

7158

I N   S E N A T E

May 1, 2014

---

Introduced by Sen. FELDER -- (at request of the Office of Court Administration) -- 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 social services law, in relation to notices to non-marital fathers in adoption, surrender and termination of parental rights proceedings and consents to adoptions in family and surrogate's courts

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

1     Section 1. Paragraphs (d) and (e) of subdivision 1 of section 111 of  
2     the domestic relations law, as added by chapter 575 of the laws of 1980,  
3     are amended to read as follows:  
4     (d) Of the father, whether adult or infant, of a child born out-of-  
5     wedlock and [placed with the adoptive parents] more than six months  
6     [after birth] OLD AT THE TIME OF THE FILING OF A PETITION TO TERMINATE  
7     PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION  
8     FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO  
9     ADOPTION OR PETITION FOR ADOPTION, WHICHEVER IS EARLIEST, but only if  
10    such father shall have:  
11    (I) BEEN NAMED AS THE FATHER ON THE CHILD'S BIRTH CERTIFICATE; OR  
12    (II) BEEN ADJUDICATED AS THE FATHER BY A COURT IN THE STATE OF NEW  
13    YORK; OR  
14    (III) BEEN ADJUDICATED BY A COURT OF ANOTHER STATE OR TERRITORY OF THE  
15    UNITED STATES TO BE THE FATHER OF THE CHILD, WHEN A CERTIFIED COPY OF  
16    THE COURT ORDER HAS BEEN FILED WITH THE PUTATIVE FATHER REGISTRY, PURSU-  
17    ANT TO SECTION THREE HUNDRED SEVENTY-TWO-C OF THE SOCIAL SERVICES LAW;  
18    OR  
19    (IV) ACKNOWLEDGED PATERNITY IN A FORM DULY EXECUTED PURSUANT TO  
20    SECTION FOUR THOUSAND ONE HUNDRED THIRTY-FIVE-B OF THE PUBLIC HEALTH LAW  
21    OR IN A FORM RECOGNIZED BY THE STATE OR TERRITORY OF THE UNITED STATES  
22    IN WHICH IT WAS EXECUTED TO HAVE THE FORCE AND EFFECT OF AN ORDER OF  
23    PATERNITY OR FILIATION; OR

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

LBD13833-01-4

(V) BEEN IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR FILIATION OR AN ACKNOWLEDGMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS BEEN DETERMINED BY THE COURT TO BE ENTITLED TO COMITY IN THIS STATE; OR

(VI) maintained substantial and continuous or repeated contact with the child as manifested by[: (i)] the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either [(ii)]:

(A) the father's visiting the child at least [monthly] TWICE PER MONTH when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or [(iii)]

(B) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. [The] FOR PURPOSES OF THIS SUBPARAGRAPH, THE subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this paragraph.

(VII) A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months [within the one year period] immediately preceding the EARLIER OF THE placement of the child for adoption OR PLACEMENT OF THE CHILD IN FOSTER CARE and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this [subdivision] PARAGRAPH.

(e) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months [at the time he is placed for adoption] OLD AT THE TIME OF THE FILING OF A PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION OR PETITION FOR ADOPTION, WHICHEVER IS EARLIEST, but only if:

(i) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (ii) such father openly held himself out to be the father of such child during such period; and (iii) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

S 2. Subdivisions 1 and 2 of section 111-a of the domestic relations law, subdivision 1 as amended by chapter 371 of the laws of 2013, subdivision 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivision 2 as amended by chapter 862 of the laws of 1977, and paragraphs (f) and (g) of subdivision 2 as amended and paragraph (h) of subdivision 2 as added by chapter 575 of the laws of 1980, are amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to

1 section one hundred fifteen-b of this article relating to the revocation  
2 of an adoption consent, when such proceeding involves a child born out-  
3 of-wedlock provided, however, that such notice shall not be required to  
4 be given to any person who previously has been given notice of any  
5 [proceeding] PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO  
6 EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL  
7 SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION involving the child[,  
8 pursuant to section three hundred eighty-four-c of the social services  
9 law,] and provided further that notice in an adoption proceeding[,]  
10 pursuant to this section shall not be required to be given to any person  
11 who has previously received notice of any proceeding pursuant to section  
12 one hundred fifteen-b of this article. In addition to such other  
13 requirements as may be applicable to the petition in any proceeding in  
14 which notice must be given pursuant to this section, the petition shall  
15 set forth the names and last known addresses of all persons required to  
16 be given notice of the proceeding, pursuant to this section, and there  
17 shall be shown by the petition or by affidavit or other proof satisfac-  
18 tory to the court that there are no persons other than those set forth  
19 in the petition who are entitled to notice. For the purpose of determin-  
20 ing persons entitled to notice of adoption proceedings initiated pursu-  
21 ant to this article, persons specified in subdivision two of this  
22 section shall not include any person who has been convicted of one or  
23 more of the following sexual offenses in this state or convicted of one  
24 or more offenses in another jurisdiction which, if committed in this  
25 state, would constitute one or more of the following offenses, when the  
26 child who is the subject of the proceeding was conceived as a result:  
27 (A) rape in first or second degree; (B) course of sexual conduct against  
28 a child in the first degree; (C) predatory sexual assault; or (D) preda-  
29 tory sexual assault against a child.

30 2. Persons entitled to notice, pursuant to subdivision one of this  
31 section, shall include:

32 (a) [any person adjudicated by a court in this state to be the father  
33 of the child;

34 (b) any person adjudicated by a court of another state or territory of  
35 the United States to be the father of the child, when a certified copy  
36 of the court order has been filed with the putative father registry,  
37 pursuant to section three hundred seventy-two-c of the social services  
38 law;

39 (c)] any person who has timely filed an unrevoked notice of intent to  
40 claim paternity of the child, pursuant to section three hundred seven-  
41 ty-two-c of the social services law;

42 [(d) any person who is recorded on the child's birth certificate as  
43 the child's father;

44 (e)] (B) any person who is openly living with the child and the  
45 child's mother at the time the proceeding is initiated and who is hold-  
46 ing himself out to be the child's father;

47 [(f)] (C) any person who has been identified as the child's father by  
48 the mother in A written, sworn statement;

49 [(g)] (D) any person who was married to the child's mother within six  
50 months subsequent to the birth of the child and prior to the execution  
51 of a surrender instrument or the initiation of a proceeding pursuant to  
52 section three hundred eighty-four-b of the social services law; [and

53 (h) any person who has filed with the putative father registry an  
54 instrument acknowledging paternity of the child, pursuant to section  
55 4-1.2 of the estates, powers and trusts law] (E) ANY PERSON WHO, SUBSE-  
56 QUENT TO THE CHILD'S MOST RECENT ENTRY INTO FOSTER CARE, HAS FILED A

1 PATERNITY OR CUSTODY PETITION THAT REMAINS PENDING, WHERE SUCH PETITION  
2 WAS SERVED UPON THE MOTHER OR UPON THE AGENCY HAVING CARE AND CUSTODY OF  
3 THE CHILD, WHERE SUCH PERSON STATED IN THE PETITION THAT HE IS THE  
4 CHILD'S FATHER AND WHERE HE APPEARED IN COURT ON THAT PETITION ON THE  
5 DATE FOR RETURN OF PROCESS; AND

6 (F) ANY PERSON IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR  
7 FILIATION OR AN ACKNOWLEDGMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS  
8 BEEN DETERMINED BY THE COURT NOT TO BE ENTITLED TO COMITY IN THIS STATE,  
9 BUT FOR WHOM THE COURT DETERMINES THAT SUCH PERSON SHOULD BE PROVIDED  
10 WITH NOTICE PURSUANT TO THIS SECTION.

11 S 3. Subdivisions 1 and 2 of section 384-c of the social services law,  
12 subdivision 1 as amended by chapter 371 of the laws of 2013, subdivision  
13 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivi-  
14 sion 2 as amended by chapter 862 of the laws of 1977, and paragraphs (f)  
15 and (g) of subdivision 2 as amended and paragraph (h) of subdivision 2  
16 as added by chapter 575 of the laws of 1980, are amended to read as  
17 follows:

18 1. Notwithstanding any inconsistent provision of this or any other  
19 law, and in addition to the notice requirements of any law pertaining to  
20 persons other than those specified in subdivision two of this section,  
21 notice as provided herein shall be given to the persons specified in  
22 subdivision two of this section of any [proceeding initiated pursuant to  
23 sections three hundred fifty-eight-a, three hundred eighty-four, and  
24 three hundred eighty-four-b of this chapter,] PETITION TO TERMINATE  
25 PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION  
26 FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO  
27 ADOPTION involving [a] THE child IF THE CHILD WAS born out-of-wedlock.  
28 Persons specified in subdivision two of this section shall not include  
29 any person who has been convicted of one or more of the following sexual  
30 offenses in this state or convicted of one or more offenses in another  
31 jurisdiction which, if committed in this state, would constitute one or  
32 more of the following offenses, when the child who is the subject of the  
33 proceeding was conceived as a result: (A) rape in first or second  
34 degree; (B) course of sexual conduct against a child in the first  
35 degree; (C) predatory sexual assault; or (D) predatory sexual assault  
36 against a child.

37 2. Persons entitled to notice, pursuant to subdivision one of this  
38 section, shall include:

39 (a) [any person adjudicated by a court in this state to be the father  
40 of the child;

41 (b) any person adjudicated by a court of another state or territory of  
42 the United States to be the father of the child, when a certified copy  
43 of the court order has been filed with the putative father registry,  
44 pursuant to section three hundred seventy-two-c of this chapter;

45 (c)] any person who has timely filed an unrevoked notice of intent to  
46 claim paternity of the child, pursuant to section three hundred seven-  
47 ty-two-c of this [chapter] TITLE;

48 [(d) any person who is recorded on the child's birth certificate as  
49 the child's father;

50 (e)] (B) any person who is openly living with the child and the  
51 child's mother at the time the proceeding is initiated or at the time  
52 the child was placed in the care of an authorized agency, and who is  
53 holding himself out to be the child's father;

54 [(f)] (C) any person who has been identified as the child's father by  
55 the mother in A written, sworn statement;

1 [(g)] (D) any person who was married to the child's mother within six  
2 months subsequent to the birth of the child and prior to the execution  
3 of a surrender instrument or the initiation of a proceeding pursuant to  
4 section three hundred eighty-four-b OF THIS TITLE; [and

5 (h) any person who has filed with the putative father registry an  
6 instrument acknowledging paternity of the child, pursuant to section  
7 4-1.2 of the estates, powers and trusts law] (E) ANY PERSON WHO, SUBSE-  
8 QUENT TO THE CHILD'S MOST RECENT ENTRY INTO FOSTER CARE, HAS FILED A  
9 PATERNITY OR CUSTODY PETITION THAT REMAINS PENDING, WHERE SUCH PETITION  
10 WAS SERVED UPON THE MOTHER OR UPON THE AGENCY HAVING CARE AND CUSTODY OF  
11 THE CHILD, WHERE SUCH PERSON STATED IN THE PETITION THAT HE IS THE  
12 CHILD'S FATHER AND WHERE HE APPEARED IN COURT ON THAT PETITION ON THE  
13 DATE FOR RETURN OF PROCESS; AND

14 (F) ANY PERSON IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR  
15 FILIATION OR AN ACKNOWLEDGMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS  
16 BEEN DETERMINED BY THE COURT NOT TO BE ENTITLED TO COMITY IN THIS STATE,  
17 BUT FOR WHOM THE COURT DETERMINES THAT SUCH PERSON SHOULD BE PROVIDED  
18 WITH NOTICE PURSUANT TO SECTION ONE HUNDRED ELEVEN-A OF THE DOMESTIC  
19 RELATIONS LAW.

20 S 4. This act shall take effect on the ninetieth day after it shall  
21 have become a law and shall apply to petitions for adoption, termination  
22 of parental rights, approvals of extra-judicial surrenders or extra-ju-  
23 dicial consents to adoption or applications to execute judicial surren-  
24 ders filed on or after such effective date; provided, however, that this  
25 act shall not apply to cases in which judicial determinations had been  
26 made prior to such effective date regarding putative fathers entitled to  
27 consent to adopt or to notice of adoption, termination of parental  
28 rights, approvals of extra-judicial surrenders or extra-judicial  
29 consents to adoption or applications to execute judicial surrenders.