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, BUTTENSCHON, 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:

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

§ 240-d. Support orders for certain adult dependents. 1. Notwithstanding any other law, a person who would otherwise be chargeable under law with support of a minor child is also chargeable with the support of any such individual until such individual reaches the age of twenty-six, when it shall appear to the satisfaction of the court that the person is developmentally disabled as defined in subdivision twenty-two of section 1.03 of the mental hygiene law, resides with the person seeking such support, and is principally dependent on such person for maintenance. A finding of a developmental disability shall be supported by a diagnosis 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.

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

2. Upon petition brought by such person, the court shall make its award for support for such individual with a developmental disability in accordance with the provisions of subdivision one-b of section two hundred forty of this article. In addition to the provisions of subdivision one-b of section two hundred forty of this article, the court may consider whether the financial responsibility of caring for the individual has been unreasonably placed on one parent when determining the support obligation. The duration of time the court may use when considering this factor shall be limited to the time period from when the child turned twenty-one until the individual turns twenty-six. If a child support order ended at the age of eighteen then such time period shall be from when the child turned eighteen until the individual turns twenty-six.

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

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect immediately.