

104--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to prohibiting the consideration of evidence that either parent has ever obtained or attempted to obtain reproductive health services relating to the termination of a pregnancy in certain legal proceedings

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

1 Section 1. Subdivision (a) of section 70 of the domestic relations
2 law, as amended by chapter 457 of the laws of 1988, is amended to read
3 as follows:
4 (a) Where a minor child is residing within this state, either parent
5 may apply to the supreme court for a writ of habeas corpus to have such
6 minor child brought before such court; and on the return thereof, the
7 court, on due consideration, may award the natural guardianship, charge
8 and custody of such child to either parent for such time, under such
9 regulations and restrictions, and with such provisions and directions,
10 as the case may require, and may at any time thereafter vacate or modify
11 such order. In all cases there shall be no prima facie right to the
12 custody of the child in either parent, but the court shall determine
13 solely what is for the best interest of the child, and what will best
14 promote its welfare and happiness, and make award accordingly. IN
15 MAKING A DETERMINATION OF THE BEST INTEREST OF THE CHILD PURSUANT TO
16 THIS SECTION, THE COURT SHALL NOT CONSIDER EVIDENCE THAT EITHER PARENT
17 HAS EVER OBTAINED OR ATTEMPTED TO OBTAIN REPRODUCTIVE HEALTH SERVICES.
18 FOR THE PURPOSES OF THIS SECTION, REPRODUCTIVE HEALTH SERVICES MEANS
19 HEALTH CARE SERVICES PROVIDED IN A HOSPITAL, CLINIC, PHYSICIAN'S OFFICE
20 OR OTHER FACILITY AND INCLUDES MEDICAL, SURGICAL, COUNSELING OR REFERRAL
21 SERVICES RELATING TO THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES
22 RELATING TO PREGNANCY OR THE TERMINATION OF A PREGNANCY.

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

LBD01380-02-6

1 S 2. 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 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 one-c of this section. IN MAKING A DETERMI-
15 NATION OF THE BEST INTEREST OF THE CHILD PURSUANT TO THIS SECTION, THE
16 COURT SHALL NOT CONSIDER EVIDENCE THAT EITHER PARENT HAS EVER OBTAINED
17 OR ATTEMPTED TO OBTAIN REPRODUCTIVE HEALTH SERVICES. FOR THE PURPOSES OF
18 THIS SECTION, REPRODUCTIVE HEALTH SERVICES MEANS HEALTH CARE SERVICES
19 PROVIDED IN A HOSPITAL, CLINIC, PHYSICIAN'S OFFICE OR OTHER FACILITY AND
20 INCLUDES MEDICAL, SURGICAL, COUNSELING OR REFERRAL SERVICES RELATING TO
21 THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES RELATING TO PREGNANCY
22 OR THE TERMINATION OF A PREGNANCY. Where either party to an action
23 concerning custody of or a right to visitation with a child alleges in a
24 sworn petition or complaint or sworn answer, cross-petition, counter-
25 claim or other sworn responsive pleading that the other party has
26 committed an act of domestic violence against the party making the alle-
27 gation or a family or household member of either party, as such family
28 or household member is defined in article eight of the family court act,
29 and such allegations are proven by a preponderance of the evidence, the
30 court must consider the effect of such domestic violence upon the best
31 interests of the child, together with such other facts and circumstances
32 as the court deems relevant in making a direction pursuant to this
33 section and state on the record how such findings, facts and circum-
34 stances factored into the direction. If a parent makes a good faith
35 allegation based on a reasonable belief supported by facts that the
36 child is the victim of child abuse, child neglect, or the effects of
37 domestic violence, and if that parent acts lawfully and in good faith in
38 response to that reasonable belief to protect the child or seek treat-
39 ment for the child, then that parent shall not be deprived of custody,
40 visitation or contact with the child, or restricted in custody, visita-
41 tion or contact, based solely on that belief or the reasonable actions
42 taken based on that belief. If an allegation that a child is abused is
43 supported by a preponderance of the evidence, then the court shall
44 consider such evidence of abuse in determining the visitation arrange-
45 ment that is in the best interest of the child, and the court shall not
46 place a child in the custody of a parent who presents a substantial risk
47 of harm to that child, and shall state on the record how such findings
48 were factored into the determination. An order directing the payment of
49 child support shall contain the social security numbers of the named
50 parties. In all cases there shall be no prima facie right to the custody
51 of the child in either parent. Such direction shall make provision for
52 child support out of the property of either or both parents. The court
53 shall make its award for child support pursuant to subdivision one-b of
54 this section. Such direction may provide for reasonable visitation
55 rights to the maternal and/or paternal grandparents of any child of the
56 parties. Such direction as it applies to rights of visitation with a

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

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

52 (a) In any action or proceeding brought (1) to annul a marriage or to
53 declare the nullity of a void marriage, or (2) for a separation, or (3)
54 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-
55 tion and order to show cause, the custody of or right to visitation with
56 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 one-c of this section. IN MAKING A DETERMI-
7 NATION OF THE BEST INTEREST OF THE CHILD PURSUANT TO THIS SECTION, THE
8 COURT SHALL NOT CONSIDER EVIDENCE THAT EITHER PARENT HAS EVER OBTAINED
9 OR ATTEMPTED TO OBTAIN REPRODUCTIVE HEALTH SERVICES. FOR THE PURPOSES OF
10 THIS SECTION, REPRODUCTIVE HEALTH SERVICES MEANS HEALTH CARE SERVICES
11 PROVIDED IN A HOSPITAL, CLINIC, PHYSICIAN'S OFFICE OR OTHER FACILITY AND
12 INCLUDES MEDICAL, SURGICAL, COUNSELING OR REFERRAL SERVICES RELATING TO
13 THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES RELATING TO PREGNANCY
14 OR THE TERMINATION OF A PREGNANCY. Where either party to an action
15 concerning custody of or a right to visitation with a child alleges in a
16 sworn petition or complaint or sworn answer, cross-petition, counter-
17 claim or other sworn responsive pleading that the other party has
18 committed an act of domestic violence against the party making the alle-
19 gation or a family or household member of either party, as such family
20 or household member is defined in article eight of the family court act,
21 and such allegations are proven by a preponderance of the evidence, the
22 court must consider the effect of such domestic violence upon the best
23 interests of the child, together with such other facts and circumstances
24 as the court deems relevant in making a direction pursuant to this
25 section and state on the record how such findings, facts and circum-
26 stances factored into the direction. If a parent makes a good faith
27 allegation based on a reasonable belief supported by facts that the
28 child is the victim of child abuse, child neglect, or the effects of
29 domestic violence, and if that parent acts lawfully and in good faith in
30 response to that reasonable belief to protect the child or seek treat-
31 ment for the child, then that parent shall not be deprived of custody,
32 visitation or contact with the child, or restricted in custody, visita-
33 tion or contact, based solely on that belief or the reasonable actions
34 taken based on that belief. If an allegation that a child is abused is
35 supported by a preponderance of the evidence, then the court shall
36 consider such evidence of abuse in determining the visitation arrange-
37 ment that is in the best interest of the child, and the court shall not
38 place a child in the custody of a parent who presents a substantial risk
39 of harm to that child, and shall state on the record how such findings
40 were factored into the determination. Where a proceeding filed pursuant
41 to article ten or ten-A of the family court act is pending at the same
42 time as a proceeding brought in the supreme court involving the custody
43 of, or right to visitation with, any child of a marriage, the court
44 presiding over the proceeding under article ten or ten-A of the family
45 court act may jointly hear the dispositional hearing on the petition
46 under article ten or the permanency hearing under article ten-A of the
47 family court act and, upon referral from the supreme court, the hearing
48 to resolve the matter of custody or visitation in the proceeding pending
49 in the supreme court; provided however, the court must determine custody
50 or visitation in accordance with the terms of this section.

51 An order directing the payment of child support shall contain the
52 social security numbers of the named parties. In all cases there shall
53 be no prima facie right to the custody of the child in either parent.
54 Such direction shall make provision for child support out of the proper-
55 ty of either or both parents. The court shall make its award for child
56 support pursuant to subdivision one-b of this section. Such direction

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

52 S 4. This act shall take effect immediately provided, however, that
53 section three of this act shall take effect on the same date and in the
54 same manner as section 12 of chapter 567 of the laws of 2015 takes
55 effect.