

5069--A

Cal. No. 625

2013-2014 Regular Sessions

I N S E N A T E

May 7, 2013

Introduced by Sens. SKELOS, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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
16 and offense in another jurisdiction which, if committed in this state,
17 would constitute either murder in the first or second degree, of a
18 parent, legal custodian, legal guardian, sibling, half-sibling or step-

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

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1 sibling of a child who is the subject of the proceeding without the
2 consent of such child's custodian or legal guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 S 4. This act shall take effect immediately.