

4726--A

2015-2016 Regular Sessions

I N   S E N A T E

April 10, 2015

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Introduced by Sens. ROBACH, CROCI, GALLIVAN, MARCHIONE -- 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 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 domestic relations law, as amended by chapter 476 of the laws of 2009, is  
2     amended to read as follows:  
3     (a) In any action or proceeding brought (1) to annul a marriage or to  
4     declare the nullity of a void marriage, or (2) for a separation, or (3)  
5     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  
6     any child of a marriage, the court shall require verification of the  
7     status of any child of the marriage with respect to such child's custody  
8     and support, including any prior orders, and shall enter orders for  
9     custody and support as, in the court's discretion, justice requires,  
10    having regard to the circumstances of the case and of the respective  
11    parties and to the best interests of the child and subject to the  
12    provisions of subdivision one-c of this section. Where either party to  
13    an action concerning custody of or a right to visitation with a child  
14    alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other  
15    party has committed an act of domestic violence against the party making  
16    the allegation or a family or household member of either party, as such  
17  
18  
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EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 family or household member is defined in article eight of the family  
2 court act, and such allegations are proven by a preponderance of the  
3 evidence, the court must consider the effect of such domestic violence  
4 upon the best interests of the child, together with such other facts and  
5 circumstances as the court deems relevant in making a direction pursuant  
6 to this section and state on the record how such findings, facts and  
7 circumstances factored into the direction. NO COURT SHALL AWARD CUSTODY  
8 TO OR ALLOW UNSUPERVISED VISITATION WITH A PERSON WHO HAS BEEN CONVICTED  
9 OF RAPING THE PARENT OF SUCH CHILD AND ANY REQUEST FOR CUSTODY OR UNSU-  
10 PERVISED VISITATION BY A PERSON CHARGED WITH RAPING THE PARENT OF SUCH  
11 CHILD SHALL BE STAYED PENDING RESOLUTION OF ANY CRIMINAL CHARGES OF  
12 RAPE. If a parent makes a good faith allegation based on a reasonable  
13 belief supported by facts that the child is the victim of child abuse,  
14 child neglect, or the effects of domestic violence, and if that parent  
15 acts lawfully and in good faith in response to that reasonable belief to  
16 protect the child or seek treatment for the child, then that parent  
17 shall not be deprived of custody, visitation or contact with the child,  
18 or restricted in custody, visitation or contact, based solely on that  
19 belief or the reasonable actions taken based on that belief. If an alle-  
20 gation that a child is abused is supported by a preponderance of the  
21 evidence, then the court shall consider such evidence of abuse in deter-  
22 mining the visitation arrangement that is in the best interest of the  
23 child, and the court shall not place a child in the custody of a parent  
24 who presents a substantial risk of harm to that child, and shall state  
25 on the record how such findings were factored into the determination. An  
26 order directing the payment of child support shall contain the social  
27 security numbers of the named parties. In all cases there shall be no  
28 prima facie right to the custody of the child in either parent. Such  
29 direction shall make provision for child support out of the property of  
30 either or both parents. The court shall make its award for child support  
31 pursuant to subdivision one-b of this section. Such direction may  
32 provide for reasonable visitation rights to the maternal and/or paternal  
33 grandparents of any child of the parties. Such direction as it applies  
34 to rights of visitation with a child remanded or placed in the care of a  
35 person, official, agency or institution pursuant to article ten of the  
36 family court act, or pursuant to an instrument approved under section  
37 three hundred fifty-eight-a of the social services law, shall be  
38 enforceable pursuant to part eight of article ten of the family court  
39 act and sections three hundred fifty-eight-a and three hundred eighty-  
40 four-a of the social services law and other applicable provisions of law  
41 against any person having care and custody, or temporary care and custo-  
42 dy, of the child. Notwithstanding any other provision of law, any writ-  
43 ten application or motion to the court for the establishment, modifica-  
44 tion or enforcement of a child support obligation for persons not in  
45 receipt of public assistance and care must contain either a request for  
46 child support enforcement services which would authorize the collection  
47 of the support obligation by the immediate issuance of an income  
48 execution for support enforcement as provided for by this chapter,  
49 completed in the manner specified in section one hundred eleven-g of the  
50 social services law; or a statement that the applicant has applied for  
51 or is in receipt of such services; or a statement that the applicant  
52 knows of the availability of such services, has declined them at this  
53 time and where support enforcement services pursuant to section one  
54 hundred eleven-g of the social services law have been declined that the  
55 applicant understands that an income deduction order may be issued  
56 pursuant to subdivision (c) of section fifty-two hundred forty-two of

1 the civil practice law and rules without other child support enforcement  
2 services and that payment of an administrative fee may be required. The  
3 court shall provide a copy of any such request for child support  
4 enforcement services to the support collection unit of the appropriate  
5 social services district any time it directs payments to be made to such  
6 support collection unit. Additionally, the copy of any such request  
7 shall be accompanied by the name, address and social security number of  
8 the parties; the date and place of the parties' marriage; the name and  
9 date of birth of the child or children; and the name and address of the  
10 employers and income payors of the party from whom child support is  
11 sought or from the party ordered to pay child support to the other  
12 party. Such direction may require the payment of a sum or sums of money  
13 either directly to the custodial parent or to third persons for goods or  
14 services furnished for such child, or for both payments to the custodial  
15 parent and to such third persons; provided, however, that unless the  
16 party seeking or receiving child support has applied for or is receiving  
17 such services, the court shall not direct such payments to be made to  
18 the support collection unit, as established in section one hundred  
19 eleven-h of the social services law. Every order directing the payment  
20 of support shall require that if either parent currently, or at any time  
21 in the future, has health insurance benefits available that may be  
22 extended or obtained to cover the child, such parent is required to  
23 exercise the option of additional coverage in favor of such child and  
24 execute and deliver to such person any forms, notices, documents or  
25 instruments necessary to assure timely payment of any health insurance  
26 claims for such child.

27 S 2. Paragraph (a) of subdivision 1 of section 240 of the domestic  
28 relations law, as amended by chapter 567 of the laws of 2015, is amended  
29 to read as follows:

30 (a) In any action or proceeding brought (1) to annul a marriage or to  
31 declare the nullity of a void marriage, or (2) for a separation, or (3)  
32 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-  
33 tion and order to show cause, the custody of or right to visitation with  
34 any child of a marriage, the court shall require verification of the  
35 status of any child of the marriage with respect to such child's custody  
36 and support, including any prior orders, and shall enter orders for  
37 custody and support as, in the court's discretion, justice requires,  
38 having regard to the circumstances of the case and of the respective  
39 parties and to the best interests of the child and subject to the  
40 provisions of subdivision one-c of this section. Where either party to  
41 an action concerning custody of or a right to visitation with a child  
42 alleges in a sworn petition or complaint or sworn answer, cross-peti-  
43 tion, counterclaim or other sworn responsive pleading that the other  
44 party has committed an act of domestic violence against the party making  
45 the allegation or a family or household member of either party, as such  
46 family or household member is defined in article eight of the family  
47 court act, and such allegations are proven by a preponderance of the  
48 evidence, the court must consider the effect of such domestic violence  
49 upon the best interests of the child, together with such other facts and  
50 circumstances as the court deems relevant in making a direction pursuant  
51 to this section and state on the record how such findings, facts and  
52 circumstances factored into the direction. NO COURT SHALL AWARD CUSTODY  
53 TO OR ALLOW UNSUPERVISED VISITATION WITH A PERSON WHO HAS BEEN CONVICTED  
54 OF RAPING THE PARENT OF SUCH CHILD AND ANY REQUEST FOR CUSTODY OR UNSU-  
55 PERVISED VISITATION BY A PERSON CHARGED WITH RAPING THE PARENT OF SUCH  
56 CHILD SHALL BE STAYED PENDING RESOLUTION OF ANY CRIMINAL CHARGES OF

1 RAPE. If a parent makes a good faith allegation based on a reasonable  
2 belief supported by facts that the child is the victim of child abuse,  
3 child neglect, or the effects of domestic violence, and if that parent  
4 acts lawfully and in good faith in response to that reasonable belief to  
5 protect the child or seek treatment for the child, then that parent  
6 shall not be deprived of custody, visitation or contact with the child,  
7 or restricted in custody, visitation or contact, based solely on that  
8 belief or the reasonable actions taken based on that belief. If an alle-  
9 gation that a child is abused is supported by a preponderance of the  
10 evidence, then the court shall consider such evidence of abuse in deter-  
11 mining the visitation arrangement that is in the best interest of the  
12 child, and the court shall not place a child in the custody of a parent  
13 who presents a substantial risk of harm to that child, and shall state  
14 on the record how such findings were factored into the determination.  
15 Where a proceeding filed pursuant to article ten or ten-A of the family  
16 court act is pending at the same time as a proceeding brought in the  
17 supreme court involving the custody of, or right to visitation with, any  
18 child of a marriage, the court presiding over the proceeding under arti-  
19 cle ten or ten-A of the family court act may jointly hear the disposi-  
20 tional hearing on the petition under article ten or the permanency hear-  
21 ing under article ten-A of the family court act and, upon referral from  
22 the supreme court, the hearing to resolve the matter of custody or visi-  
23 tation in the proceeding pending in the supreme court; provided however,  
24 the court must determine custody or visitation in accordance with the  
25 terms of this section.

26 An order directing the payment of child support shall contain the  
27 social security numbers of the named parties. In all cases there shall  
28 be no prima facie right to the custody of the child in either parent.  
29 Such direction shall make provision for child support out of the proper-  
30 ty of either or both parents. The court shall make its award for child  
31 support pursuant to subdivision one-b of this section. Such direction  
32 may provide for reasonable visitation rights to the maternal and/or  
33 paternal grandparents of any child of the parties. Such direction as it  
34 applies to rights of visitation with a child remanded or placed in the  
35 care of a person, official, agency or institution pursuant to article  
36 ten of the family court act, or pursuant to an instrument approved under  
37 section three hundred fifty-eight-a of the social services law, shall be  
38 enforceable pursuant to part eight of article ten of the family court  
39 act and sections three hundred fifty-eight-a and three hundred eighty-  
40 four-a of the social services law and other applicable provisions of law  
41 against any person having care and custody, or temporary care and custo-  
42 dy, of the child. Notwithstanding any other provision of law, any writ-  
43 ten application or motion to the court for the establishment, modifica-  
44 tion or enforcement of a child support obligation for persons not in  
45 receipt of public assistance and care must contain either a request for  
46 child support enforcement services which would authorize the collection  
47 of the support obligation by the immediate issuance of an income  
48 execution for support enforcement as provided for by this chapter,  
49 completed in the manner specified in section one hundred eleven-g of the  
50 social services law; or a statement that the applicant has applied for  
51 or is in receipt of such services; or a statement that the applicant  
52 knows of the availability of such services, has declined them at this  
53 time and where support enforcement services pursuant to section one  
54 hundred eleven-g of the social services law have been declined that the  
55 applicant understands that an income deduction order may be issued  
56 pursuant to subdivision (c) of section fifty-two hundred forty-two of

1 the civil practice law and rules without other child support enforcement  
2 services and that payment of an administrative fee may be required. The  
3 court shall provide a copy of any such request for child support  
4 enforcement services to the support collection unit of the appropriate  
5 social services district any time it directs payments to be made to such  
6 support collection unit. Additionally, the copy of any such request  
7 shall be accompanied by the name, address and social security number of  
8 the parties; the date and place of the parties' marriage; the name and  
9 date of birth of the child or children; and the name and address of the  
10 employers and income payors of the party from whom child support is  
11 sought or from the party ordered to pay child support to the other  
12 party. Such direction may require the payment of a sum or sums of money  
13 either directly to the custodial parent or to third persons for goods or  
14 services furnished for such child, or for both payments to the custodial  
15 parent and to such third persons; provided, however, that unless the  
16 party seeking or receiving child support has applied for or is receiving  
17 such services, the court shall not direct such payments to be made to  
18 the support collection unit, as established in section one hundred  
19 eleven-h of the social services law. Every order directing the payment  
20 of support shall require that if either parent currently, or at any time  
21 in the future, has health insurance benefits available that may be  
22 extended or obtained to cover the child, such parent is required to  
23 exercise the option of additional coverage in favor of such child and  
24 execute and deliver to such person any forms, notices, documents or  
25 instruments necessary to assure timely payment of any health insurance  
26 claims for such child.

27 S 3. The family court act is amended by adding a new section 553 to  
28 read as follows:

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

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

39 S 4. Subdivisions (a), (b) and (c) of section 651 of the family court  
40 act, subdivisions (a) and (c) as amended by chapter 85 of the laws of  
41 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003,  
42 are amended to read as follows:

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

54 (b) When initiated in the family court, the family court has jurisdic-  
55 tion to determine, in accordance with subdivision one of section two  
56 hundred forty of the domestic relations law and with the same powers

1 possessed by the supreme court in addition to its own powers, habeas  
2 corpus proceedings and proceedings brought by petition and order to show  
3 cause, for the determination of the custody or visitation of minors,  
4 including applications by a grandparent or grandparents for visitation  
5 or custody rights pursuant to section seventy-two or two hundred forty  
6 of the domestic relations law SUBJECT, HOWEVER, TO THE PROVISIONS OF  
7 PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE  
8 DOMESTIC RELATIONS LAW PROHIBITING THE COURT FROM GRANTING CUSTODY OR  
9 UNSUPERVISED VISITATION OF A CHILD TO A PERSON WHO HAS BEEN CONVICTED OF  
10 OR CHARGED WITH RAPING THE PARENT OF THE CHILD.

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

22 S 5. This act shall take effect immediately; provided that section two  
23 of this act shall take effect on the same date and in the same manner as  
24 section 12 of chapter 567 of the laws of 2015, takes effect.