

7188--A

2013-2014 Regular Sessions

I N A S S E M B L Y

May 7, 2013

Introduced by M. of A. PAULIN, TITUS, MORELLE, LAVINE, TITONE, SIMOTAS, BUCHWALD, FAHY, JAFFEE, WEPRIN, ZEBROWSKI, GABRYSZAK, GALEF, GUNTHER, HEVESI, MAGNARELLI, MAISEL, MILLMAN, OTIS, RIVERA, ROBERTS, ROSA, ROSENTHAL, SCARBOROUGH, SEPULVEDA, SIMANOWITZ, STIRPE, GIBSON, STECK, HOOPER -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, BARCLAY, CLARK, COOK, CORWIN, CROUCH, DUPREY, FITZPATRICK, HIKIND, JACOBS, KEARNS, P. LOPEZ, MAGEE, McDONOUGH, McLAUGHLIN, MONTESANO, MOSLEY, PALMESANO, PERRY, ROBINSON, SCHIMMINGER, SKARTADOS, SWEENEY -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the social services law, in relation to visitation and custody rights of a parent convicted of sexual assault

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

1 Section 1. Subdivision 1-c of section 240 of the domestic relations
2 law, as added by chapter 150 of the laws of 1998, paragraph (a) as
3 amended by chapter 378 of the laws of 1999 and paragraph (c) as amended
4 by chapter 41 of the laws of 2010, is amended to read as follows:
5 1-c. (a) Notwithstanding any other provision of this chapter to the
6 contrary, no court shall make an order providing for visitation or
7 custody to a person who has been convicted of murder in the first or
8 second degree in this state, or convicted of an offense in another
9 jurisdiction which, if committed in this state, would constitute either
10 murder in the first or second degree, of a parent, legal custodian,
11 legal guardian, sibling, half-sibling or step-sibling of any child who
12 is the subject of the proceeding. Pending determination of a petition
13 for visitation or custody, such child shall not visit and no person
14 shall visit with such child present, such person who has been convicted
15 of murder in the first or second degree in this state, or convicted of

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

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1 and offense in another jurisdiction which, if committed in this state,
2 would constitute either murder in the first or second degree, of a
3 parent, legal custodian, legal guardian, sibling, half-sibling or step-
4 sibling of a child who is the subject of the proceeding without the
5 consent of such child's custodian or legal guardian.

6 (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER TO THE CONTRA-
7 RY, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT IT IS NOT IN THE BEST
8 INTERESTS OF THE CHILD TO BE PLACED IN THE CUSTODY OF OR TO VISIT WITH A
9 PERSON WHO HAS BEEN CONVICTED OF ONE OR MORE OF THE FOLLOWING SEXUAL
10 OFFENSES IN THIS STATE OR CONVICTED OF ONE OR MORE OFFENSES IN ANOTHER
11 JURISDICTION WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OR
12 MORE OF THE FOLLOWING OFFENSES, WHEN A CHILD WHO IS THE SUBJECT OF THE
13 PROCEEDING WAS CONCEIVED AS A RESULT: (A) RAPE IN THE FIRST OR SECOND
14 DEGREE; (B) COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST
15 DEGREE; (C) PREDATORY SEXUAL ASSAULT; OR (D) PREDATORY SEXUAL ASSAULT
16 AGAINST A CHILD.

17 (C) Notwithstanding paragraph (a) OR (B) of this subdivision a court
18 may order visitation or custody where:

19 (i) (A) such child is of suitable age to signify assent and such child
20 assents to such visitation or custody; or

21 (B) if such child is not of suitable age to signify assent, the
22 child's custodian or legal guardian assents to such order; or

23 (C) the person who has been convicted of murder in the first or second
24 degree, or an offense in another jurisdiction which if committed in this
25 state, would constitute either murder in the first or second degree, can
26 prove by a preponderance of the evidence that:

27 (1) he or she, or a family or household member of either party, was a
28 victim of domestic violence by the victim of such murder; and

29 (2) the domestic violence was causally related to the commission of
30 such murder; [and]

31 (ii) AND the court finds that such visitation or custody is in the
32 best interests of the child.

33 [(c)] (D) For the purpose of making a determination pursuant to clause
34 (C) of subparagraph (i) of paragraph [(b)] (C) of this subdivision, the
35 court shall not be bound by the findings of fact, conclusions of law or
36 ultimate conclusion as determined by the proceedings leading to the
37 conviction of murder in the first or second degree in this state or of
38 an offense in another jurisdiction which, if committed in this state,
39 would constitute murder in either the first or second degree, of a
40 parent, legal guardian, legal custodian, sibling, half-sibling or step-
41 sibling of a child who is the subject of the proceeding. In all
42 proceedings under this section, an attorney shall be appointed for the
43 child.

44 S 2. Subdivision 1 of section 111-a of the domestic relations law, as
45 amended by chapter 353 of the laws of 1993, is amended to read as
46 follows:

47 1. Notwithstanding any inconsistent provisions of this or any other
48 law, and in addition to the notice requirements of any law pertaining to
49 persons other than those specified in subdivision two of this section,
50 notice as provided herein shall be given to the persons specified in
51 subdivision two of this section of any adoption proceeding initiated
52 pursuant to this article or of any proceeding initiated pursuant to
53 section one hundred fifteen-b OF THIS ARTICLE relating to the revocation
54 of an adoption consent, when such proceeding involves a child born out-
55 of-wedlock provided, however, that such notice shall not be required to
56 be given to any person who previously has been given notice of any

1 proceeding involving the child, pursuant to section three hundred eight-
2 y-four-c of the social services law, and provided further that notice in
3 an adoption proceeding, pursuant to this section shall not be required
4 to be given to any person who has previously received notice of any
5 proceeding pursuant to section one hundred fifteen-b OF THIS ARTICLE. In
6 addition to such other requirements as may be applicable to the petition
7 in any proceeding in which notice must be given pursuant to this
8 section, the petition shall set forth the names and last known addresses
9 of all persons required to be given notice of the proceeding, pursuant
10 to this section, and there shall be shown by the petition or by affida-
11 vit or other proof satisfactory to the court that there are no persons
12 other than those set forth in the petition who are entitled to notice.
13 For the purpose of determining persons entitled to notice of adoption
14 proceedings initiated pursuant to this article, persons specified in
15 subdivision two of this section shall not include any person who has
16 been convicted of [rape in the first degree involving forcible compul-
17 sion, under subdivision one of section 130.35 of the penal law, when the
18 child who is the subject of the proceeding was conceived as a result of
19 such rape] ONE OR MORE OF THE FOLLOWING SEXUAL OFFENSES IN THIS STATE OR
20 CONVICTED OF ONE OR MORE OFFENSES IN ANOTHER JURISDICTION WHICH, IF
21 COMMITTED IN THIS STATE, WOULD CONSTITUTE ONE OR MORE OF THE FOLLOWING
22 OFFENSES, WHEN THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING WAS
23 CONCEIVED AS A RESULT: (A) RAPE IN FIRST OR SECOND DEGREE; (B) COURSE OF
24 SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE; (C) PREDATORY SEXUAL
25 ASSAULT; OR (D) PREDATORY SEXUAL ASSAULT AGAINST A CHILD.

26 S 3. Subdivision 1 of section 384-c of the social services law, as
27 amended by chapter 18 of the laws of 1979, is amended to read as
28 follows:

29 1. Notwithstanding any inconsistent provision of this or any other
30 law, and in addition to the notice requirements of any law pertaining to
31 persons other than those specified in subdivision two of this section,
32 notice as provided herein shall be given to the persons specified in
33 subdivision two of this section of any proceeding initiated pursuant to
34 sections three hundred fifty-eight-a, three hundred eighty-four, and
35 three hundred eighty-four-b of this chapter, involving a child born
36 out-of-wedlock. Persons specified in subdivision two of this section
37 shall not include any person who has been convicted of [rape in the
38 first degree involving forcible compulsion, under subdivision one of
39 section 130.35 of the penal law, when the child who is the subject of
40 the proceeding was conceived as a result of such rape] ONE OR MORE OF
41 THE FOLLOWING SEXUAL OFFENSES IN THIS STATE OR CONVICTED OF ONE OR MORE
42 OFFENSES IN ANOTHER JURISDICTION WHICH, IF COMMITTED IN THIS STATE,
43 WOULD CONSTITUTE ONE OR MORE OF THE FOLLOWING OFFENSES, WHEN THE CHILD
44 WHO IS THE SUBJECT OF THE PROCEEDING WAS CONCEIVED AS A RESULT: (A) RAPE
45 IN FIRST OR SECOND DEGREE; (B) COURSE OF SEXUAL CONDUCT AGAINST A CHILD
46 IN THE FIRST DEGREE; (C) PREDATORY SEXUAL ASSAULT; OR (D) PREDATORY
47 SEXUAL ASSAULT AGAINST A CHILD.

48 S 4. This act shall take effect immediately.