOWEVER, TO THE LIMITATIONS SET FORTH IN SUBDIVISION SEVEN OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW REGARDING THE AWARDING OF CUSTODY OR UNSUPERVISED VISITATION TO A PERSON WHO HAS BEEN CONVICTED OF ANY OF THE OFFENSES ENUMERATED IN SUCH SUBDIVISION.

S 4. This act shall take effect immediately.