

STATE OF NEW YORK

4784--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. FALL, GLICK, HYNDMAN, TAYLOR, SAYEGH, CRUZ, COLTON, ROMEO, M. L. MILLER, D'URSO, CUSICK, GRIFFIN, PICHARDO, STIRPE, ARROYO, COOK, RICHARDSON, RIVERA, BUTTENSCHON, SIMON, ORTIZ, WILLIAMS, JEAN-PIERRE, McDONALD, JAFFEE, FRONTUS, NIOU -- Multi-Sponsored by -- M. of A. DE LA ROSA, EPSTEIN -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the correction law, in relation to enacting "Marie's Law"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 "Marie's Law".

3 § 2. Legislative intent. The legislature hereby finds and declares
4 that under current law, even though the state has recognized that the
5 best interest of the child is the determining factor in awarding custody
6 of a child, there currently exists a loophole whereby former perpetra-
7 tors of abuse who are related to and may come into contact with a regis-
8 tered sex offender may often gain access to a subject of his or her
9 abuse.

10 By the enactment of the provisions of this act, it is the sense of the
11 legislature, that additional steps and guidelines are necessary to limit
12 contact and restrict custody when a person related to such sex offender
13 has regular contact with and may have access to a child. Nothing can be
14 deemed more of a state concern than the safety and welfare of our chil-
15 dren, and in recognition of that responsibility, we take steps to help
16 minimize contact between vulnerable children and persons who pose a
17 significant risk to their safety.

18 § 3. Paragraph (b) of subdivision 1-c of section 240 of the domestic
19 relations law, as amended by chapter 371 of the laws of 2013, is amended
20 to read as follows:

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

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(b) (i) Notwithstanding any other provision of this chapter to the contrary, ~~[there shall be a rebuttable presumption that it is not in the best interests of the child to be placed in the custody of or to visit with a person]~~ no person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender pursuant to article six-C of the correction law or who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when a child who is the subject of the proceeding was conceived as a result: (A) rape in the first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child. The court may grant such physical or legal custody or unsupervised visitation with the child only where it finds based on clear and convincing evidence that there is no significant risk to the child, including no significant risk that any person related to such person and with whom such person has regular contact poses significant risk or has in the past been convicted of an offense the court determined could pose the potential for significant risk to the child, and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

(ii) Notwithstanding any other provision of this chapter to the contrary, no person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household, or any related person with whom such person has regular contact, is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender pursuant to article six-C of the correction law, unless the court finds based on clear and convincing evidence there is no significant risk to the child and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

(iii) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender pursuant to article six-C of the correction law, or who has regular contact with such a person, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender pursuant to article six-C of the correction law.

(iv) No person shall be granted custody of, or visitation with, a child if the person has been convicted of rape in the first or second degree and the child was conceived as a result of that violation.

(v) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree and the victim of the murder was the other parent of the child who is the subject of the order or is related to such a person and with whom he or she has regular contact, unless the court finds that there is

1 no risk to the child's health, safety, and welfare, and states the
2 reasons for its finding in writing or on the record. In making its find-
3 ing, the court may consider, among other things, the following:

4 (A) the wishes of the child, if the child is of sufficient age and
5 capacity to reason so as to form an intelligent preference;

6 (B) credible evidence that the convicted parent was a victim of abuse
7 committed by the deceased parent. That evidence may include, but is not
8 limited to, written reports by law enforcement agencies, child protec-
9 tive services or other social welfare agencies, courts, medical facili-
10 ties, or other public agencies or private nonprofit organizations
11 providing services to victims of domestic abuse; or

12 (C) testimony of an expert witness that the convicted parent experi-
13 ences intimate partner battering.

14 (vi) Unless and until a custody or visitation order is issued pursuant
15 to this subdivision, no person shall permit or cause the child to visit
16 or remain in the custody of the convicted parent without the consent of
17 the child's custodian or legal guardian.

18 (vii) The court may order child support to be paid by a person subject
19 to this paragraph to be paid pursuant to article four of the family
20 court act.

21 (viii) The court shall not disclose, or cause to be disclosed, the
22 custodial parent's place of residence, place of employment, or the
23 child's school, unless the court finds that the disclosure would be in
24 the best interest of the child.

25 (ix) The court shall take notice of, but may deviate from, any
26 requirement contained in this section when it determines such deviation
27 is required by facts pertinent to a decision granting custody and is in
28 the best interest of the child.

29 § 4. This act shall take effect on the sixtieth day after it shall
30 have become a law.