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I N   S E N A T E

May 15, 2014

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Introduced by Sen. HOYLMAN -- 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 prohibiting the consideration of evidence that either parent has ever obtained or attempted to obtain reproductive health services relating to the termination of a pregnancy in certain legal proceedings

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 to read  
3 as follows:  
4     (a) Where a minor child is residing within this state, either parent  
5 may apply to the supreme 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 welfare and happiness, and make award accordingly. IN  
15 MAKING A DETERMINATION OF THE BEST INTEREST OF THE CHILD PURSUANT TO  
16 THIS SECTION, THE COURT SHALL NOT CONSIDER EVIDENCE THAT EITHER PARENT  
17 HAS EVER OBTAINED OR ATTEMPTED TO OBTAIN REPRODUCTIVE HEALTH SERVICES.  
18 FOR THE PURPOSES OF THIS SECTION, REPRODUCTIVE HEALTH SERVICES MEANS  
19 HEALTH CARE SERVICES PROVIDED IN A HOSPITAL, CLINIC, PHYSICIAN'S OFFICE  
20 OR OTHER FACILITY AND INCLUDES MEDICAL, SURGICAL, COUNSELING OR REFERRAL  
21 SERVICES RELATING TO THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES  
22 RELATING TO PREGNANCY OR THE TERMINATION OF A PREGNANCY.  
23     S 2. Paragraph (a) of subdivision 1 of section 240 of the domestic  
24 relations law, as amended by chapter 476 of the laws of 2009, is amended  
25 to read as follows:

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

LBD14793-02-4

1 (a) In any action or proceeding brought (1) to annul a marriage or to  
2 declare the nullity of a void marriage, or (2) for a separation, or (3)  
3 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-  
4 tion and order to show cause, the custody of or right to visitation with  
5 any child of a marriage, the court shall require verification of the  
6 status of any child of the marriage with respect to such child's custody  
7 and support, including any prior orders, and shall enter orders for  
8 custody and support as, in the court's discretion, justice requires,  
9 having regard to the circumstances of the case and of the respective  
10 parties and to the best interests of the child and subject to the  
11 provisions of subdivision one-c of this section. IN MAKING A DETERMI-  
12 NATION OF THE BEST INTEREST OF THE CHILD PURSUANT TO THIS SECTION, THE  
13 COURT SHALL NOT CONSIDER EVIDENCE THAT EITHER PARENT HAS EVER OBTAINED  
14 OR ATTEMPTED TO OBTAIN REPRODUCTIVE HEALTH SERVICES. FOR THE PURPOSES OF  
15 THIS SECTION, REPRODUCTIVE HEALTH SERVICES MEANS HEALTH CARE SERVICES  
16 PROVIDED IN A HOSPITAL, CLINIC, PHYSICIAN'S OFFICE OR OTHER FACILITY AND  
17 INCLUDES MEDICAL, SURGICAL, COUNSELING OR REFERRAL SERVICES RELATING TO  
18 THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES RELATING TO PREGNANCY  
19 OR THE TERMINATION OF A PREGNANCY. Where either party to an action  
20 concerning custody of or a right to visitation with a child alleges in a  
21 sworn petition or complaint or sworn answer, cross-petition, counter-  
22 claim or other sworn responsive pleading that the other party has  
23 committed an act of domestic violence against the party making the alle-  
24 gation or a family or household member of either party, as such family  
25 or household member is defined in article eight of the family court act,  
26 and such allegations are proven by a preponderance of the evidence, the  
27 court must consider the effect of such domestic violence upon the best  
28 interests of the child, together with such other facts and circumstances  
29 as the court deems relevant in making a direction pursuant to this  
30 section and state on the record how such findings, facts and circum-  
31 stances factored into the direction. If a parent makes a good faith  
32 allegation based on a reasonable belief supported by facts that the  
33 child is the victim of child abuse, child neglect, or the effects of  
34 domestic violence, and if that parent acts lawfully and in good faith in  
35 response to that reasonable belief to protect the child or seek treat-  
36 ment for the child, then that parent shall not be deprived of custody,  
37 visitation or contact with the child, or restricted in custody, visita-  
38 tion or contact, based solely on that belief or the reasonable actions  
39 taken based on that belief. If an allegation that a child is abused is  
40 supported by a preponderance of the evidence, then the court shall  
41 consider such evidence of abuse in determining the visitation arrange-  
42 ment that is in the best interest of the child, and the court shall not  
43 place a child in the custody of a parent who presents a substantial risk  
44 of harm to that child, and shall state on the record how such findings  
45 were factored into the determination. An order directing the payment of  
46 child support shall contain the social security numbers of the named  
47 parties. In all cases there shall be no prima facie right to the custody  
48 of the child in either parent. Such direction shall make provision for  
49 child support out of the property of either or both parents. The court  
50 shall make its award for child support pursuant to subdivision one-b of  
51 this section. Such direction may provide for reasonable visitation  
52 rights to the maternal and/or paternal grandparents of any child of the  
53 parties. Such direction as it applies to rights of visitation with a  
54 child remanded or placed in the care of a person, official, agency or  
55 institution pursuant to article ten of the family court act, or pursuant  
56 to an instrument approved under section three hundred fifty-eight-a of

1 the social services law, shall be enforceable pursuant to part eight of  
2 article ten of the family court act and sections three hundred fifty-  
3 eight-a and three hundred eighty-four-a of the social services law and  
4 other applicable provisions of law against any person having care and  
5 custody, or temporary care and custody, of the child. Notwithstanding  
6 any other provision of law, any written application or motion to the  
7 court for the establishment, modification or enforcement of a child  
8 support obligation for persons not in receipt of public assistance and  
9 care must contain either a request for child support enforcement  
10 services which would authorize the collection of the support obligation  
11 by the immediate issuance of an income execution for support enforcement  
12 as provided for by this chapter, completed in the manner specified in  
13 section one hundred eleven-g of the social services law; or a statement  
14 that the applicant has applied for or is in receipt of such services; or  
15 a statement that the applicant knows of the availability of such  
16 services, has declined them at this time and where support enforcement  
17 services pursuant to section one hundred eleven-g of the social services  
18 law have been declined that the applicant understands that an income  
19 deduction order may be issued pursuant to subdivision (c) of section  
20 fifty-two hundred forty-two of the civil practice law and rules without  
21 other child support enforcement services and that payment of an adminis-  
22 trative fee may be required. The court shall provide a copy of any such  
23 request for child support enforcement services to the support collection  
24 unit of the appropriate social services district any time it directs  
25 payments to be made to such support collection unit. Additionally, the  
26 copy of any such request shall be accompanied by the name, address and  
27 social security number of the parties; the date and place of the  
28 parties' marriage; the name and date of birth of the child or children;  
29 and the name and address of the employers and income payors of the party  
30 from whom child support is sought or from the party ordered to pay child  
31 support to the other party. Such direction may require the payment of a  
32 sum or sums of money either directly to the custodial parent or to third  
33 persons for goods or services furnished for such child, or for both  
34 payments to the custodial parent and to such third persons; provided,  
35 however, that unless the party seeking or receiving child support has  
36 applied for or is receiving such services, the court shall not direct  
37 such payments to be made to the support collection unit, as established  
38 in section one hundred eleven-h of the social services law. Every order  
39 directing the payment of support shall require that if either parent  
40 currently, or at any time in the future, has health insurance benefits  
41 available that may be extended or obtained to cover the child, such  
42 parent is required to exercise the option of additional coverage in  
43 favor of such child and execute and deliver to such person any forms,  
44 notices, documents or instruments necessary to assure timely payment of  
45 any health insurance claims for such child.

46 S 3. This act shall take effect immediately.