

STATE OF NEW YORK

2836

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sen. SAVINO -- 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 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. This act shall be known and may be cited as "Marie's law".
2 § 2. Paragraph (b) and the opening paragraph of paragraph (c) of
3 subdivision 1-c of section 240 of the domestic relations law, as amended
4 by chapter 371 of the laws of 2013, are amended to read as follows:

5 (b) (i) Notwithstanding any other provision of this chapter to the
6 contrary, ~~[there shall be a rebuttable presumption that it is not in the~~
7 ~~best interests of the child to be placed in the custody of or to visit~~
8 ~~with a person]~~ no person shall be granted physical or legal custody of,
9 or unsupervised visitation with, a child if the person is required to be
10 registered as a sex offender pursuant to article six-C of the correction
11 law or who has been convicted of one or more of the following sexual
12 offenses in this state or convicted of one or more offenses in another
13 jurisdiction which, if committed in this state, would constitute one or
14 more of the following offenses, when a child who is the subject of the
15 proceeding was conceived as a result: (A) rape in the first or second
16 degree; (B) course of sexual conduct against a child in the first
17 degree; (C) predatory sexual assault; or (D) predatory sexual assault
18 against a child. The court may grant such physical or legal custody or
19 unsupervised visitation with the child if it finds that there is no
20 significant risk to the child and states its reasons in writing or on
21 the record. The child may not be placed in a home in which that person
22 resides, nor permitted to have unsupervised visitation with that person,
23 unless the court states the reasons for its findings in writing or on
24 the record.

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

LBD08328-02-9

(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 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 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, 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, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

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

(B) credible evidence that the convicted parent was a victim of abuse committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse; or

(C) testimony of an expert witness that the convicted parent experiences intimate partner battering.

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

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

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

Notwithstanding paragraph (a) [~~or (b)~~] of this subdivision a court may order visitation or custody where:

1 § 3. Section 201 of the correction law is amended by adding a new
2 subdivision 2-a to read as follows:

3 2-a. The department shall promulgate rules and regulations with regard
4 to a person's grant of custody pursuant to paragraph (b) of subdivision
5 one-c of section two hundred forty of the domestic relations law. Such
6 regulations shall include coordination with local social services
7 districts and law enforcement agencies for purposes of monitoring and
8 supervising such persons. Such regulations shall include provisions for
9 permanent supervision for all persons required to be registered as a sex
10 offender pursuant to article six-C of the correction law, including
11 level one sex offenders.

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