

4726

2015-2016 Regular Sessions

I N   S E N A T E

April 10, 2015

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Introduced by Sen. ROBACH -- 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 prohibiting the court from granting custody of or unsupervised visitation with a child to a person who has been convicted of or charged with raping the parent of the child

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

1     Section 1. Paragraph (a) of subdivision 1 of section 240 of the domes-  
2     tic relations law, as amended by chapter 476 of the laws of 2009, is  
3     amended 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. Where either party to  
15    an action concerning custody of or a right to visitation with a child  
16    alleges in a sworn petition or complaint or sworn answer, cross-peti-  
17    tion, counterclaim or other sworn responsive pleading that the other  
18    party has committed an act of domestic violence against the party making  
19    the allegation or a family or household member of either party, as such  
20    family or household member is defined in article eight of the family  
21    court act, and such allegations are proven by a preponderance of the  
22    evidence, the court must consider the effect of such domestic violence  
23    upon the best interests of the child, together with such other facts and

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

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1 circumstances as the court deems relevant in making a direction pursuant  
2 to this section and state on the record how such findings, facts and  
3 circumstances factored into the direction. NO COURT SHALL AWARD CUSTODY  
4 TO OR ALLOW UNSUPERVISED VISITATION WITH A PERSON WHO HAS BEEN CONVICTED  
5 OF RAPING THE PARENT OF SUCH CHILD AND ANY REQUEST FOR CUSTODY OR UNSU-  
6 PERVISED VISITATION BY A PERSON CHARGED WITH RAPING THE PARENT OF SUCH  
7 CHILD SHALL BE STAYED PENDING RESOLUTION OF ANY CRIMINAL CHARGES OF  
8 RAPE. If a parent makes a good faith allegation based on a reasonable  
9 belief supported by facts that the child is the victim of child abuse,  
10 child neglect, or the effects of domestic violence, and if that parent  
11 acts lawfully and in good faith in response to that reasonable belief to  
12 protect the child or seek treatment for the child, then that parent  
13 shall not be deprived of custody, visitation or contact with the child,  
14 or restricted in custody, visitation or contact, based solely on that  
15 belief or the reasonable actions taken based on that belief. If an alle-  
16 gation that a child is abused is supported by a preponderance of the  
17 evidence, then the court shall consider such evidence of abuse in deter-  
18 mining the visitation arrangement that is in the best interest of the  
19 child, and the court shall not place a child in the custody of a parent  
20 who presents a substantial risk of harm to that child, and shall state  
21 on the record how such findings were factored into the determination. An  
22 order directing the payment of child support shall contain the social  
23 security numbers of the named parties. In all cases there shall be no  
24 prima facie right to the custody of the child in either parent. Such  
25 direction shall make provision for child support out of the property of  
26 either or both parents. The court shall make its award for child support  
27 pursuant to subdivision one-b of this section. Such direction may  
28 provide for reasonable visitation rights to the maternal and/or paternal  
29 grandparents of any child of the parties. Such direction as it applies  
30 to rights of visitation with a child remanded or placed in the care of a  
31 person, official, agency or institution pursuant to article ten of the  
32 family court act, or pursuant to an instrument approved under section  
33 three hundred fifty-eight-a of the social services law, shall be  
34 enforceable pursuant to part eight of article ten of the family court  
35 act and sections three hundred fifty-eight-a and three hundred eighty-  
36 four-a of the social services law and other applicable provisions of law  
37 against any person having care and custody, or temporary care and custo-  
38 dy, of the child. Notwithstanding any other provision of law, any writ-  
39 ten application or motion to the court for the establishment, modifica-  
40 tion or enforcement of a child support obligation for persons not in  
41 receipt of public assistance and care must contain either a request for  
42 child support enforcement services which would authorize the collection  
43 of the support obligation by the immediate issuance of an income  
44 execution for support enforcement as provided for by this chapter,  
45 completed in the manner specified in section one hundred eleven-g of the  
46 social services law; or a statement that the applicant has applied for  
47 or is in receipt of such services; or a statement that the applicant  
48 knows of the availability of such services, has declined them at this  
49 time and where support enforcement services pursuant to section one  
50 hundred eleven-g of the social services law have been declined that the  
51 applicant understands that an income deduction order may be issued  
52 pursuant to subdivision (c) of section fifty-two hundred forty-two of  
53 the civil practice law and rules without other child support enforcement  
54 services and that payment of an administrative fee may be required. The  
55 court shall provide a copy of any such request for child support  
56 enforcement services to the support collection unit of the appropriate

1 social services district any time it directs payments to be made to such  
2 support collection unit. Additionally, the copy of any such request  
3 shall be accompanied by the name, address and social security number of  
4 the parties; the date and place of the parties' marriage; the name and  
5 date of birth of the child or children; and the name and address of the  
6 employers and income payors of the party from whom child support is  
7 sought or from the party ordered to pay child support to the other  
8 party. Such direction may require the payment of a sum or sums of money  
9 either directly to the custodial parent or to third persons for goods or  
10 services furnished for such child, or for both payments to the custodial  
11 parent and to such third persons; provided, however, that unless the  
12 party seeking or receiving child support has applied for or is receiving  
13 such services, the court shall not direct such payments to be made to  
14 the support collection unit, as established in section one hundred  
15 eleven-h of the social services law. Every order directing the payment  
16 of support shall require that if either parent currently, or at any time  
17 in the future, has health insurance benefits available that may be  
18 extended or obtained to cover the child, such parent is required to  
19 exercise the option of additional coverage in favor of such child and  
20 execute and deliver to such person any forms, notices, documents or  
21 instruments necessary to assure timely payment of any health insurance  
22 claims for such child.

23 S 2. The family court act is amended by adding a new section 553 to  
24 read as follows:

25 S 553. PATERNITY PROCEEDINGS STAYED FOR RAPE CHARGES AGAINST PUTATIVE  
26 FATHER. 1. IF CRIMINAL CHARGES ALLEGING AN ACT OF RAPE ARE BROUGHT  
27 AGAINST THE PUTATIVE FATHER OF A CHILD CONCEIVED AS THE RESULT OF THAT  
28 ACT OF RAPE, THE COURT SHALL ISSUE AN AUTOMATIC STAY OF ANY PATERNITY  
29 PROCEEDING INVOLVING BOTH THE CHILD AND THE ALLEGED PUTATIVE FATHER. THE  
30 STAY SHALL NOT BE LIFTED UNTIL THERE IS A FINAL DISPOSITION OF SUCH  
31 CRIMINAL CHARGES.

32 2. IN ANY FUTURE CUSTODY PROCEEDING, ANY DENIAL OF VISITATION UNDER  
33 THIS SECTION SHALL NOT BE USED AGAINST THE MOTHER OF THE CHILD WHEN  
34 DETERMINING ANY SUPPORT OBLIGATION.

35 S 3. Subdivisions (a), (b) and (c) of section 651 of the family court  
36 act, subdivisions (a) and (c) as amended by chapter 85 of the laws of  
37 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003,  
38 are amended to read as follows:

39 (a) When referred from the supreme court or county court to the family  
40 court, the family court has jurisdiction to determine, in accordance  
41 with subdivision one of section two hundred forty of the domestic  
42 relations law and with the same powers possessed by the supreme court in  
43 addition to its own powers, habeas corpus proceedings and proceedings  
44 brought by petition and order to show cause, for the determination of  
45 the custody or visitation of minors SUBJECT, HOWEVER, TO THE PROVISIONS  
46 OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE  
47 DOMESTIC RELATIONS LAW PROHIBITING THE COURT FROM GRANTING CUSTODY OR  
48 UNSUPERVISED VISITATION OF A CHILD TO A PERSON WHO HAS BEEN CONVICTED OF  
49 OR CHARGED WITH RAPING THE PARENT OF THE CHILD.

50 (b) When initiated in the family court, the family court has jurisdic-  
51 tion to determine, in accordance with subdivision one of section two  
52 hundred forty of the domestic relations law and with the same powers  
53 possessed by the supreme court in addition to its own powers, habeas  
54 corpus proceedings and proceedings brought by petition and order to show  
55 cause, for the determination of the custody or visitation of minors,  
56 including applications by a grandparent or grandparents for visitation

1 or custody rights pursuant to section seventy-two or two hundred forty  
2 of the domestic relations law SUBJECT, HOWEVER, TO THE PROVISIONS OF  
3 PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE  
4 DOMESTIC RELATIONS LAW PROHIBITING THE COURT FROM GRANTING CUSTODY OR  
5 UNSUPERVISED VISITATION OF A CHILD TO A PERSON WHO HAS BEEN CONVICTED OF  
6 OR CHARGED WITH RAPING THE PARENT OF THE CHILD.

7 (c) When initiated in the family court pursuant to a petition under  
8 part eight of article ten of this act or section three hundred fifty-  
9 eight-a of the social services law, the family court has jurisdiction to  
10 enforce or modify orders or judgments of the supreme court relating to  
11 the visitation of minors in foster care, notwithstanding any limitation  
12 contained in subdivision (b) of section four hundred sixty-seven of this  
13 act BUT SUBJECT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION ONE OF  
14 SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW PROHIBITING THE  
15 COURT FROM GRANTING CUSTODY OR UNSUPERVISED VISITATION OF A CHILD TO A  
16 PERSON WHO HAS BEEN CONVICTED OF OR CHARGED WITH RAPING THE PARENT OF  
17 THE CHILD.

18 S 4. This act shall take effect immediately.