

STATE OF NEW YORK

898--B

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. WOERNER, WALSH, FAHY, WILLIAMS, REYES, HUNTER, GUNTHER, JEAN-PIERRE, SIMON, GALEF, HYNDMAN, SOLAGES, DAVILA, BUTTENS-CHON, SEAWRIGHT, DICKENS, GLICK, McMAHON, M. MILLER, NIOU, QUART, CUSICK, ASHBY, BRABENEC, WALCZYK, BYRNES, SMULLEN, FRIEND, MONTESANO, J. M. GIGLIO, BLANKENBUSH, MANKTELOW, HAWLEY, GOODELL, BYRNE, DiPIETRO, MORINELLO, ROZIC, LUPARDO, DARLING, WALKER, HEVESI, COOK, WALLACE, WEPRIN, L. ROSENTHAL, STIRPE, CRUZ, BRAUNSTEIN -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the domestic relations law and the family court act, in relation to establishing a living allowance for adults with developmental disabilities

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

1 Section 1. The domestic relations law is amended by adding a new
2 section 240-d to read as follows:

3 § 240-d. Support orders for certain adult dependents. 1. Notwithstand-
4 ing any other law, a person who would otherwise be chargeable under law
5 with support of a minor child is also chargeable with the support of any
6 such individual until such individual reaches the age of twenty-six,
7 when it shall appear to the satisfaction of the court that the person is
8 developmentally disabled as defined in subdivision twenty-two of section
9 1.03 of the mental hygiene law, resides with the person seeking such
10 support, and is principally dependent on such person for maintenance. A
11 finding of a developmental disability shall be supported by a diagnosis
12 and accompanying report of a physician, licensed psychologist, regis-

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

LBD01275-06-1

1 tered professional nurse, licensed clinical social worker or a licensed
 2 master social worker under the supervision of a physician, psychologist
 3 or licensed clinical social worker authorized to practice under title
 4 eight of the education law, and acting within their lawful scope of
 5 practice.

6 2. Upon petition brought by such person, the court shall make its
 7 award for support for such individual with a developmental disability in
 8 accordance with the provisions of subdivision one-b of section two
 9 hundred forty of this article. In addition to the provisions of subdivi-
 10 vision one-b of section two hundred forty of this article, the court may
 11 consider whether the financial responsibility of caring for the individ-
 12 ual has been unreasonably placed on one parent when determining the
 13 support obligation. The duration of time the court may use when consid-
 14 ering this factor shall be limited to the time period from when the
 15 child turned twenty-one until the individual turns twenty-six. If a
 16 child support order ended at the age of eighteen then such time period
 17 shall be from when the child turned eighteen until the individual turns
 18 twenty-six.

19 3. The court has jurisdiction to determine proceedings brought by
 20 petition and order to show cause, for the determination of support of
 21 such adult dependents, as well as to enforce or modify orders or judg-
 22 ments.

23 4. The court shall have discretion to order the payor party to make
 24 support payments either to the petitioner or to the trustee of an
 25 "exception trust" as defined in 42 U.S.C. 1396p(d)(4)(A) and (C),
 26 clause (iii) of subparagraph two of paragraph (b) of subdivision two of
 27 section three hundred sixty-six of the social services law, and section
 28 7-1.12 of the estates, powers and trusts law if such direction would
 29 assist in maximizing assistance to the child.

30 5. Except where inconsistent with this section, all provisions of this
 31 article relating to orders of child support shall apply to all orders of
 32 support for adults with developmental disabilities.

33 § 2. The family court act is amended by adding a new section 413-b to
 34 read as follows:

35 § 413-b. Support orders for certain adult dependents. 1. Notwithstand-
 36 ing any other law, a person who would otherwise be chargeable under law
 37 with support of a minor child is also chargeable with the support of any
 38 such individual until such individual reaches the age of twenty-six,
 39 when it shall appear to the satisfaction of the court that the person is
 40 developmentally disabled as defined under subdivision twenty-two of
 41 section 1.03 of the mental hygiene law, resides with the person seeking
 42 such support, and is principally dependent on such person for mainte-
 43 nance. A finding of a developmental disability shall be supported by a
 44 diagnosis and accompanying report of a physician, licensed psychologist,
 45 registered professional nurse, licensed clinical social worker or a
 46 licensed master social worker under the supervision of a physician,
 47 psychologist or licensed clinical social worker authorized to practice
 48 under title eight of the education law, and acting within their lawful
 49 scope of practice.

50 2. Upon petition brought by the parent or kinship caregiver of an
 51 adult child with a disability, the court shall make its award for
 52 support for such individual with a developmental disability in accord-
 53 ance with the provisions of subdivision one of section four hundred
 54 thirteen of this part. In addition to the provisions of subdivision one
 55 of section four hundred thirteen of this part, the court may consider
 56 whether the financial responsibility of caring for the individual has

1 been unreasonably placed on one parent when determining the child
2 support obligation. The duration of time the court may use when consid-
3 ering this factor shall be limited to the time period from when the
4 child turned twenty-one until the individual turns twenty-six. If a
5 child support order ended at the age of eighteen then such time period
6 shall be from when the child turned eighteen until the individual turns
7 twenty-six.

8 3. The court has jurisdiction to determine proceedings brought by
9 petition and order to show cause, for the determination of support of
10 such dependents, as well as to enforce or modify orders or judgments.

11 4. The court shall have discretion to order the payor party to make
12 support payments either to the petitioner or to the trustee of an
13 "exception trust" as defined in 42 U.S.C. 1396p(d)(4)(A) and (C), clause
14 (iii) of subparagraph two of paragraph (b) of subdivision two of section
15 three hundred sixty-six of the social services law, and section 7-1.12
16 of the estates, powers and trusts law if such direction would assist in
17 maximizing assistance to the child.

18 5. Except where inconsistent with this section, all provisions of this
19 article relating to orders of child support shall apply to all orders of
20 support for adults with developmental disabilities.

21 § 3. This act shall take effect immediately.