

2153

2015-2016 Regular Sessions

I N S E N A T E

January 21, 2015

Introduced by Sen. GOLDEN -- 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 family court act, in relation to the standing of certain relatives in custody and guardianship proceedings

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

1 Section 1. Subdivision 2 of section 72 of the domestic relations law,  
2 as added by chapter 657 of the laws of 2003, is amended to read as  
3 follows:

4 2. (a) Where a grandparent or the grandparents of a minor child,  
5 residing within this state, OR RELATIVE WHO IS RELATED TO A PARENT WITH-  
6 IN THE SECOND DEGREE OF CONSANGUINITY OR AFFINITY, RESIDING IN THIS  
7 STATE can demonstrate to the satisfaction of the court the existence of  
8 extraordinary circumstances, such grandparent [or], grandparents OR  
9 RELATIVE of such child may apply to the supreme court by commencing a  
10 special proceeding or for a writ of habeas corpus to have such child  
11 brought before such court, or may apply to family court pursuant to  
12 subdivision (b) of section six hundred fifty-one OR SECTION SIX HUNDRED  
13 SIXTY-ONE of the family court act; and on the return thereof, the court,  
14 by order, after due notice to the parent or any other person or party  
15 having the care, custody, and control of such child, to be given in such  
16 manner as the court shall prescribe, may make such directions as the  
17 best interests of the child may require, for custody rights for such  
18 grandparent [or], grandparents OR RELATIVE in respect to such child. An  
19 extended disruption of custody, as such term is defined in this section,  
20 shall constitute an extraordinary circumstance.

21 (b) For the purposes of this section "extended disruption of custody"  
22 shall include, but not be limited to, a prolonged separation of the  
23 respondent parent and the child for at least twenty-four continuous  
24 months, during which TIME the parent voluntarily relinquished care and

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

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1 control of the child and the child resided in the household of the peti-  
2 tioner grandparent [or], grandparents OR RELATIVE, provided, however,  
3 that the court may find that extraordinary circumstances exist should  
4 the prolonged separation have lasted for less than twenty-four months  
5 AND PROVIDED THAT WHERE THE PARENT PROVES BY PREPONDERANCE OF THE  
6 EVIDENCE THAT AN ACT OR ACTS OF DOMESTIC VIOLENCE COMMITTED AGAINST THE  
7 PARENT CONTRIBUTED TO THE RELINQUISHMENT OF CARE AND CONTROL, THE COURT  
8 SHALL FIND NO EXTRAORDINARY CIRCUMSTANCES EXIST.

9 (c) Nothing in this section shall limit the ability of parties to  
10 enter into consensual custody agreements absent the existence of  
11 extraordinary circumstances.

12 S 2. Subdivisions (b) and (d) of section 651 of the family court act,  
13 subdivision (b) as amended by chapter 657 of the laws of 2003 and subdi-  
14 vision (d) as amended by chapter 41 of the laws of 2010, are amended to  
15 read as follows:

16 (b) When initiated in the family court, the family court has jurisdic-  
17 tion to determine, in accordance with subdivision one of section two  
18 hundred forty of the domestic relations law and with the same powers  
19 possessed by the supreme court in addition to its own powers, habeas  
20 corpus proceedings and proceedings brought by petition and order to show  
21 cause, for the determination of the custody or visitation of minors,  
22 including applications by a grandparent or grandparents for visitation  
23 or custody rights pursuant to section seventy-two or two hundred forty  
24 of the domestic relations law , OR BY A RELATIVE WHO IS RELATED TO A  
25 PARENT OF A CHILD IN THE SECOND DEGREE OF CONSANGUINITY OR AFFINITY FOR  
26 CUSTODY RIGHTS PURSUANT TO SECTION SEVENTY-TWO OF THE DOMESTIC RELATIONS  
27 LAW.

28 (d) With respect to applications by a grandparent or grandparents for  
29 visitation or custody rights, made pursuant to section seventy-two or  
30 two hundred forty of the domestic relations law, OR BY A RELATIVE WHO IS  
31 RELATED TO A PARENT OF A CHILD IN THE SECOND DEGREE OF CONSANGUINITY OR  
32 AFFINITY FOR CUSTODY RIGHTS PURSUANT TO SECTION SEVENTY-TWO OF THE  
33 DOMESTIC RELATIONS LAW, with a child remanded or placed in the care of a  
34 person, official, agency or institution pursuant to the provisions of  
35 article ten of this act, the applicant, in such manner as the court  
36 shall prescribe, shall serve a copy of the application upon the social  
37 services official having care and custody of such child, and the child's  
38 attorney, who shall be afforded an opportunity to be heard thereon.

39 S 3. This act shall take effect immediately.