

# STATE OF NEW YORK

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2267

2017-2018 Regular Sessions

## IN SENATE

January 12, 2017

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Introduced by Sen. PARKER -- 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, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. The legislature hereby finds and  
2 declares that it is the public policy of the state to assure minor chil-  
3 dren have frequent and continuing contact with both parents after the  
4 parents have separated or dissolved their marriage and that it is in the  
5 public interest to encourage parents to share the rights and responsi-  
6 bilities of child-rearing in order to effectuate this policy. At the  
7 outset and thereafter, in any proceeding where there is at issue the  
8 custody of a minor child, the court may, during the pendency of the  
9 proceeding or at any time thereafter, make such order for the custody of  
10 minor children as may seem necessary or proper. The provisions of this  
11 act establish a presumption, affecting the burden of proof, that shared  
12 parenting is in the best interests of minor children.

13 § 2. Subdivision (a) of section 70 of the domestic relations law, as  
14 amended by chapter 457 of the laws of 1988, is amended to read as  
15 follows:

16 (a) Where a minor child is residing within this state, either parent  
17 may apply to the supreme court for a writ of habeas corpus to have such  
18 minor child brought before such court; and on the return thereof, the  
19 court, on due consideration, [~~may~~] shall award the natural guardianship,  
20 charge and custody of such child to [~~either parent~~] both parents, in the  
21 absence of an allegation that such shared parenting would be detrimental  
22 to such child, for such time, under such regulations and restrictions,  
23 and with such provisions and directions, as the case may require, and  
24 may at any time thereafter vacate or modify such order. [~~In all cases~~]

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

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~~there shall be no prima facie right to the custody of the child in either parent, but the~~ The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody. The court shall determine solely what is for the best interest of the child, and what will best promote ~~its~~ the child's welfare and happiness, and make award accordingly.

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

(a) (i) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) 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 any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court must determine custody or visitation in accordance with the terms of this section.

1 An order directing the payment of child support shall contain the  
2 social security numbers of the named parties. [~~In all cases there shall~~  
3 ~~be no prima facie right to the custody of the child in either parent.~~  
4 ~~Such~~] (ii) Custody shall be awarded in the following order of prefer-  
5 ence, according to the best interests of the child:

6 (1) To both parents jointly pursuant to section two hundred forty-d of  
7 this article. In such cases the court must require the parents to submit  
8 a parenting plan as defined in subdivision two of section two hundred  
9 forty-d of this article for implementation of the custody order or the  
10 parents acting individually or in concert may submit a custody implemen-  
11 tation plan to the court prior to issuance of a custody decree. There  
12 shall be a presumption, affecting the burden of proof, that shared  
13 parenting is in the best interests of a minor child unless the parents  
14 have agreed to an award of custody to one parent or so agree in open  
15 court at a hearing for the purpose of determining custody of a minor  
16 child of the marriage or the court finds that shared parenting would be  
17 detrimental to a particular child of a specific marriage. For the  
18 purpose of assisting the court in making a determination whether an  
19 award of shared parenting is appropriate, the court may direct that an  
20 investigation be conducted. If the court declines to enter an order  
21 awarding shared parenting pursuant to this paragraph, the court shall  
22 state in its decision the reasons for denial of an award of shared  
23 parenting. In jurisdictions having a private or publicly-supported  
24 conciliation service, the court or the parties may, at any time, pursu-  
25 ant to local rules of court, consult with the conciliation service for  
26 the purpose of assisting the parties to formulate a plan for implementa-  
27 tion of the custody order or to resolve any controversy which has arisen  
28 in the implementation of a plan for custody. Any order for shared  
29 parenting may be modified or terminated upon the petition of one or both  
30 parents or on the court's own motion if it is shown that the best inter-  
31 ests of the child require modification or termination of the shared  
32 parenting order. Any order for the custody of a minor child of a  
33 marriage entered by a court in this state or in any other state, subject  
34 to jurisdictional requirements, may be modified at any time to an order  
35 of shared parenting in accordance with the provisions of this section.

36 (2) To either parent, in which case, the court, in making an order for  
37 custody to either parent shall consider, among other factors, which  
38 parent is more likely to allow the child or children frequent and  
39 continuing contact with the noncustodial parent, and shall not prefer a  
40 parent as custodian because of that parent's gender. The burden of proof  
41 that shared parenting would not be in the child's best interest shall be  
42 upon the parent requesting sole custody. Notwithstanding any other  
43 provision of law, access to records and information pertaining to a  
44 minor child, including but not limited to medical, dental and school  
45 records, shall not be denied to a parent because the parent is not the  
46 child's custodial parent.

47 (3) If to neither parent, to the person or persons in whose home the  
48 child has been living in a nurturing and stable environment.

49 (4) To any other person or persons deemed by the court to be suitable  
50 and able to provide a nurturing and stable environment.

51 Before the court makes any order awarding custody to a person or  
52 persons other than a parent without the consent of the parents, it shall  
53 make a finding that an award of custody to a parent would be detrimental  
54 to the child and the award to a non-parent is required to serve the best  
55 interests of the child. Allegations that parental custody would be  
56 detrimental to the child, other than a statement of that ultimate fact,

1 shall not appear in the pleadings. The court may, in its discretion,  
2 exclude the public from the hearing on this issue. The court shall state  
3 in writing the reason for its decision and why the award made was found  
4 to be in the best interests of the child. Any direction made pursuant to  
5 this subdivision shall make provision for child support out of the prop-

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

1 instruments necessary to assure timely payment of any health insurance  
2 claims for such child.

3 § 4. The domestic relations law is amended by adding a new section  
4 240-d to read as follows:

5 § 240-d. Custody of children. 1. Where the court considers awarding  
6 shared parenting pursuant to the provisions of paragraph (a) of subdivi-  
7 sion one of section two hundred forty of this article, "shared parent-  
8 ing", shall mean an order awarding custody of the child to both parties  
9 so that both parties share equally the legal responsibility and control  
10 of such child and share equally the living experience in time and phys-  
11 ical care to assure frequent and continuing contact with both parties,  
12 as the court deems to be in the best interests of the child, taking into  
13 consideration the location and circumstances of each party. The term  
14 "shared parenting", shall be considered interchangeable with "nearly  
15 equal shared parenting". An award of joint physical and legal custody  
16 obligates the parties to exchange information concerning the health,  
17 education and welfare of the minor child, and unless allocated, appor-  
18 tioned or decreed, the parents or parties shall confer with one another  
19 in the exercise of decision-making rights, responsibilities and authori-  
20 ty.

21 2. For the purposes of this article a "parenting plan", required to be  
22 submitted to the court pursuant to clause one of subparagraph (ii) of  
23 paragraph (a) of subdivision one of section two hundred forty of this  
24 article, shall include but not be limited to:

- 25 (a) the legal responsibilities of each parent;
- 26 (b) a weekly parenting schedule;
- 27 (c) a holiday and vacation parenting schedule;
- 28 (d) a schedule for special occasions, including birthdays;
- 29 (e) a description of any specific decision making areas for each  
30 parent provided, however, that both parents shall confer and jointly  
31 determine major issues affecting the welfare of the child including  
32 health, education, discipline and religion;
- 33 (f) if applicable, the need for any and all of the parties to partic-  
34 ipate in counseling;
- 35 (g) any restrictions on either parent when in physical control of the  
36 child or children; and
- 37 (h) provisions for mediation of disputes.

38 3. One parent may be designated as a public welfare recipient in situ-  
39 ations where public welfare aid is deemed necessary and appropriate. In  
40 making an order of shared parenting, the court shall specify the right  
41 of each parent to the physical control of the child in sufficient detail  
42 to enable a parent deprived of that control to enforce the court order  
43 and to enable law enforcement authorities to implement laws for relief  
44 of parental kidnapping and custodial interference.

45 § 5. This act shall take effect on the first of November next succeed-  
46 ing the date on which it shall have become a law and shall apply to  
47 actions and proceedings commenced on and after such date.