

STATE OF NEW YORK

36

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. HOYLMAN -- 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 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.

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§ 2. 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) 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. In making a determination of the best interest of the child pursuant to this section, the court shall not consider evidence that either parent has ever obtained or attempted to obtain reproductive health services. For the purposes of this section, reproductive health services means health care services provided in a hospital, clinic, physician's office or other facility and includes medical, surgical, counseling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

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

1 in the supreme court; provided however, the court must determine custody
2 or visitation in accordance with the terms of this section.

3 An order directing the payment of child support shall contain the
4 social security numbers of the named parties. In all cases there shall
5 be no prima facie right to the custody of the child in either parent.
6 Such direction shall make provision for child support out of the proper-
7 ty of either or both parents. The court shall make its award for child
8 support pursuant to subdivision one-b of this section. Such direction
9 may provide for reasonable visitation rights to the maternal and/or
10 paternal grandparents of any child of the parties. Such direction as it
11 applies to rights of visitation with a child remanded or placed in the
12 care of a person, official, agency or institution pursuant to article
13 ten of the family court act, or pursuant to an instrument approved under
14 section three hundred fifty-eight-a of the social services law, shall be
15 enforceable pursuant to part eight of article ten of the family court
16 act and sections three hundred fifty-eight-a and three hundred eighty-
17 four-a of the social services law and other applicable provisions of law
18 against any person having care and custody, or temporary care and custo-
19 dy, of the child. Notwithstanding any other provision of law, any writ-
20 ten application or motion to the court for the establishment, modifica-
21 tion or enforcement of a child support obligation for persons not in
22 receipt of public assistance and care must contain either a request for
23 child support enforcement services which would authorize the collection
24 of the support obligation by the immediate issuance of an income
25 execution for support enforcement as provided for by this chapter,
26 completed in the manner specified in section one hundred eleven-g of the
27 social services law; or a statement that the applicant has applied for
28 or is in receipt of such services; or a statement that the applicant
29 knows of the availability of such services, has declined them at this
30 time and where support enforcement services pursuant to section one
31 hundred eleven-g of the social services law have been declined that the
32 applicant understands that an income deduction order may be issued
33 pursuant to subdivision (c) of section fifty-two hundred forty-two of
34 the civil practice law and rules without other child support enforcement
35 services and that payment of an administrative fee may be required. The
36 court shall provide a copy of any such request for child support
37 enforcement services to the support collection unit of the appropriate
38 social services district any time it directs payments to be made to such
39 support collection unit. Additionally, the copy of any such request
40 shall be accompanied by the name, address and social security number of
41 the parties; the date and place of the parties' marriage; the name and
42 date of birth of the child or children; and the name and address of the
43 employers and income payors of the party from whom child support is
44 sought or from the party ordered to pay child support to the other
45 party. Such direction may require the payment of a sum or sums of money
46 either directly to the custodial parent or to third persons for goods or
47 services furnished for such child, or for both payments to the custodial
48 parent and to such third persons; provided, however, that unless the
49 party seeking or receiving child support has applied for or is receiving
50 such services, the court shall not direct such payments to be made to
51 the support collection unit, as established in section one hundred
52 eleven-h of the social services law. Every order directing the payment
53 of support shall require that if either parent currently, or at any time
54 in the future, has health insurance benefits available that may be
55 extended or obtained to cover the child, such parent is required to
56 exercise the option of additional coverage in favor of such child and

1 execute and deliver to such person any forms, notices, documents or
2 instruments necessary to assure timely payment of any health insurance
3 claims for such child.
4 § 3. This act shall take effect immediately.