



2018 New York State YMCA

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Committee Assignment: Assembly Freedom 4

Bill #: AF-25

1 **Sponsors:** Drue DeGroat, Gage Morris

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3 **An Act To**

4 Amend §240 of the Domestic Relations to Allow all children of 13 to have an input
5 on which parent they will live the most time with, after the filed divorce.

6

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

9

10 **Purpose**

11 This bill will compel judges to adhere to the wishes of any child over the age of 13
12 or over in determining custody for that child.

13

14 **Summary of Provisions**

15 § 240. Custody and child support; orders of protection. 1. (a) In any action or
16 proceeding brought (1) to annul a marriage or to declare the nullity of a void
17 marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of
18 habeas corpus or by petition and order to show cause, the custody of
19 or right to visitation with any child of a marriage, the court shall require
20 verification of the status of any child of the marriage with respect to such child's
21 custody and support, including any prior orders, and shall enter orders for custody
22 and support as, in the court's discretion, justice requires, having regard to
23 the circumstances of the case and of the respective parties and to the best
24 interests of the child and subject to the provisions of subdivision one-c of this
25 section. Where either party to an action concerning custody of or a right to
26 visitation with a child alleges in a sworn petition or complaint or sworn answer,
27 cross-petition, counterclaim or other sworn responsive pleading that the other party
28 has committed an act of domestic violence against the party making the allegation
29 or a family or household member of either party, as such family or household
30 member is defined in article eight of the family court act, and such allegations are
31 proven by a preponderance of the evidence, the court must consider the effect of
32 such domestic violence upon the best interests of the child, together with such
33 other facts and circumstances as the court deems relevant in making a direction
34 pursuant to this section and state on the record how such findings, facts and
35 circumstances factored into the direction. If a parent makes a good faith allegation
36 based on a reasonable belief supported by facts that the child is the victim of child
37 abuse, child neglect, or the effects of domestic violence, and if that parent acts
38 lawfully and in good faith in response to that reasonable belief to protect the child
39 or seek treatment for the child, then that parent shall not be deprived of custody,
40 visitation or contact with the child, or restricted in custody, visitation or contact,
41 based solely on that belief or the reasonable actions taken based on that belief. If
42 an allegation that a child is abused is supported by a preponderance of the
43 evidence, then the court shall consider such evidence of abuse in determining the
44 visitation arrangement that is in the best interest of the child, and the court shall



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45 not place a child in the custody of a parent who presents a substantial
46 risk of harm to that child, and shall state on the record how such findings were
47 factored into the determination. Where a proceeding filed pursuant to article ten
48 or ten-A of the family court act is pending at the same time as a proceeding
49 brought in the supreme court involving the custody of, or right to visitation with,
50 any child of a marriage, the court presiding over the proceeding under article ten or
51 ten-A of the family court act may jointly hear the dispositional hearing on the
52 petition under article ten or the permanency hearing under article ten-A of the
53 family court act and, upon referral from the supreme court, the hearing to resolve
54 the matter of custody or visitation in the proceeding pending in the supreme court;
55 provided however, the court must determine custody or visitation in accordance
56 with the terms of this section.

57 Section 1

58 Physical custody: the child's main residence or domicile.

59 Joint physical custody: The child lives with each parent for an equal amount of time

60 Sole physical custody: The child lives with the adult more than 50% of the
61 time(custodial)

62 Noncustodial: Will have parenting time

63 Age of opinion: Between 6 and 14 are generally able to express a preference (but
64 children at this age usually choose the parent that disciplines the least). 14 years,
65 and older, are proven to be mature, and have more experience in which parent
66 they choose.

67 Attorney for the Child (AFC): The AFC will present the wishes of the child in all
68 cases of custody. The AFC must represent the child's wishes, unless the AFC
69 deems one household to be unsuitable for the child (i.e. drug or alcohol abuse,
70 domestic violence).

71 Section 2

72 Judges must comply to the wishes of children, 13 and older, as to which parent that
73 child would like to live with, unless extenuating circumstances supercede the child's
74 wishes. The judge must comply with the recommendation of the Attorney for the
75 Child.

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77 Justification

78 Children aren't given any thought when it comes to divorce. They've seen more
79 than the court. Sometimes the favored parent has a hidden addiction including,
80 drinking, or taking drugs, pornography, inappropriate sexual activity. These are
81 secrets, that only the child or spouse would know of.

82

83 Fiscal Implications

84 There will be no additional cost to New York State.

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86 Effective Date

87 This bill shall go into effect on January 1, 2019.