

104--A

2015-2016 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2015

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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.