

# STATE OF NEW YORK

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74

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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Introduced by Sen. ROBACH -- 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 family court act, in relation to prohibiting the court from granting custody of or unsupervised visitation with a child to a person who has been convicted of or charged with raping the parent of the child

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

1 Section 1. 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:

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3  
4 (a) In any action or proceeding brought (1) to annul a marriage or to  
5 declare the nullity of a void marriage, or (2) for a separation, or (3)  
6 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  
7 any child of a marriage, the court shall require verification of the  
8 status of any child of the marriage with respect to such child's custody  
9 and support, including any prior orders, and shall enter orders for  
10 custody and support as, in the court's discretion, justice requires,  
11 having regard to the circumstances of the case and of the respective  
12 parties and to the best interests of the child and subject to the  
13 provisions of subdivision one-c of this section. Where either party to  
14 an action concerning custody of or a right to visitation with a child  
15 alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other  
16 party has committed an act of domestic violence against the party making  
17 the allegation or a family or household member of either party, as such  
18 family or household member is defined in article eight of the family  
19 court act, and such allegations are proven by a preponderance of the  
20 evidence, the court must consider the effect of such domestic violence  
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 upon the best interests of the child, together with such other facts and  
2 circumstances as the court deems relevant in making a direction pursuant  
3 to this section and state on the record how such findings, facts and  
4 circumstances factored into the direction. No court shall award custody  
5 to or allow unsupervised visitation with a person who has been convicted  
6 of raping the parent of such child and any request for custody or unsu-  
7 pervised visitation by a person charged with raping the parent of such  
8 child shall be stayed pending resolution of any criminal charges of  
9 rape. If a parent makes a good faith allegation based on a reasonable  
10 belief supported by facts that the child is the victim of child abuse,  
11 child neglect, or the effects of domestic violence, and if that parent  
12 acts lawfully and in good faith in response to that reasonable belief to  
13 protect the child or seek treatment for the child, then that parent  
14 shall not be deprived of custody, visitation or contact with the child,  
15 or restricted in custody, visitation or contact, based solely on that  
16 belief or the reasonable actions taken based on that belief. If an alle-  
17 gation that a child is abused is supported by a preponderance of the  
18 evidence, then the court shall consider such evidence of abuse in deter-  
19 mining the visitation arrangement that is in the best interest of the  
20 child, and the court shall not place a child in the custody of a parent  
21 who presents a substantial risk of harm to that child, and shall state  
22 on the record how such findings were factored into the determination.  
23 Where a proceeding filed pursuant to article ten or ten-A of the family  
24 court act is pending at the same time as a proceeding brought in the  
25 supreme court involving the custody of, or right to visitation with, any  
26 child of a marriage, the court presiding over the proceeding under arti-  
27 cle ten or ten-A of the family court act may jointly hear the disposi-  
28 tional hearing on the petition under article ten or the permanency hear-  
29 ing under article ten-A of the family court act and, upon referral from  
30 the supreme court, the hearing to resolve the matter of custody or visi-  
31 tation in the proceeding pending in the supreme court; provided however,  
32 the court must determine custody or visitation in accordance with the  
33 terms of this section.

34 An order directing the payment of child support shall contain the  
35 social security numbers of the named parties. In all cases there shall  
36 be no prima facie right to the custody of the child in either parent.  
37 Such direction shall make provision for child support out of the proper-  
38 ty of either or both parents. The court shall make its award for child  
39 support pursuant to subdivision one-b of this section. Such direction  
40 may provide for reasonable visitation rights to the maternal and/or  
41 paternal grandparents of any child of the parties. Such direction as it  
42 applies to rights of visitation with a child remanded or placed in the  
43 care of a person, official, agency or institution pursuant to article  
44 ten of the family court act, or pursuant to an instrument approved under  
45 section three hundred fifty-eight-a of the social services law, shall be  
46 enforceable pursuant to part eight of article ten of the family court  
47 act and sections three hundred fifty-eight-a and three hundred eighty-  
48 four-a of the social services law and other applicable provisions of law  
49 against any person having care and custody, or temporary care and custo-  
50 dy, of the child. Notwithstanding any other provision of law, any writ-  
51 ten application or motion to the court for the establishment, modifica-  
52 tion or enforcement of a child support obligation for persons not in  
53 receipt of public assistance and care must contain either a request for  
54 child support enforcement services which would authorize the collection  
55 of the support obligation by the immediate issuance of an income  
56 execution for support enforcement as provided for by this chapter,

completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

§ 2. The family court act is amended by adding a new section 553 to read as follows:

§ 553. Paternity proceedings stayed for rape charges against putative father. 1. If criminal charges alleging an act of rape are brought against the putative father of a child conceived as the result of that act of rape, the court shall issue an automatic stay of any paternity proceeding involving both the child and the alleged putative father. The stay shall not be lifted until there is a final disposition of such criminal charges.

2. In any future custody proceeding, any denial of visitation under this section shall not be used against the mother of the child when determining any support obligation.

§ 3. Subdivisions (a), (b) and (c) of section 651 of the family court act, subdivisions (a) and (c) as amended by chapter 85 of the laws of 1996 and subdivision (b) as amended by chapter 657 of the laws of 2003, are amended to read as follows:

(a) When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of

1 the custody or visitation of minors subject, however, to the provisions  
2 of paragraph (a) of subdivision one of section two hundred forty of the  
3 domestic relations law prohibiting the court from granting custody or  
4 unsupervised visitation of a child to a person who has been convicted of  
5 or charged with raping the parent of the child.

6 (b) When initiated in the family court, the family court has jurisdic-  
7 tion to determine, in accordance with subdivision one of section two  
8 hundred forty of the domestic relations law and with the same powers  
9 possessed by the supreme court in addition to its own powers, habeas  
10 corpus proceedings and proceedings brought by petition and order to show  
11 cause, for the determination of the custody or visitation of minors,  
12 including applications by a grandparent or grandparents for visitation  
13 or custody rights pursuant to section seventy-two or two hundred forty  
14 of the domestic relations law subject, however, to the provisions of  
15 paragraph (a) of subdivision one of section two hundred forty of the  
16 domestic relations law prohibiting the court from granting custody or  
17 unsupervised visitation of a child to a person who has been convicted of  
18 or charged with raping the parent of the child.

19 (c) When initiated in the family court pursuant to a petition under  
20 part eight of article ten of this act or section three hundred fifty-  
21 eight-a of the social services law, the family court has jurisdiction to  
22 enforce or modify orders or judgments of the supreme court relating to  
23 the visitation of minors in foster care, notwithstanding any limitation  
24 contained in subdivision (b) of section four hundred sixty-seven of this  
25 act but subject to the provisions of paragraph (a) of subdivision one of  
26 section two hundred forty of the domestic relations law prohibiting the  
27 court from granting custody or unsupervised visitation of a child to a  
28 person who has been convicted of or charged with raping the parent of  
29 the child.

30 § 4. This act shall take effect immediately.