STATE OF NEW YORK

9489

IN SENATE

June 22, 2022

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the family court act and the social services law, in relation to a vehicular assailant's duty to support a surviving child

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

Section 1. The family court act is amended by adding a new section 419 to read as follows:

§ 419. Vehicular assailant's duty to support a surviving child. 1. For purposes of this section, the following definitions shall apply:

(a) "Child support" shall mean a sum to be paid pursuant to court order or decree by a vehicular assailant for the care, maintenance and education of any unemancipated surviving child.

(b) "Deceased parent or guardian" shall mean a custodial parent, legal guardian, or other person who prior to their death had legal custody of a surviving child or any other person with whom a surviving child lived who had assumed responsibility for the day-to-day care and custody of the child and whose death was caused by a vehicular assailant.

(c) "Income" shall mean, but shall not be limited to, the sum of the amounts determined by the application of subparagraphs (i), (ii), (iii), (iv) and (v) of this paragraph reduced by the amount determined by the application of subparagraph (vi) of this paragraph:

(i) gross income as should have been reported or should be reported in the most recent federal income tax return. If an individual files his or her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his or her gross income individually;

(ii) to the extent not already included in gross income in subparagraph (i) of this paragraph, investment income reduced by sums expended in connection with such investment;

(iii) to the extent not already included in gross income in subparagraphs (i) and (ii) of this paragraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

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

LBD16058-02-2

(A) workers' compensation,
(B) disability benefits,
(C) unemployment insurance benefits,
(D) social security benefits,
(E) veterans benefits,
(F) pensions and retirement benefits,
(G) fellowships and stipends, and
(H) annuity payments;
(iv) at the discretion of the court, the court may attribute or impute income from such other resources as may be available to the vehicular assailant, including, but not limited to:
(A) non-income producing assets,
(B) meals, lodging, memberships, automobiles, or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or indirectly confer personal economic benefits,
(C) fringe benefits provided as part of compensation for employment,
(D) money, goods, or services provided by relatives and friends, and
(E) an amount imputed as income based upon the vehicular assailant's former resources or income, if the court determines that an assailant has reduced resources or income in order to reduce or avoid the assailant's obligation for child support; provided that incarceration shall not be considered voluntary unemployment;
(v) to the extent not already included in gross income in subparagraphs (i) and (ii) of this paragraph, the following self-employment deductions attributable to self-employment carried on by the taxpayer:
(A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and
(B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures;
(vi) the following shall be deducted from income prior to applying the provisions of subdivision three of this section:
(A) unreimbursed employee business expenses except to the extent said expenses reduce personal expenditures,
(B) alimony or maintenance actually paid to a spouse pursuant to court order or validly executed written agreement,
(C) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the vehicular assailant has a legal duty of support and who is not subject to the instant action,
(D) public assistance,
(E) supplemental security income,
(F) New York city or Yonkers income or earnings taxes actually paid, and
(G) federal insurance contributions act (FICA) taxes actually paid.
(d) "Self-support reserve" shall mean one hundred thirty-five percent of the poverty income guidelines amount for a single person as reported by the federal department of health and human services.
(e) "Surviving child" shall mean an individual or individuals under the age of twenty-one who was under the physical care and supervision of a deceased parent or guardian.
(f) "Surviving parent or guardian" shall mean a custodial parent, legal guardian, or other person retaining legal custody of a surviving child or any other person with whom a surviving child lives who has assumed responsibility for the day-to-day care and custody of the child after the death of one or both deceased parents or guardians, as defined

in paragraph (b) of this subdivision, by a vehicular assailant, as defined in paragraph (g) of this subdivision.

(g) "Vehicular assailant" shall mean an individual convicted of vehicular manslaughter in the second degree as described in section 125.12 of the penal law, vehicular manslaughter in the first degree as described in section 125.13 of the penal law, or aggravated vehicular homicide as described in section 125.14 of the penal law.

2. In the event that a vehicular assailant, as defined in paragraph (g) of subdivision one of this section causes the death of a parent or guardian of an individual under the age of twenty-one, such assailant shall be chargeable with the support of such surviving child, as defined in paragraph (e) of subdivision one of this section, and, if possessed of sufficient means or able to earn such means, shall be required to pay child support, as defined in paragraph (a) of subdivision one of this section, to a surviving parent or guardian in a fair and reasonable sum as the court may determine. The court shall make its award for child support pursuant to the provisions of this section.

3. The court shall calculate the child support obligation in an amount it deems to be just and appropriate. Such finding shall be based upon consideration of the following factors:

(a) the financial resources of the vehicular assailant and those of the child and surviving parent or guardian;

(b) the income, as calculated pursuant to paragraph (c) of subdivision one of this section, of the vehicular assailant and of the surviving parent or guardian;

(c) the physical and emotional health of the child and his or her special needs and aptitudes;

(d) the standard of living the child would have enjoyed had his or her parent not been killed by the vehicular assailant;

(e) the tax consequences to the parties;

(f) the educational needs of the vehicular assailant and/or the child;

(g) the needs of the child or children of the vehicular assailant for whom the assailant is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to clause (C) of subparagraph (vi) of paragraph (c) of subdivision one of this section, and the financial resources of any person obligated to support such child or children, provided, however, that this factor may apply only if the resources available to support such child or children are less than the resources available to support the child or children who are subject to the instant action;

(h) the length of the sentence to be served or currently being served by the vehicular assailant for the crimes causing the death of the deceased parent or guardian or for any other crime;

(i) the educational and employment needs of the vehicular assailant after his or her period of incarceration, including the need for the assailant to find new employment and the ease with which he or she may be able to do so;

(j) child care expenses of the surviving parent or guardian; and

(k) any other factors the court determines are relevant in each case. The court shall set forth, in a written order, the factors it considered when determining the amount of the child support obligation to be paid by a vehicular assailant to a surviving parent or guardian.

4. The court shall give strong consideration to the financial status of the vehicular assailant upon release from incarceration, accounting for court fines and fees and other debts to the state previously paid or to be paid by such assailant. In no case shall the court order an amount

of basic child support obligation which would place an undue or excessive financial burden upon a vehicular assailant and/or severely and adversely impact their economic condition upon release from incarceration, giving full consideration to the state of such assailant's financial resources and barriers he or she may face in future employment.

5. Notwithstanding the provisions of subdivision three of this section, where the annual amount of the child support obligation would reduce the vehicular assailant's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month. Notwithstanding the provisions of subdivision three of this section, where the annual amount of the child support obligation would reduce the vehicular assailant's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the child support obligation shall be fifty dollars per month or the difference between the vehicular assailant's income and the self-support reserve, whichever is greater.

6. Where a vehicular assailant is or may be entitled to receive nonrecurring payments from extraordinary sources not otherwise considered as income pursuant to this section, including but not limited to:

(a) life insurance policies;

(b) discharges of indebtedness;

(c) recovery of bad debts and delinquency amounts;

(d) gifts and inheritances; and

(e) lottery winnings,

the court, in accordance with subdivision three of this section, may allocate a proportion of the same to child support, and such amount shall be paid in a manner determined by the court.

7. A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this section presented to the court for incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this section. Nothing contained in this section shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the child support obligation provided herein provided that such agreements or stipulations comply with the provisions of this section.

8. In addition to financial disclosure required in section four hundred twenty-four-a of this article, the court may require that the income and/or expenses of any party be verified with documentation including, but not limited to, past and present income tax returns, employer statements, pay stubs, corporate, business, or partnership books and records, corporate and business tax returns, and receipts for expenses or such other means of verification as the court determines appropriate. Nothing herein shall affect any party's right to pursue discovery pursuant to this chapter or the civil practice law and rules.

9. The court shall retain discretion in determining (a) the date by which a vehicular assailant shall be required to begin the child support payments described herein and (b) the duration of time of such payments, giving due account to the age of the surviving child and the length of the vehicular assailant's incarceration, provided that child support payments shall only be ordered for surviving children who are under the age of twenty-one at the time of the commission of the crime by the vehicular assailant which caused the death of such surviving child's deceased parent or guardian.

10. If a surviving child entitled to receive child support under this section has been placed in the custody of a local social services district in either foster care or a residential facility, then any support ordered under this section shall be paid to the local social services district responsible for such placement or facility.

11. Notwithstanding any other provision of this section to the contrary, the amount of the child support obligation described herein shall be reduced by the amount of any civil award paid by a vehicular assailant to a surviving child or surviving parent or guardian pursuant to an action brought against such assailant by such child or parent or guardian.

§ 2. Paragraph (b) of subdivision 3 of section 413-a of the family court act, as added by chapter 398 of the laws of 1997, is amended to read as follows:

(b) Where such objections are timely filed, the cost of living adjustment shall not take effect, and a hearing on the adjustment of such order shall be granted pursuant to the provisions of this section, which shall result in either:

(1) the issuance by the court of a new order of support in accordance with the child support standards as set forth in section four hundred thirteen **or four hundred nineteen** of this article; or

(2) where application of the child support standards as set forth in section four hundred thirteen **or four hundred nineteen** of this article results in a determination that no adjustment is appropriate, an order of no adjustment.

§ 3. Section 413-a of the family court act is amended by adding a new subdivision 6 to read as follows:

6. The provisions of this section shall apply to child support orders issued pursuant to section four hundred nineteen of this part.

§ 4. Paragraph (d) of subdivision 2 of section 111-n of the social services law, as added by chapter 398 of the laws of 1997, is amended to read as follows:

(d) "Order" shall mean an original, modified, or adjusted order of support; or, after a hearing in response to objections to a cost of living adjustment as set forth in an adjusted order of support, the order of support reflecting the application of the child support standards pursuant to section two hundred forty of the domestic relations law or section four hundred thirteen **or four hundred nineteen** of the family court act, or an order of no adjustment.

§ 5. This act shall take effect immediately and shall apply to all offenses and actions commenced on and after such effective date.