

STATE OF NEW YORK

8403

IN SENATE

January 26, 2024

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, in relation to evidence to
be considered in the case of child custody matters

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

1 Section 1. This act shall be known and may be cited as "Beatrice's
2 Law".

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

6 (a) Where a minor child is residing within this state, either parent
7 may apply to the supreme court for a writ of habeas corpus to have such
8 minor child brought before such court; and on the return thereof, the
9 court, on due consideration, may award the natural guardianship, charge
10 and custody of such child to either parent for such time, under such
11 regulations and restrictions, and with such provisions and directions,
12 as the case may require, and may at any time thereafter vacate or modify
13 such order. In all cases there shall be no prima facie right to the
14 custody of the child in either parent, but the court shall determine
15 solely what is for the best interest of the child, and what will best
16 promote its welfare and happiness, and make award accordingly. In making
17 a determination of the best interest of the child pursuant to this
18 subdivision, the court shall consider evidence that a child is enrolled
19 in, or either parent intends to enroll the child in, a nonpublic elemen-
20 tary or secondary school that is noncompliant with the academic require-
21 ments set forth in paragraph (ii) of subdivision two of section thirty-
22 two hundred four of the education law, and notwithstanding a
23 determination pursuant to paragraph (v) of subdivision two of section
24 thirty-two hundred four of the education law. A finding by the court
25 that the child is enrolled in, or either parent intends to enroll the
26 child in, a noncompliant nonpublic school as provided in this subdivi-
27 sion shall create a non-rebuttable presumption that it is in the best
28 interest of the child for educational decision making authority to be

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

LBD14156-01-4

awarded to the parent who will affect enrollment or intended enrollment to a school that is compliant with the academic requirements set forth in paragraph (ii) of subdivision two of section thirty-two hundred four of the education law. The court shall issue its order awarding educational decision making authority within thirty days of evidence, as provided for in this subdivision, being presented to the court.

§ 3. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 567 of the laws of 2015, is amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. In making a determination of the best interest of the child pursuant to this paragraph, the court shall consider evidence that a child is enrolled in, or either parent intends to enroll the child in, a nonpublic elementary or secondary school that is noncompliant with the academic requirements set forth in paragraph (ii) of subdivision two of section thirty-two hundred four of the education law, and notwithstanding a determination pursuant to paragraph (v) of subdivision two of section thirty-two hundred four of the education law. A finding by the court that the child is enrolled in, or either parent intends to enroll the child in, a noncompliant nonpublic school as provided in this paragraph shall create a non-rebuttable presumption that it is in the best interest of the child for educational decision making authority to be awarded to the parent who will affect enrollment or intended enrollment to a school that is compliant with the academic requirements set forth in paragraph (ii) of subdivision two of section thirty-two hundred four of the education law. The court shall issue its order awarding educational decision making authority within thirty days of evidence, as provided for in this paragraph, being presented to the court. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visita-

tion or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court must determine custody or visitation in accordance with the terms of this section.

An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of

1 the parties; the date and place of the parties' marriage; the name and
2 date of birth of the child or children; and the name and address of the
3 employers and income payors of the party from whom child support is
4 sought or from the party ordered to pay child support to the other
5 party. Such direction may require the payment of a sum or sums of money
6 either directly to the custodial parent or to third persons for goods or
7 services furnished for such child, or for both payments to the custodial
8 parent and to such third persons; provided, however, that unless the
9 party seeking or receiving child support has applied for or is receiving
10 such services, the court shall not direct such payments to be made to
11 the support collection unit, as established in section one hundred
12 eleven-h of the social services law. Every order directing the payment
13 of support shall require that if either parent currently, or at any time
14 in the future, has health insurance benefits available that may be
15 extended or obtained to cover the child, such parent is required to
16 exercise the option of additional coverage in favor of such child and
17 execute and deliver to such person any forms, notices, documents or
18 instruments necessary to assure timely payment of any health insurance
19 claims for such child.

20 § 4. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.