

6768--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

April 1, 2015

---

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to child custody when a parent is deployed on military active duty

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

1     Section 1. Section 70 of the domestic relations law is amended by  
2     adding a new subdivision (c) to read as follows:  
3     (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
4     COURT SHALL NOT CONSIDER THE PAST OR CURRENT DEPLOYMENT, OR POSSIBLE  
5     FUTURE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF THE ARMED FORCES OF  
6     THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE STATE AS A DETRI-  
7     MENTAL FACTOR TO THE AWARDING OF CUSTODY OF A CHILD WHERE A SUITABLE  
8     CHILD CARE PLAN HAS BEEN PRESENTED TO THE COURT BY THE PETITIONING  
9     PARENT.  
10    S 2. Subdivision 3 of section 75-1 of the domestic relations law, as  
11    amended by chapter 473 of the laws of 2009, is amended to read as  
12    follows:  
13    3. Unless the parties have otherwise stipulated or agreed, if an order  
14    is issued under this section, the return of the parent from active mili-  
15    tary service, deployment or temporary assignment shall be considered a  
16    substantial change in circumstances, AND WITHIN THIRTY DAYS OF SUCH  
17    RETURN THE CHILD CUSTODY ORDER IN EFFECT IMMEDIATELY PRIOR TO ANY  
18    MODIFICATIONS THEREOF PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS  
19    SECTION SHALL BE REINSTATED AND BE IN FULL FORCE AND EFFECT. [Upon the  
20    request of either parent, the court shall determine on the basis of the  
21    child's best interests whether the custody judgment or order previously  
22    in effect should be modified.]

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

LBD03495-03-6

1 S 3. Paragraph (a) of subdivision 1 of section 240 of the domestic  
2 relations law, as amended by chapter 476 of the laws of 2009, is amended  
3 and a new subdivision 1-d is added to read as follows:

4 (a) In any action or proceeding brought (1) to annul a marriage or to  
5 declare the nullity of a void marriage, or (2) for a separation, or (3)  
6 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-  
7 tion and order to show cause, the custody of or right to visitation with  
8 any child of a marriage, the court shall require verification of the  
9 status of any child of the marriage with respect to such child's custody  
10 and support, including any prior orders, and shall enter orders for  
11 custody and support as, in the court's discretion, justice requires,  
12 having regard to the circumstances of the case and of the respective  
13 parties and to the best interests of the child and subject to the  
14 provisions of [subdivision] SUBDIVISIONS one-c AND ONE-D of this  
15 section. Where either party to an action concerning custody of or a  
16 right to visitation with a child alleges in a sworn petition or  
17 complaint or sworn answer, cross-petition, counterclaim or other sworn  
18 responsive pleading that the other party has committed an act of domes-  
19 tic violence against the party making the allegation or a family or  
20 household member of either party, as such family or household member is  
21 defined in article eight of the family court act, and such allegations  
22 are proven by a preponderance of the evidence, the court must consider  
23 the effect of such domestic violence upon the best interests of the  
24 child, together with such other facts and circumstances as the court  
25 deems relevant in making a direction pursuant to this section and state  
26 on the record how such findings, facts and circumstances factored into  
27 the direction. If a parent makes a good faith allegation based on a  
28 reasonable belief supported by facts that the child is the victim of  
29 child abuse, child neglect, or the effects of domestic violence, and if  
30 that parent acts lawfully and in good faith in response to that reason-  
31 able belief to protect the child or seek treatment for the child, then  
32 that parent shall not be deprived of custody, visitation or contact with  
33 the child, or restricted in custody, visitation or contact, based solely  
34 on that belief or the reasonable actions taken based on that belief. If  
35 an allegation that a child is abused is supported by a preponderance of  
36 the evidence, then the court shall consider such evidence of abuse in  
37 determining the visitation arrangement that is in the best interest of  
38 the child, and the court shall not place a child in the custody of a  
39 parent who presents a substantial risk of harm to that child, and shall  
40 state on the record how such findings were factored into the determi-  
41 nation. An order directing the payment of child support shall contain  
42 the social security numbers of the named parties. In all cases there  
43 shall be no prima facie right to the custody of the child in either  
44 parent. Such direction shall make provision for child support out of the  
45 property of either or both parents. The court shall make its award for  
46 child support pursuant to subdivision one-b of this section. Such direc-  
47 tion may provide for reasonable visitation rights to the maternal and/or  
48 paternal grandparents of any child of the parties. Such direction as it  
49 applies to rights of visitation with a child remanded or placed in the  
50 care of a person, official, agency or institution pursuant to article  
51 ten of the family court act, or pursuant to an instrument approved under  
52 section three hundred fifty-eight-a of the social services law, shall be  
53 enforceable pursuant to part eight of article ten of the family court  
54 act and sections three hundred fifty-eight-a and three hundred eighty-  
55 four-a of the social services law and other applicable provisions of law  
56 against any person having care and custody, or temporary care and custo-

dy, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

1-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COURT SHALL NOT CONSIDER THE PAST OR CURRENT DEPLOYMENT, OR POSSIBLE FUTURE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF THE ARMED FORCES OF THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE STATE AS A DETRIMENTAL FACTOR TO THE AWARDING OF CUSTODY OF A CHILD TO A PETITIONING PARENT WHERE A SUITABLE CHILD CARE PLAN HAS BEEN PRESENTED TO THE COURT BY SUCH PARENT.

S 3-a. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 567 of the laws of 2015, is amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the

1 status of any child of the marriage with respect to such child's custody  
2 and support, including any prior orders, and shall enter orders for  
3 custody and support as, in the court's discretion, justice requires,  
4 having regard to the circumstances of the case and of the respective  
5 parties and to the best interests of the child and subject to the  
6 provisions of [subdivision] SUBDIVISIONS one-c AND ONE-D of this  
7 section. Where either party to an action concerning custody of or a  
8 right to visitation with a child alleges in a sworn petition or  
9 complaint or sworn answer, cross-petition, counterclaim or other sworn  
10 responsive pleading that the other party has committed an act of domes-  
11 tic violence against the party making the allegation or a family or  
12 household member of either party, as such family or household member is  
13 defined in article eight of the family court act, and such allegations  
14 are proven by a preponderance of the evidence, the court must consider  
15 the effect of such domestic violence upon the best interests of the  
16 child, together with such other facts and circumstances as the court  
17 deems relevant in making a direction pursuant to this section and state  
18 on the record how such findings, facts and circumstances factored into  
19 the direction. If a parent makes a good faith allegation based on a  
20 reasonable belief supported by facts that the child is the victim of  
21 child abuse, child neglect, or the effects of domestic violence, and if  
22 that parent acts lawfully and in good faith in response to that reason-  
23 able belief to protect the child or seek treatment for the child, then  
24 that parent shall not be deprived of custody, visitation or contact with  
25 the child, or restricted in custody, visitation or contact, based solely  
26 on that belief or the reasonable actions taken based on that belief. If  
27 an allegation that a child is abused is supported by a preponderance of  
28 the evidence, then the court shall consider such evidence of abuse in  
29 determining the visitation arrangement that is in the best interest of  
30 the child, and the court shall not place a child in the custody of a  
31 parent who presents a substantial risk of harm to that child, and shall  
32 state on the record how such findings were factored into the determi-  
33 nation. Where a proceeding filed pursuant to article ten or ten-A of the  
34 family court act is pending at the same time as a proceeding brought in  
35 the supreme court involving the custody of, or right to visitation with,  
36 any child of a marriage, the court presiding over the proceeding under  
37 article ten or ten-A of the family court act may jointly hear the dispo-  
38 sitional hearing on the petition under article ten or the permanency  
39 hearing under article ten-A of the family court act and, upon referral  
40 from the supreme court, the hearing to resolve the matter of custody or  
41 visitation in the proceeding pending in the supreme court; provided  
42 however, the court must determine custody or visitation in accordance  
43 with the terms of this section.

44 An order directing the payment of child support shall contain the  
45 social security numbers of the named parties. In all cases there shall  
46 be no prima facie right to the custody of the child in either parent.  
47 Such direction shall make provision for child support out of the proper-  
48 ty of either or both parents. The court shall make its award for child  
49 support pursuant to subdivision one-b of this section. Such direction  
50 may provide for reasonable visitation rights to the maternal and/or  
51 paternal grandparents of any child of the parties. Such direction as it  
52 applies to rights of visitation with a child remanded or placed in the  
53 care of a person, official, agency or institution pursuant to article  
54 ten of the family court act, or pursuant to an instrument approved under  
55 section three hundred fifty-eight-a of the social services law, shall be  
56 enforceable pursuant to part eight of article ten of the family court

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

45 S 4. This act shall take effect immediately; provided, however, that  
46 section three-a of this act shall take effect on the same date as  
47 section 12 of chapter 567 of the laws of 2015, takes effect.