

STATE OF NEW YORK

2836--A

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 -- 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:

21 (b) (i) Notwithstanding any other provision of this chapter to the
22 contrary, [~~there shall be a rebuttable presumption that it is not in the~~
23 ~~best interests of the child to be placed in the custody of or to visit~~

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

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1 ~~with a person~~ no person shall be granted physical or legal custody of,
2 or unsupervised visitation with, a child if the person is required to be
3 registered as a sex offender pursuant to article six-C of the correction
4 law or who has been convicted of one or more of the following sexual
5 offenses in this state or convicted of one or more offenses in another
6 jurisdiction which, if committed in this state, would constitute one or
7 more of the following offenses, when a child who is the subject of the
8 proceeding was conceived as a result: (A) rape in the first or second
9 degree; (B) course of sexual conduct against a child in the first
10 degree; (C) predatory sexual assault; or (D) predatory sexual assault
11 against a child. The court may grant such physical or legal custody or
12 unsupervised visitation with the child only where it finds based on
13 clear and convincing evidence that there is no significant risk to the
14 child, including no significant risk that any person related to such
15 person and with whom such person has regular contact poses significant
16 risk or has in the past been convicted of an offense the court deter-
17 mined could pose the potential for significant risk to the child, and
18 states its reasons in writing or on the record. The child may not be
19 placed in a home in which that person resides, nor permitted to have
20 unsupervised visitation with that person, unless the court states the
21 reasons for its findings in writing or on the record.

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

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

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

49 (v) No person shall be granted custody of, or unsupervised visitation
50 with, a child if the person has been convicted of murder in the first
51 degree and the victim of the murder was the other parent of the child
52 who is the subject of the order or is related to such a person and with
53 whom he or she has regular contact, unless the court finds that there is
54 no risk to the child's health, safety, and welfare, and states the
55 reasons for its finding in writing or on the record. In making its find-
56 ing, the court may consider, among other things, the following:

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

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

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

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

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

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

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

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