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

1603

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sen. MONTGOMERY -- 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 and the family court act, in relation to the child support obligation of indigent non-custodial parents

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

Section 1. Paragraphs (d), (g) and (i) of subdivision 1-b of section 240 of the domestic relations law, paragraphs (d) and (i) as added by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month [or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater], PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, IN ADDITION TO ANY

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

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AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

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

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of this article, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision two of section one hundred eleven-i of the social services law. Where either party is in receipt of child support enforcement services through the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart. [In no instance shall the court approve any voluntary support agreement or compromise that includes an amount for child support less than twenty-five dollars per month.]

S 2. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of the family court act, paragraphs (d) and (i) as added by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month [or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater]; PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION, THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obli-

gation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, IN ADDITION TO ANY AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

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

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of [this article] THE DOMESTIC RELATIONS LAW, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision two of section one hundred eleven-i of the social services law. Where either party is in receipt of child support enforcement services through the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart. [In no instance shall the court approve any voluntary support agreement or compromise that includes an amount for child support less than twenty-five dollars per month.]

S 3. This act shall take effect on the ninetieth day after it shall have become a law.