

# STATE OF NEW YORK

5762

2021-2022 Regular Sessions

## IN ASSEMBLY

February 24, 2021

Introduced by M. of A. HAWLEY, MORINELLO, SMULLEN, ASHBY, SALKA --  
Multi-Sponsored by -- M. of A. BARCLAY -- read once and referred to  
the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to determinations of child custody in matrimonial actions

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

1 Section 1. Section 70 of the domestic relations law is amended by  
2 adding a new subdivision (c) to read as follows:

3 (c) Notwithstanding any other provision of law to the contrary, the  
4 court shall not consider the deployment of a parent in active service of  
5 the armed forces of the United States or of the organized militia of the  
6 state of New York as a detrimental factor to the awarding of custody of  
7 a child where a suitable child care plan for the period of such deploy-  
8 ment has been presented to the court by the petitioning parent.

9 § 2. Paragraph (a) of subdivision 1 of section 240 of the domestic  
10 relations law, as amended by chapter 567 of the laws of 2015, is amended  
11 and a new subdivision 1-d is added to read as follows:

12 (a) In any action or proceeding brought (1) to annul a marriage or to  
13 declare the nullity of a void marriage, or (2) for a separation, or (3)  
14 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-  
15 tion and order to show cause, the custody of or right to visitation with  
16 any child of a marriage, the court shall require verification of the  
17 status of any child of the marriage with respect to such child's custody  
18 and support, including any prior orders, and shall enter orders for  
19 custody and support as, in the court's discretion, justice requires,  
20 having regard to the circumstances of the case and of the respective  
21 parties and to the best interests of the child and subject to the  
22 provisions of [~~subdivision~~ subdivisions one-c and one-d of this  
23 section. Where either party to an action concerning custody of or a  
24 right to visitation with a child alleges in a sworn petition or

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

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1 complaint or sworn answer, cross-petition, counterclaim or other sworn  
2 responsive pleading that the other party has committed an act of domes-  
3 tic violence against the party making the allegation or a family or  
4 household member of either party, as such family or household member is  
5 defined in article eight of the family court act, and such allegations  
6 are proven by a preponderance of the evidence, the court must consider  
7 the effect of such domestic violence upon the best interests of the  
8 child, together with such other facts and circumstances as the court  
9 deems relevant in making a direction pursuant to this section and state  
10 on the record how such findings, facts and circumstances factored into  
11 the direction. If a parent makes a good faith allegation based on a  
12 reasonable belief supported by facts that the child is the victim of  
13 child abuse, child neglect, or the effects of domestic violence, and if  
14 that parent acts lawfully and in good faith in response to that reason-  
15 able belief to protect the child or seek treatment for the child, then  
16 that parent shall not be deprived of custody, visitation or contact with  
17 the child, or restricted in custody, visitation or contact, based solely  
18 on that belief or the reasonable actions taken based on that belief. If  
19 an allegation that a child is abused is supported by a preponderance of  
20 the evidence, then the court shall consider such evidence of abuse in  
21 determining the visitation arrangement that is in the best interest of  
22 the child, and the court shall not place a child in the custody of a  
23 parent who presents a substantial risk of harm to that child, and shall  
24 state on the record how such findings were factored into the determi-  
25 nation. Where a proceeding filed pursuant to article ten or ten-A of the  
26 family court act is pending at the same time as a proceeding brought in  
27 the supreme court involving the custody of, or right to visitation with,  
28 any child of a marriage, the court presiding over the proceeding under  
29 article ten or ten-A of the family court act may jointly hear the dispo-  
30 sitional hearing on the petition under article ten or the permanency  
31 hearing under article ten-A of the family court act and, upon referral  
32 from the supreme court, the hearing to resolve the matter of custody or  
33 visitation in the proceeding pending in the supreme court; provided  
34 however, the court must determine custody or visitation in accordance  
35 with the terms of this section.

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

1 of the support obligation by the immediate issuance of an income  
2 execution for support enforcement as provided for by this chapter,  
3 completed in the manner specified in section one hundred eleven-g of the  
4 social services law; or a statement that the applicant has applied for  
5 or is in receipt of such services; or a statement that the applicant  
6 knows of the availability of such services, has declined them at this  
7 time and where support enforcement services pursuant to section one  
8 hundred eleven-g of the social services law have been declined that the  
9 applicant understands that an income deduction order may be issued  
10 pursuant to subdivision (c) of section fifty-two hundred forty-two of  
11 the civil practice law and rules without other child support enforcement  
12 services and that payment of an administrative fee may be required. The  
13 court shall provide a copy of any such request for child support  
14 enforcement services to the support collection unit of the appropriate  
15 social services district any time it directs payments to be made to such  
16 support collection unit. Additionally, the copy of any such request  
17 shall be accompanied by the name, address and social security number of  
18 the parties; the date and place of the parties' marriage; the name and  
19 date of birth of the child or children; and the name and address of the  
20 employers and income payors of the party from whom child support is  
21 sought or from the party ordered to pay child support to the other  
22 party. Such direction may require the payment of a sum or sums of money  
23 either directly to the custodial parent or to third persons for goods or  
24 services furnished for such child, or for both payments to the custodial  
25 parent and to such third persons; provided, however, that unless the  
26 party seeking or receiving child support has applied for or is receiving  
27 such services, the court shall not direct such payments to be made to  
28 the support collection unit, as established in section one hundred  
29 eleven-h of the social services law. Every order directing the payment  
30 of support shall require that if either parent currently, or at any time  
31 in the future, has health insurance benefits available that may be  
32 extended or obtained to cover the child, such parent is required to  
33 exercise the option of additional coverage in favor of such child and  
34 execute and deliver to such person any forms, notices, documents or  
35 instruments necessary to assure timely payment of any health insurance  
36 claims for such child.

37 1-d. Notwithstanding any other provision of law to the contrary, the  
38 court shall not consider the deployment of a parent in active service of  
39 the armed forces of the United States or of the organized militia of the  
40 state of New York as a detrimental factor to the awarding of custody of  
41 a child to a petitioning parent where a suitable child care plan for the  
42 period of such deployment has been presented to the court by such  
43 parent.

44 § 3. This act shall take effect immediately.