

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sen. PARKER -- 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 establishing a presumption of shared parenting of minor children in matrimonial proceedings

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

1     Section 1. Legislative findings. The legislature hereby finds and  
2 declares that it is the public policy of the state to assure minor chil-  
3 dren have frequent and continuing contact with both parents after the  
4 parents have separated or dissolved their marriage and that it is in the  
5 public interest to encourage parents to share the rights and responsi-  
6 bilities of child-rearing in order to effectuate this policy. At the  
7 outset and thereafter, in any proceeding where there is at issue the  
8 custody of a minor child, the court may, during the pendency of the  
9 proceeding or at any time thereafter, make such order for the custody of  
10 minor children as may seem necessary or proper. The provisions of this  
11 act establish a presumption, affecting the burden of proof, that shared  
12 parenting is in the best interests of minor children.

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

16     (a) Where a minor child is residing within this state, either parent  
17 may apply to the supreme court for a writ of habeas corpus to have such  
18 minor child brought before such court; and on the return thereof, the  
19 court, on due consideration, [may] SHALL award the natural guardianship,  
20 charge and custody of such child to [either parent] BOTH PARENTS, IN THE  
21 ABSENCE OF AN ALLEGATION THAT SUCH SHARED PARENTING WOULD BE DETRIMENTAL  
22 TO SUCH CHILD, for such time, under such regulations and restrictions,  
23 and with such provisions and directions, as the case may require, and

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

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1 may at any time thereafter vacate or modify such order. [In all cases  
2 there shall be no prima facie right to the custody of the child in  
3 either parent, but the] THE BURDEN OF PROOF THAT SUCH SHARED PARENTING  
4 WOULD BE DETRIMENTAL TO SUCH CHILD SHALL BE UPON THE PARENT REQUESTING  
5 SOLE CUSTODY. THE court shall determine solely what is for the best  
6 interest of the child, and what will best promote [its] THE CHILD'S  
7 welfare and happiness, and make award accordingly.

8 S 3. Paragraph (a) of subdivision 1 of section 240 of the domestic  
9 relations law, as amended by chapter 476 of the laws of 2009, is amended  
10 to read as follows:

11 (a) (I) In any action or proceeding brought (1) to annul a marriage or  
12 to declare the nullity of a void marriage, or (2) for a separation, or  
13 (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by  
14 petition and order to show cause, the custody of or right to visitation  
15 with any child of a marriage, the court shall require verification of  
16 the status of any child of the marriage with respect to such child's  
17 custody and support, including any prior orders, and shall enter orders  
18 for custody and support as, in the court's discretion, justice requires,  
19 having regard to the circumstances of the case and of the respective  
20 parties and to the best interests of the child and subject to the  
21 provisions of subdivision one-c of this section. Where either party to  
22 an action concerning custody of or a right to visitation with a child  
23 alleges in a sworn petition or complaint or sworn answer, cross-peti-  
24 tion, counterclaim or other sworn responsive pleading that the other  
25 party has committed an act of domestic violence against the party making  
26 the allegation or a family or household member of either party, as such  
27 family or household member is defined in article eight of the family  
28 court act, and such allegations are proven by a preponderance of the  
29 evidence, the court must consider the effect of such domestic violence  
30 upon the best interests of the child, together with such other facts and  
31 circumstances as the court deems relevant in making a direction pursuant  
32 to this section and state on the record how such findings, facts and  
33 circumstances factored into the direction. If a parent makes a good  
34 faith allegation based on a reasonable belief supported by facts that  
35 the child is the victim of child abuse, child neglect, or the effects of  
36 domestic violence, and if that parent acts lawfully and in good faith in  
37 response to that reasonable belief to protect the child or seek treat-  
38 ment for the child, then that parent shall not be deprived of custody,  
39 visitation or contact with the child, or restricted in custody, visita-  
40 tion or contact, based solely on that belief or the reasonable actions  
41 taken based on that belief. If an allegation that a child is abused is  
42 supported by a preponderance of the evidence, then the court shall  
43 consider such evidence of abuse in determining the visitation arrange-  
44 ment that is in the best interest of the child, and the court shall not  
45 place a child in the custody of a parent who presents a substantial risk  
46 of harm to that child, and shall state on the record how such findings  
47 were factored into the determination. An order directing the payment of  
48 child support shall contain the social security numbers of the named  
49 parties. [In all cases there shall be no prima facie right to the custo-  
50 dy of the child in either parent. Such] (II) CUSTODY SHALL BE AWARDED  
51 IN THE FOLLOWING ORDER OF PREFERENCE, ACCORDING TO THE BEST INTERESTS OF  
52 THE CHILD:

53 (1) TO BOTH PARENTS JOINTLY PURSUANT TO SECTION TWO HUNDRED FORTY-D OF  
54 THIS ARTICLE. IN SUCH CASES THE COURT MUST REQUIRE THE PARENTS TO  
55 SUBMIT A PARENTING PLAN AS DEFINED IN SUBDIVISION TWO OF SECTION TWO  
56 HUNDRED FORTY-D OF THIS ARTICLE FOR IMPLEMENTATION OF THE CUSTODY ORDER

1 OR THE PARENTS ACTING INDIVIDUALLY OR IN CONCERT MAY SUBMIT A CUSTODY  
2 IMPLEMENTATION PLAN TO THE COURT PRIOR TO ISSUANCE OF A CUSTODY DECREE.  
3 THERE SHALL BE A PRESUMPTION, AFFECTING THE BURDEN OF PROOF, THAT SHARED  
4 PARENTING IS IN THE BEST INTERESTS OF A MINOR CHILD UNLESS THE PARENTS  
5 HAVE AGREED TO AN AWARD OF CUSTODY TO ONE PARENT OR SO AGREE IN OPEN  
6 COURT AT A HEARING FOR THE PURPOSE OF DETERMINING CUSTODY OF A MINOR  
7 CHILD OF THE MARRIAGE OR THE COURT FINDS THAT SHARED PARENTING WOULD BE  
8 DETRIMENTAL TO A PARTICULAR CHILD OF A SPECIFIC MARRIAGE. FOR THE  
9 PURPOSE OF ASSISTING THE COURT IN MAKING A DETERMINATION WHETHER AN  
10 AWARD OF SHARED PARENTING IS APPROPRIATE, THE COURT MAY DIRECT THAT AN  
11 INVESTIGATION BE CONDUCTED. IF THE COURT DECLINES TO ENTER AN ORDER  
12 AWARDED SHARED PARENTING PURSUANT TO THIS PARAGRAPH, THE COURT SHALL  
13 STATE IN ITS DECISION THE REASONS FOR DENIAL OF AN AWARD OF SHARED  
14 PARENTING. IN JURISDICTIONS HAVING A PRIVATE OR PUBLICLY-SUPPORTED  
15 CONCILIATION SERVICE, THE COURT OR THE PARTIES MAY, AT ANY TIME, PURSU-  
16 ANT TO LOCAL RULES OF COURT, CONSULT WITH THE CONCILIATION SERVICE FOR  
17 THE PURPOSE OF ASSISTING THE PARTIES TO FORMULATE A PLAN FOR IMPLEMENTA-  
18 TION OF THE CUSTODY ORDER OR TO RESOLVE ANY CONTROVERSY WHICH HAS ARISEN  
19 IN THE IMPLEMENTATION OF A PLAN FOR CUSTODY. ANY ORDER FOR SHARED  
20 PARENTING MAY BE MODIFIED OR TERMINATED UPON THE PETITION OF ONE OR BOTH  
21 PARENTS OR ON THE COURT'S OWN MOTION IF IT IS SHOWN THAT THE BEST INTER-  
22 ESTS OF THE CHILD REQUIRE MODIFICATION OR TERMINATION OF THE SHARED  
23 PARENTING ORDER. ANY ORDER FOR THE CUSTODY OF A MINOR CHILD OF A  
24 MARRIAGE ENTERED BY A COURT IN THIS STATE OR IN ANY OTHER STATE, SUBJECT  
25 TO JURISDICTIONAL REQUIREMENTS, MAY BE MODIFIED AT ANY TIME TO AN ORDER  
26 OF SHARED PARENTING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

27 (2) TO EITHER PARENT, IN WHICH CASE, THE COURT, IN MAKING AN ORDER FOR  
28 CUSTODY TO EITHER PARENT SHALL CONSIDER, AMONG OTHER FACTORS, WHICH  
29 PARENT IS MORE LIKELY TO ALLOW THE CHILD OR CHILDREN FREQUENT AND  
30 CONTINUING CONTACT WITH THE NONCUSTODIAL PARENT, AND SHALL NOT PREFER A  
31 PARENT AS CUSTODIAN BECAUSE OF THAT PARENT'S GENDER. THE BURDEN OF PROOF  
32 THAT SHARED PARENTING WOULD NOT BE IN THE CHILD'S BEST INTEREST SHALL BE  
33 UPON THE PARENT REQUESTING SOLE CUSTODY. NOTWITHSTANDING ANY OTHER  
34 PROVISION OF LAW, ACCESS TO RECORDS AND INFORMATION PERTAINING TO A  
35 MINOR CHILD, INCLUDING BUT NOT LIMITED TO MEDICAL, DENTAL AND SCHOOL  
36 RECORDS, SHALL NOT BE DENIED TO A PARENT BECAUSE THE PARENT IS NOT THE  
37 CHILD'S CUSTODIAL PARENT.

38 (3) IF TO NEITHER PARENT, TO THE PERSON OR PERSONS IN WHOSE HOME THE  
39 CHILD HAS BEEN LIVING IN A NURTURING AND STABLE ENVIRONMENT.

40 (4) TO ANY OTHER PERSON OR PERSONS DEEMED BY THE COURT TO BE SUITABLE  
41 AND ABLE TO PROVIDE A NURTURING AND STABLE ENVIRONMENT.

42 BEFORE THE COURT MAKES ANY ORDER AWARDED CUSTODY TO A PERSON OR  
43 PERSONS OTHER THAN A PARENT WITHOUT THE CONSENT OF THE PARENTS, IT SHALL  
44 MAKE A FINDING THAT AN AWARD OF CUSTODY TO A PARENT WOULD BE DETRIMENTAL  
45 TO THE CHILD AND THE AWARD TO A NON-PARENT IS REQUIRED TO SERVE THE BEST  
46 INTERESTS OF THE CHILD. ALLEGATIONS THAT PARENTAL CUSTODY WOULD BE  
47 DETRIMENTAL TO THE CHILD, OTHER THAN A STATEMENT OF THAT ULTIMATE FACT,  
48 SHALL NOT APPEAR IN THE PLEADINGS. THE COURT MAY, IN ITS DISCRETION,  
49 EXCLUDE THE PUBLIC FROM THE HEARING ON THIS ISSUE. THE COURT SHALL STATE  
50 IN WRITING THE REASON FOR ITS DECISION AND WHY THE AWARD MADE WAS FOUND  
51 TO BE IN THE BEST INTERESTS OF THE CHILD. ANY DIRECTION MADE PURSUANT TO  
52 THIS SUBDIVISION shall make provision for child support out of the prop-  
53 erty of [either or] both parents. The court shall make its award for  
54 child support pursuant to subdivision one-b of this section. Such direc-  
55 tion may provide for reasonable visitation rights to the maternal and/or  
56 paternal grandparents of any child of the parties. Such direction as it

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

50 S 4. The domestic relations law is amended by adding a new section  
51 240-d to read as follows:

52 S 240-D. CUSTODY OF CHILDREN. 1. WHERE THE COURT CONSIDERS AWARDING  
53 SHARED PARENTING PURSUANT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVI-  
54 SION ONE OF SECTION TWO HUNDRED FORTY OF THIS ARTICLE, "SHARED PARENT-  
55 ING", SHALL MEAN AN ORDER AWARDING CUSTODY OF THE CHILD TO BOTH PARTIES  
56 SO THAT BOTH PARTIES SHARE EQUALLY THE LEGAL RESPONSIBILITY AND CONTROL

1 OF SUCH CHILD AND SHARE EQUALLY THE LIVING EXPERIENCE IN TIME AND PHYS-  
2 ICAL CARE TO ASSURE FREQUENT AND CONTINUING CONTACT WITH BOTH PARTIES,  
3 AS THE COURT DEEMS TO BE IN THE BEST INTERESTS OF THE CHILD, TAKING INTO  
4 CONSIDERATION THE LOCATION AND CIRCUMSTANCES OF EACH PARTY. THE TERM  
5 "SHARED PARENTING", SHALL BE CONSIDERED INTERCHANGEABLE WITH "NEARLY  
6 EQUAL SHARED PARENTING". AN AWARD OF JOINT PHYSICAL AND LEGAL CUSTODY  
7 OBLIGATES THE PARTIES TO EXCHANGE INFORMATION CONCERNING THE HEALTH,  
8 EDUCATION AND WELFARE OF THE MINOR CHILD, AND UNLESS ALLOCATED, APPOR-  
9 TIONED OR DECREED, THE PARENTS OR PARTIES SHALL CONFER WITH ONE ANOTHER  
10 IN THE EXERCISE OF DECISION-MAKING RIGHTS, RESPONSIBILITIES AND AUTHORI-  
11 TY.

12 2. FOR THE PURPOSES OF THIS ARTICLE A "PARENTING PLAN", REQUIRED TO BE  
13 SUBMITTED TO THE COURT PURSUANT TO CLAUSE ONE OF SUBPARAGRAPH (II) OF  
14 PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THIS  
15 ARTICLE, SHALL INCLUDE BUT NOT BE LIMITED TO:

16 (A) THE LEGAL RESPONSIBILITIES OF EACH PARENT;

17 (B) A WEEKLY PARENTING SCHEDULE;

18 (C) A HOLIDAY AND VACATION PARENTING SCHEDULE;

19 (D) A SCHEDULE FOR SPECIAL OCCASIONS, INCLUDING BIRTHDAYS;

20 (E) A DESCRIPTION OF ANY SPECIFIC DECISION MAKING AREAS FOR EACH  
21 PARENT PROVIDED, HOWEVER, THAT BOTH PARENTS SHALL CONFER AND JOINTLY  
22 DETERMINE MAJOR ISSUES AFFECTING THE WELFARE OF THE CHILD INCLUDING  
23 HEALTH, EDUCATION, DISCIPLINE AND RELIGION;

24 (F) IF APPLICABLE, THE NEED FOR ANY AND ALL OF THE PARTIES TO PARTIC-  
25 IPATE IN COUNSELING;

26 (G) ANY RESTRICTIONS ON EITHER PARENT WHEN IN PHYSICAL CONTROL OF THE  
27 CHILD OR CHILDREN; AND

28 (H) PROVISIONS FOR MEDIATION OF DISPUTES.

29 3. ONE PARENT MAY BE DESIGNATED AS A PUBLIC WELFARE RECIPIENT IN SITU-  
30 ATIONS WHERE PUBLIC WELFARE AID IS DEEMED NECESSARY AND APPROPRIATE. IN  
31 MAKING AN ORDER OF SHARED PARENTING, THE COURT SHALL SPECIFY THE RIGHT  
32 OF EACH PARENT TO THE PHYSICAL CONTROL OF THE CHILD IN SUFFICIENT DETAIL  
33 TO ENABLE A PARENT DEPRIVED OF THAT CONTROL TO ENFORCE THE COURT ORDER  
34 AND TO ENABLE LAW ENFORCEMENT AUTHORITIES TO IMPLEMENT LAWS FOR RELIEF  
35 OF PARENTAL KIDNAPPING AND CUSTODIAL INTERFERENCE.

36 S 5. This act shall take effect on the first of November next succeed-  
37 ing the date on which it shall have become a law and shall apply to  
38 actions and proceedings commenced on and after such date.