STATE OF NEW YORK

1787

2023-2024 Regular Sessions

IN SENATE

January 17, 2023

Introduced by Sen. HOYLMAN-SIGAL -- 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 establishing confirmatory adoptions and allowing courts to grant the custody and support from more than two parents

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

Section 1. Section 109 of the domestic relations law is amended by adding a new subdivision 8 to read as follows:

8. "Confirmatory adoption" shall mean an adoption of a child by an existing legal parent pursuant to title five of this article.

§ 2. Article 7 of the domestic relations law is amended by adding a new title 5 to read as follows:

TITLE V

CONFIRMATORY ADOPTIONS

Section 119. Purpose of title.
119-a. Eligibility to file for confirmatory adoption.
119-b. Procedure on application for confirmatory adoption.
119-c. Multi-parent adoption.

§ 119. Purpose of title. The purpose of this title is to create a streamlined adoption process for a child's parents to confirm their parent-child relationship through an adoption in order to protect the child's best interests. Such adoption process shall ensure all parents are afforded full rights and protections equivalent to that of biological parents, especially for children conceived through assisted reproduction.

§ 119-a. Eligibility to file for confirmatory adoption. 1. Parents of a child may file a joint petition for a confirmatory adoption to confirm their parentage. Those eligible include the child's intended parents as defined in section 581-102 of the family court act and the current or

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

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former spouse of a birthing parent, provided that the person is named on the child's birth certificate as a parent.

2. All living parents of a child seeking to file for confirmatory adoption pursuant to subdivision one of this section shall jointly file a petition for a judgment of adoption with the court and include:

(a) proof of marriage between the petitioners, entered into prior to the birth of the child; or

(b) a government-issued birth certificate listing petitioners as parents of the child.

§ 119-b. Procedure on application for confirmatory adoption. 1. Along with the complaint for a final judgment of adoption, an individual or individuals seeking adoption shall file a petition with the court certifying the following:

(a) the applicant's name or applicants' names, residential address and telephone number;

(b) a statement by the applicant or applicants that they are seeking certification by the court as a person or persons qualified to adopt the child to whom they are already a legal parent;

(c) a statement by the applicant or applicants that all the child's living parent's consent to the confirmatory adoption; and

(d) a written declaration signed by all parties to the action that describes in sufficient detail how the child was conceived and identifies any other involved parties so that the court may determine whether those individuals have parental rights to the child.

2. The court shall issue a judgment of adoption confirming parties to the action as the legal parents of the child without the need for an appearance by the parties.

3. If there are any other individuals with a claim to parentage, the court may determine if the parental rights of that individual have been relinquished or terminated and proceed without a hearing pursuant to subdivision two of this section.

4. The court shall, if it determines that another individual may have existing parental rights to the child, order and conduct a hearing on the matter, provided notice is given to all parties of the action, before issuing a judgment of adoption. If the court finds there is a competing claim of parentage and all parties do not consent to such claim, the court shall dismiss the petition without prejudice and the parties may refile their adoption petition pursuant to section one hundred fifteen of this article.

5. The court filing fees and other certification, investigation, and criminal background check requirements for private-placement adoptions pursuant to section one hundred fifteen-d or one hundred sixteen of this article shall not apply.

6. Nothing in this title shall be deemed to summarily extinguish or terminate the parental rights of any individual.

7. The chief administrator of the court shall promulgate the necessary rules to effectuate the provisions of this title.

§ 119-c. Multi-parent adoption. 1. The termination of the parental duties and responsibilities of an existing parent or parents pursuant to section one hundred eleven of this article may be waived if both the existing parent or parents and the prospective adoptive parent or parents consent to such waiver in writing at any time prior to the finalization of the adoption. Such written consent shall be filed with the court.

2. After receipt of the waiver pursuant to subdivision one of this section, if the prospective adoptive parent has already been recognized

to be one of more than two legal parents of the child, the court may proceed with the confirmatory adoptive process pursuant to section one hundred nineteen-b of this title.

§ 3. The family court act is amended by adding a new article 5-D to read as follows:

ARTICLE 5-D
PRESUMPTION OF PARENTAGE

PART 1. General provisions (582-101)
2. De facto parent (582-102 - 582-104)
3. Court adjudication of parentage for a child with multiple parents (582-105 - 582-106)

PART 1
GENERAL PROVISIONS

Section 582-101. Presumption of parentage.

§ 582-101. Presumption of parentage. (a) An individual is presumed to be a parent of a child if, except as otherwise provided under section 581-406 of this chapter, the individual and the person who gave birth to the child:

(1) are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid;

(2) are married to each other and the child is born no later than three hundred days after the marriage is terminated by death, divorce, dissolution, annulment, or declaration of invalidity, or after a decree of separation or separate maintenance, whether the marriage is or could be declared invalid; or

(3) have married each other after the birth of the child, whether the marriage is or could be declared invalid, and the individual at any time asserted parentage of the child and:

(i) the assertion is in a record filed with a state agency maintaining birth records;

(ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(iii) the individual resided in the same household with the child and openly held out the child as the individual's own child from the time the child was born or adopted and for a period of at least two years thereafter, including any period of temporary absence.

(b) A presumption of parentage under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication under section 582-105 of this article.

PART 2
DE FACTO PARENT

Section 582-102. Definitions.
582-103. Eligibility for a de facto parent to file for a judgment of parentage.
582-104. Procedure for a de facto parent to file for a judgment of parentage.

§ 582-102. Definitions. As used in this article, the following terms shall have the following meanings:

(a) "Parentage" means the continuing relationship between a child and their parents, which can be shared, in certain circumstances, by more than two parents, each having a degree of responsibility.

(b) "De facto parent" means a person who exercised parental responsibility for the child and acted in a parental role from birth, or for at least one year, to have established a bonded and dependent relationship with the child that is parental in nature.

§ 582-103. Eligibility for a de facto parent to file for a judgment of parentage. (a) In a proceeding to adjudicate parentage of a person who claims to be a de facto parent of the child, if there is only one other person who is a parent or has a claim to parentage of the child, the court shall adjudicate the petitioner to be a parent of the child if the person demonstrates by clear and convincing evidence that:

(1) The person resided with the child as a regular member of the child's household from the child's birth, or for at least one year, unless the court finds good cause to accept a shorter period of residence as a regular member of the child's household;

(2) The person engaged in consistent caretaking of the child which may include regularly caring for the child's needs and making day-to-day decisions regarding the child individually or cooperatively with another legal parent;

(3) The person undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(4) The person held out the child as their own;

(5) Another person consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;

(6) The person established a bonded and dependent relationship with the child that is parental in nature; and

(7) Continuing the relationship between the person and the child is in the best interest of the child.

(b) In a proceeding to adjudicate parentage of a person who claims to be a de facto parent of the child, if there is more than one other person who is a parent or has a claim to parentage of the child and the court determines that the requirements of this section and section 582-106 of this article are satisfied, the court shall award parentage to the person claiming to be a de facto parent, provided the adjudication of a person as a parent under this section shall not disestablish the parentage of any other parent, nor limit any other parent's rights pursuant to any other law of the state.

(c) An existing parent of the child may use evidence of duress, coercion or threat of harm to contest an allegation that the person seeking to be adjudicated as a parent fostered or supported a bonded and dependent relationship as described in this section. Such evidence may include:

(1) Whether within a ten-year period preceding the date of the proceeding, the person seeking to be adjudicated as a de facto parent:

(i) has been convicted of domestic assault, sexual assault or sexual exploitation of the child or a parent of the child;

(ii) has been convicted of a family violence crime, as defined by title O of the penal law, and is or has been subject to an order of protection issued by a family court; or

(iii) was found by a court to have committed abuse against the child or a parent of the child;

(2) A sworn affidavit from a domestic violence counselor or sexual assault counselor, provided the person who had confidential communications with the domestic violence counselor or sexual assault counselor has waived the privilege; or

(3) Other credible evidence of abuse against the parent of the child or the child, including, but not limited to, the parent's or child's sworn affidavit or an affidavit from a social services provider, health care provider, clergy person, attorney, or other professional from whom the parent or child sought assistance regarding the abuse.

§ 582-104. Procedure for a de facto parent to file for a judgment of parentage. (a) A proceeding to establish parentage of a child pursuant to this article may be commenced by a person who:

(1) Is alive when the proceeding is commenced; and

(2) Claims to be a de facto parent of the child; or

(3) Claims to be the child of a de facto parent.

(b) A person seeking to be adjudicated as a parent of a child shall file a petition with the court before the child reaches eighteen years of age. The child is required to be alive at the time of the filing. The petition shall include a verified affidavit alleging facts to support the existence of a de facto parent relationship with the child. The petition and affidavit shall be served on the following: all parents of the child; the child; the child's legal guardian if the child is under eighteen years of age; and, any other necessary party to the proceeding.

(c) An adverse party, parent or legal guardian may file a pleading and verified affidavit in response to the petition that shall be served on all parties to the proceeding.

(d) The court shall determine on the basis of the pleadings and affidavits whether the person seeking to be adjudicated a parent has presented prima facie evidence of the criteria for parentage pursuant to subdivision (a) of section 582-103 of this part and, therefore, has standing to proceed with a parentage action. The court, in its sole discretion, may hold a hearing to determine disputed facts that are necessary and material to the issue of standing.

(e) If the child for whom the person is seeking to be adjudicated a parent has two parents at the time the petition is filed and there is litigation pending between the parents at the time the petition is filed regarding custody or visitation with respect to the child, a parent may introduce evidence that the de facto parent action is being brought to interfere improperly in the pending litigation. Based on such evidence, the court may determine that allowing the de facto parent's petition for judgment of parentage to proceed would not be in the best interests of the child and may dismiss the petition without prejudice.

(f) The court may enter an interim order concerning contact between the child and a person with standing seeking adjudication under section 582-103 of this part as a parent of the child.

(g) Any person adjudicated to be a de facto parent of a child under this section shall have all the legal rights and responsibilities of parentage under New York law, including the obligation to support the child.

PART 3

COURT ADJUDICATION OF PARENTAGE FOR A CHILD WITH MULTIPLE PARENTS

Section 582-105. Adjudicating competing claims of parentage.

582-106. Judgment of parentage for a child with multiple parents.

§ 582-105. Adjudicating competing claims of parentage. (a) In a proceeding to adjudicate competing claims of parentage of a child by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

(1) the age of the child;

(2) the length of time during which each individual assumed the role of parent of the child;

(3) the nature of the relationship between the child and each individual;

(4) the harm to the child if the relationship between the child and each individual is not recognized;

(5) the basis for each individual's claim to parentage of the child; and

(6) other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) The interest that a child may have in forming a relationship with a genetic parent shall not be given conclusive weight in adjudicating competing claims of parentage, particularly when there is no preexisting substantial relationship between the genetic parent and the child.

(c) In a proceeding to adjudicate parentage of a person who claims to be a de facto parent of the child, if there is more than one other person who is a parent or has a claim to parentage of the child and the court determines that the requirements of this section and section 582-103 of this article are satisfied, the court shall award parentage to the person claiming to be a de facto parent, provided the adjudication of a person as a parent under this section shall not disestablish the parentage of any other parent, nor limit any other parent's rights under the laws of this state.

§ 582-106. Judgment of parentage for a child with multiple parents. The court may adjudicate a child to have more than two parents if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child shall not require a finding of unfitness of any parent or person seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including:

(a) The harm if the child is removed from a stable placement with a person who has fulfilled the child's physical needs and psychological needs for care and affection and has assumed the role since the child's birth or for a substantial period;

(b) The harm if the child is separated from a person the child understands to be their parent; and

(c) The intention of all parents to raise a child together, including a pre-conception agreement to parent or agreement to parent at any other point in the child's life.

§ 4. Subdivision (a) of section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended to read as follows:

(a) Where a minor child is residing within this state, [~~either~~] any parent may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the natural guardianship, charge and custody of such child to [~~either~~] any parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order. In all cases there shall be no prima facie right to the custody of the child in [~~either~~] any parent, but the court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly. Where a court deems it to be in the child's best interest, the court may award custody to more than two parents.

§ 5. Subparagraphs 2 and 4 of paragraph (a), clause (vi) of subparagraph 5 of paragraph (c), subparagraphs 6 and 7 of paragraph (f) and paragraphs (g), (i) and (j) of subdivision 1 and paragraph a and the opening paragraph and subparagraph 1 of paragraph b of subdivision 3 of

section 413 of the family court act, subparagraphs 2 and 4 of paragraph (a) and subparagraphs 6 and 7 of paragraph (f) of subdivision 1 as amended by chapter 567 of the laws of 1989, clause (vi) of subparagraph 5 of paragraph (c) of subdivision 1 as added by chapter 215 of the laws of 2009, paragraphs (g) and (i) of subdivision 1 as amended by chapter 436 of the laws of 2011, paragraph (j) of subdivision 1 as amended by chapter 59 of the laws of 1993, and paragraph a and the opening paragraph and subparagraph 1 of paragraph b of subdivision 3 as amended by chapter 398 of the laws of 1997, are amended to read as follows:

(2) "Child support" shall mean a sum to be paid pursuant to court order or decree by [~~either or both parents~~] one or more parent or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

(4) "Combined parental income" shall mean the sum of the income of [~~both~~] all parents.

(vi) Upon proof by [~~either~~] any party that cash medical support pursuant to clause (ii), (iii), (iv) or (v) of this subparagraph would be unjust or inappropriate pursuant to paragraph (f) of this subdivision [~~one of this section~~], the court shall:

(6) The educational needs of [~~either~~] any parent;

(7) A determination that the gross income of one or more parent is substantially less than [~~the other~~] one or more of another parent's gross income;

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by [~~either~~] any party or counsel; provided, however, and notwithstanding any other provision of law, including but not limited to section four hundred fifteen of this part, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

(i) Where [~~either or both~~] any of the parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of the domestic relations law, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of the office of temporary and disability assistance pursuant to subdivision two of section one hundred eleven-i of the social services law. Where [~~either~~] any party is in receipt of child support enforcement services through the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart.

(j) 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 [~~either~~] **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, the civil practice law and rules, or the family court act.

a. One-time adjustment of child support orders issued prior to September fifteenth, nineteen hundred eighty-nine. Any party to a child support order issued prior to September fifteenth, nineteen hundred eighty-nine on the behalf of a child in receipt of public assistance or child support services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit undertake one review of the order for adjustment purposes pursuant to section one hundred eleven-h of the social services law. A hearing on the adjustment of such order shall be granted upon the objection of [~~either~~] **any** party pursuant to the provisions of this section. An order shall be adjusted if as of the date of the support collection unit's review of the correct amount of child support as calculated pursuant to the provisions of this section would deviate by at least ten percent from the child support ordered in the last permanent support order of the court. Additionally, a new support order shall be issued upon a showing that the current order of support does not provide for the health care needs of the child through insurance or otherwise. Eligibility of the child for medical assistance shall not relieve any obligation the parties otherwise have to provide for the health care needs of the child. The support collection unit's review of a child support order shall be made on notice to all parties to the current support order and shall be subject to the provisions of section four hundred twenty-four-a of this article. Nothing herein shall be deemed in any way to limit, restrict, expand or impair the rights of any party to file for a modification of a child support order as is otherwise provided by law.

Upon receipt of an adjustment finding and where appropriate a proposed order in conformity with such finding filed by [~~either~~] **any** party or by the support collection unit, a party shall have thirty-five days from the date of mailing of the adjustment finding and proposed adjusted order, if any, to submit to the court identified thereon specific written objections to such finding and proposed order.

(1) If specific written objections are submitted by [~~either~~] **any** party or by the support collection unit, a hearing shall be scheduled by the court on notice to the parties and the support collection unit, who shall have the right to be heard by the court and to offer evidence in support of or in opposition to adjustment of the support order.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.