S T A T E O F N E W Y O R K

4559

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. KOLB, CROUCH, FINCH, WALKER, ALESSI -- Multi-Sponsored by -- M. of A. CALHOUN, GIGLIO, JORDAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings; to amend the domestic relations law, the social services law and the family court act, in relation to changing the denotation of visitation to parenting time; to amend the domestic relations law, in relation to matrimonial actions involving custody of children; and in relation to the obligations of child support; to amend the social services law, in relation to audits of support collection fiscal agents; to amend the family court act, in relation to opening all family court proceedings to the public; to amend the family court act, in relation to the review of evidence; to amend the family court act, in relation to DNA evidence when question of paternity; to amend the domestic relations law, in relation to parental access to information; to amend the family court act and the social services law, in relation to the payment of child support; and to repeal paragraphs (e) and (f) of subdivision 1-b of section 240 of the domestic relations law relating to child support

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and intent. The legislature hereby finds that, in cases of child custody, the court's paramount concern is always the best interests of the child. Shared parenting, where both parents share as equally as possible in the legal responsibility, living experience, and physical care of the child, has been found to be in the child's best interests in certain circumstances. Where the relationship between the parent and child is free from domestic violence, abuse, neglect and other harmful circumstances, shared parenting is beneficial to both parent and child. This legislation seeks to encourage courts and

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

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interested parties to work towards the goal of shared parenting whenever practical and when in the best interests of the child.

S 2. Short title. This act shall be known and may be cited as the "family court reform act of 2009".

S 3. The domestic relations law is amended by adding a new section 240-d to read as follows:

S 240-D. CUSTODY OF CHILDREN. 1. WHERE THE COURT CONSIDERS AWARDING SHARED PARENTING PURSUANT TO THE PROVISIONS OF THIS SECTION "SHARED PARENTING" SHALL MEAN AN ORDER AWARDING CUSTODY OF THE CHILD TO BOTH PARTIES SO THAT BOTH PARTIES SHARE EQUALLY THE LEGAL RESPONSIBILITY AND CONTROL OF SUCH CHILD AND SHARE EQUALLY THE LIVING EXPERIENCE IN TIME AND PHYSICAL CARE TO ASSURE FREQUENT AND CONTINUING CONTACT WITH BOTH PARTIES, AS THE COURT DEEMS TO BE IN THE BEST INTERESTS OF THE CHILD, TAKING INTO CONSIDERATION THE LOCATION AND CIRCUMSTANCES OF EACH PARTY. THE TERM "SHARED PARENTING" WILL BE CONSIDERED INTERCHANGEABLE WITH "NEARLY EQUAL SHARED PARENTING". AN AWARD OF JOINT PHYSICAL AND LEGAL CUSTODY OBLIGATES THE PARTIES TO EXCHANGE INFORMATION CONCERNING THE HEALTH, EDUCATION AND WELFARE OF THE MINOR CHILD, AND UNLESS ALLOCATED, APPORTIONED, OR DECREED, THE PARENTS OR PARTIES SHALL CONFER WITH ONE ANOTHER IN THE EXERCISE OF DECISION-MAKING RIGHTS, RESPONSIBILITIES AND AUTHORITY.

1-A. (A) UPON THE INITIAL APPEARANCE IN COURT IN AN ACTION FOR DIVORCE, NULLITY OR SEPARATE MAINTENANCE WHERE CUSTODY, VISITATION OR SUPPORT OF A MINOR CHILD IS AT ISSUE, AND WHERE BOTH PARTIES AGREE TO SHARED PARENTING, THE COURT SHALL APPOINT AN INDEPENDENT EVALUATOR WITH EXPERTISE IN THE FIELD, INCLUDING BUT NOT LIMITED TO, CHILD PSYCHOLOGY, DOMESTIC VIOLENCE COUNSELING, ETC., TO INVESTIGATE THE FAMILY DYNAMIC AND INTERVIEW THE PARENTS, CHILDREN AND OTHER INTERESTED PARTIES, INCLUDING BUT NOT LIMITED TO, FAMILY MEMBERS, FRIENDS AND CO-WORKERS. THE INDEPENDENT EVALUATOR'S GOAL IS TO DETERMINE WHETHER SHARED PARENTING IS IN THE BEST INTERESTS OF THE CHILD AND TO ENSURE THAT DOMESTIC VIOLENCE AND/OR ANY OTHER TYPE OF ABUSE, REPORTED OR UNREPORTED BY THE VICTIM OR BY AN APPROPRIATE FEDERAL, STATE OR MUNICIPAL AGENCY, IS NOT PRESENT IN THE HOUSEHOLD SETTING. THE COURT SHALL UTILIZE THE INDEPENDENT EVALUATOR'S ANALYSIS AND REPORT, ALONG WITH OTHER SUPPORTING DOCUMENTS PROVIDED BY THE PARTIES, TO DETERMINE THE BEST INTERESTS OF THE CHILD AND TO AWARD CUSTODY BASED ON THAT DETERMINATION.

(B) THE COURT SHALL DETERMINE EACH PARTY'S ABILITY TO PAY THE COST RELATED TO THE EVALUATION. ANY COST ABOVE AND BEYOND THE PARENTS' ABILITY TO PAY SHALL BE INCURRED BY THE COUNTY.

(C) IF EITHER PARENT HAS AN ORDER OF PROTECTION AGAINST THE OTHER PARENT BARRING CONTACT BETWEEN THE PARENT AND/OR CHILD, SHARED PARENTING SHALL NOT BE A CUSTODIAL OPTION. IF EITHER PARENT HAS BEEN CONVICTED OF ABUSE, INCLUDING BUT NOT LIMITED TO, DOMESTIC VIOLENCE AND SEXUAL ABUSE AGAINST EITHER THE OTHER PARENT AND/OR THE CHILD, SHARED PARENTING SHALL NOT BE A CUSTODIAL OPTION. IF EITHER PARENT ACCUSES THE OTHER PARENT OF DOMESTIC VIOLENCE, SEXUAL ABUSE, ETC., AGAINST HIM OR HERSELF, AND/OR THE CHILD, THE COURT SHALL SUSPEND ITS DETERMINATION AS TO WHETHER OR NOT SHARED PARENTING IS IN THE BEST INTERESTS OF THE CHILD, UNTIL THE ACCUSATION HAS BEEN INVESTIGATED AND A DETERMINATION HAS BEEN MADE BY LAW ENFORCEMENT OR APPROPRIATE FEDERAL, STATE OR MUNICIPAL AGENCIES. IF SUCH AGENCIES DETERMINE THAT THE ABUSE OCCURRED, SHARED PARENTING SHALL NOT BE A CUSTODIAL OPTION. IF SUCH AGENCY FINDS THAT ABUSE WAS NOT PRESENT, THE COURT SHALL RESUME ITS DETERMINATION AS TO WHETHER OR NOT SHARED PARENTING IS IN THE BEST INTERESTS OF THE CHILD. SHOULD SUCH ALLEGATIONS BE PROVEN FALSE AND THE COURT DETERMINED UPON MOTION BY THE

ACCUSED PARTY THAT SUCH ALLEGATIONS WERE MADE MALICIOUSLY AND IN BAD FAITH, THE COURT SHALL HAVE THE AUTHORITY TO SANCTION THE ACCUSING PARTY PURSUANT TO THE POWERS GRANTED TO THE COURT PURSUANT TO SECTION TWO HUNDRED FORTY OF THIS ARTICLE.

2. FOR THE PURPOSES OF THIS ARTICLE A "PARENTING PLAN" SHALL BE REQUIRED TO BE SUBMITTED TO THE COURT IF THE COURT AWARDS SHARED PARENTING.

EACH PARENT MUST AGREE TO A PARENTING PLAN DURING MEDIATION. THE PARENTING PLAN WOULD PROVIDE FOR THE MINOR CHILDREN'S PHYSICAL CARE, MAINTAIN THE MINOR CHILDREN'S EMOTIONAL STABILITY, AND PROVIDE FOR THE MINOR CHILDREN'S CHANGING NEEDS AS HE OR SHE DEVELOPS, IN A MANNER WHICH MINIMIZES THE NEED FOR FUTURE MODIFICATIONS TO THE PLAN. THE PARTIES WOULD BE ENCOURAGED TO FULFILL THEIR PARENTING RESPONSIBILITIES THROUGH AGREEMENTS IN THE PARENTING PLAN RATHER THAN BY RELYING ON JUDICIAL INTERVENTION.

THE PLAN SHALL DETERMINE PROCEDURES FOR THE DAY TO DAY CARE OF THE MINOR CHILD AND PROCEDURES FOR TRANSPORTING THE MINOR CHILD FROM ONE PARENT TO THE OTHER PARENT AT THE START AND CONCLUSION OF PARENTING TIME. THE PLAN SHALL INCLUDE TIME SPENT WITH EACH PARENT ON A WEEKLY BASIS, SPECIAL OCCASIONS, INCLUDING BIRTHDAYS, RELIGIOUS AND SECULAR HOLIDAYS AND VACATIONS. THE PLAN SHALL ALSO SPECIFY HOW MAJOR DECISIONS REGARDING THE MINOR CHILD'S HEALTH CARE, EDUCATION, AND RELIGIOUS UPBRINGING WILL BE MADE. THOSE ITEMS THAT REMAIN UNRESOLVED WILL GO BEFORE THE JUDGE FOR DETERMINATION. THE JUDGE SHALL RELY, IN PART, ON THE TESTIMONY OF THE MEDIATION COUNSELOR IN ALL UNRESOLVED ISSUES. OTHER ISSUES, INCLUDING BUT NOT LIMITED TO PROPERTY DIVISION, FINANCIAL ISSUES AND CHILD SUPPORT SHALL NOT BE ADDRESSED IN THIS PLAN.

THE COURT SHALL HAVE FINAL APPROVAL OVER SUCH PLAN AND MAY MODIFY, SUSPEND OR NULLIFY THE PLAN AT ITS DISCRETION. THE COURT SHALL HAVE ONE YEAR TO REVIEW THE PARENTING PLAN TO DETERMINE WHETHER SUCH PLAN IS BEING FOLLOWED AND CONTINUES TO BE IN THE BEST INTERESTS OF THE CHILD. AT SUCH TIME, THE COURT SHALL RETAIN THE POWER TO MODIFY, SUSPEND OR NULLIFY THE PLAN BASED ON ITS FINDINGS.

S 4. The domestic relations law is amended by adding a new section 240-e to read as follows:

S 240-E. PARTIES IN DISAGREEMENT OVER SHARED PARENTING. 1. IF THE PARTIES ARE SEEKING A CUSTODY ARRANGEMENT OTHER THAN SHARED PARENTING OR WHERE ONE PARENT OBJECTS TO AN AWARD OF SHARED PARENTING, THE COURT MUST DETERMINE WHAT CUSTODY ARRANGEMENT IS IN THE BEST INTERESTS OF THE CHILD. IF ONE PARTY IS SEEKING SHARED PARENTING AND THE OTHER PARTY IS SEEKING SOLE CUSTODY, BOTH PARTIES SHALL BEAR THE BURDEN OF PROOF THAT THEIR REQUESTED ARRANGEMENT IS IN THE BEST INTERESTS OF THE CHILD THROUGH THE INTRODUCTION OF TESTIMONY AND SUPPORTING DOCUMENTS, ETC. TO THE COURT.

2. THE COURT SHALL DETERMINE EACH PARTY'S ABILITY TO PAY THE COST RELATED TO THE EVALUATION. ANY COST ABOVE AND BEYOND THE PARENTS' ABILITY TO PAY SHALL BE INCURRED BY THE COUNTY.

3. THE COURT SHALL APPOINT AN INDEPENDENT EVALUATOR WITH EXPERTISE IN, BUT NOT LIMITED TO, CHILD PSYCHOLOGY, DOMESTIC VIOLENCE COUNSELING, ETC. TO INVESTIGATE THE FAMILY DYNAMIC AND INTERVIEW THE PARENTS, CHILDREN AND OTHER INTERESTED PARTIES, INCLUDING BUT NOT LIMITED TO, FAMILY MEMBERS, FRIENDS AND CO-WORKERS. THE INDEPENDENT EVALUATOR'S GOAL IS TO DETERMINE WHAT CUSTODY ARRANGEMENT IS IN THE BEST INTERESTS OF THE CHILD AND TO ENSURE THAT DOMESTIC VIOLENCE AND/OR ANY OTHER TYPE OF ABUSE, REPORTED OR UNREPORTED BY THE VICTIM OR BY AN APPROPRIATE FEDERAL, STATE OR MUNICIPAL AGENCY, IS NOT PRESENT IN THE HOUSEHOLD SETTING. THE COURT

SHALL UTILIZE THE INDEPENDENT EVALUATOR'S ANALYSIS AND REPORT, ALONG WITH OTHER SUPPORTING DOCUMENTS PROVIDED BY THE PARTIES, TO DETERMINE THE BEST INTERESTS OF THE CHILD AND TO AWARD CUSTODY BASED ON THAT DETERMINATION. IF ONE PARTY SOUGHT SHARED PARENTING, AND THE COURT FOUND THAT SUCH AN AWARD WOULD NOT BE IN THE BEST INTERESTS OF THE CHILD, THE COURT MUST STATE ITS REASONING BEHIND SUCH DETERMINATION IN THE ORDER SETTING OUT THE CUSTODY AWARD.

4. THE COURT, IN ITS DISCRETION, MAY REQUIRE THE PARENT WHO WAS NOT AWARDED SHARED PARENTING TO FULFILL CERTAIN CONDITIONS, INCLUDING BUT NOT LIMITED TO, PARENTING CLASSES, GENERAL COUNSELING, ANGER MANAGEMENT CLASSES, AND SUBSTANCE ABUSE COUNSELING, AND SHALL LIST SUCH CONDITIONS ON THE CUSTODY ORDER.

5. UPON THE NON-CUSTODIAL PARENT'S MOTION, THE COURT SHALL, ONE YEAR FOLLOWING THE INITIAL AWARD OF CUSTODY, REVISIT ITS FINDINGS AND MAKE A SUBSEQUENT DETERMINATION WHETHER OR NOT SHARED PARENTING IS IN THE BEST INTERESTS OF THE CHILD. SUCH REVIEW IS CONTINGENT ON THE NON-CUSTODIAL PARENT'S COMPLETION OF THE CONDITIONS SET FORTH IN THE CUSTODY ORDER AND THE REQUIREMENT THAT SUCH PARENT REMAIN CURRENT IN THEIR SUPPORT OBLIGATIONS.

S 5. Subdivision (b) of section 70 of the domestic relations law, as added by chapter 457 of the laws of 1988, is amended to read as follows:

(b) Any order under this section which applies to rights of [visitation] PARENTING TIME 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 the provisions of part eight of article ten of [such] THE FAMILY COURT act, 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 or official having care and custody, or temporary care and custody, of such child.

S 6. Section 71 of the domestic relations law, as added by chapter 318 of the laws of 1989, is amended to read as follows:

S 71. Special proceeding or habeas corpus to obtain [visitation] PARENTING TIME rights in respect to certain infant siblings. Where circumstances show that conditions exist which equity would see fit to intervene, a brother or sister or, if he or she be a minor, a proper person on his or her behalf of a child, whether by half or whole blood, may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to the family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interest of the child may require, for [visitation] PARENTING TIME rights for such brother or sister in respect to such child.

S 7. The section heading and subdivision 1 of section 72 of the domestic relations law, as amended by chapter 657 of the laws of 2003, are amended to read as follows:

Special proceeding or habeas corpus to obtain [visitation] PARENTING TIME rights or custody in respect to certain infant grandchildren. 1. Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions exist which equity would see fit to intervene, a grandparent or

the grandparents of such child may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to the family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interest of the child may require, for [visitation] PARENTING TIME rights for such grandparent or grandparents in respect to such child.

S 8. Subdivision 1 of section 235 of the domestic relations law, as amended by chapter 122 of the laws of 1979, is amended to read as follows:

1. An officer of the court with whom the proceedings in a matrimonial action or a written agreement of separation or an action or proceeding for custody, [visitation] PARENTING TIME or maintenance of a child are filed, or before whom the testimony is taken, or his clerk, either before or after the termination of the suit, shall not permit a copy of any of the pleadings, affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separation or memorandum thereof, or testimony, or any examination or perusal thereof, to be taken by any other person than a party, or the attorney or counsel of a party, except by order of the court.

S 9. Subdivision (b) of section 237 of the domestic relations law, as amended by chapter 892 of the laws of 1986, is amended to read as follows:

(b) Upon any application to annul or modify an order or judgment for alimony or for custody, [visitation] PARENTING TIME, or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty OF THIS ARTICLE provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, [visitation] PARENTING TIME or maintenance of a child, the court may direct a spouse or parent to pay such sum or sums of money for the prosecution or the defense of the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. With respect to any such application or proceeding, such direction may be made in the order or judgment by which the particular application or proceeding is finally determined, or by one or more orders from time to time before the final order or judgment, or by both such order or orders and the final order or judgment. Any applications for counsel fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. Representation by an attorney [pursuant to paragraph (b) of subdivision nine of section one hundred eleven-b of the social services law] shall not preclude an award of counsel fees to an applicant which would otherwise be allowed under this section.

S 10. Subdivisions 1 and 1-a of section 240 of the domestic relations law, subdivision 1 as amended by chapter 624 of the laws of 2002, paragraph (a) of subdivision 1 as amended by chapter 538 of the laws of 2008, paragraph (a-1) of subdivision 1 as added by chapter 595 of the laws of 2008 and subdivision 1-a as amended by chapter 12 of the laws of 1996, are amended to read as follows:

1. (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] PARENTING TIME 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. Where either party to an action concerning custody of or a right to [visitation] PARENTING TIME 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. HOWEVER, SHOULD SUCH ALLEGATIONS BE PROVEN FALSE, THE COURT SHALL HAVE WITHIN ITS POWER THE AUTHORITY TO SANCTION THE ACCUSING PARTY. THE SUBJECT OF AN UNFOUNDED REPORT OF DOMESTIC ABUSE WHO BELIEVES THE REPORT WAS MADE MALICIOUSLY AND IN BAD FAITH MAY PRESENT A WRITTEN REQUEST TO THE COURT FOR A DETERMINATION THAT THE REPORTER ACTED MALICIOUSLY OR IN BAD FAITH AND MUST BE SANCTIONED. 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] PARENTING TIME or contact with the child, or restricted in custody, [visitation] PARENTING TIME 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] PARENTING TIME 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. 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] BEFORE THE COURT MAKES ANY ORDER AWARDING CUSTODY TO A PERSON OR PERSONS OTHER THAN A PARENT WITHOUT THE CONSENT OF THE PARENTS, IT SHALL MAKE A FINDING THAT AN AWARD OF CUSTODY TO A PARENT WOULD BE DETRIMENTAL TO THE CHILD AND THE AWARD TO A NON-PARENT IS REQUIRED TO SERVE THE BEST INTERESTS OF THE CHILD. ALLEGATIONS THAT PARENTAL CUSTODY WOULD BE DETRIMENTAL TO THE CHILD, OTHER THAN A STATEMENT OF THAT ULTIMATE FACT, SHALL NOT APPEAR IN THE PLEADINGS. THE COURT MAY, IN ITS DISCRETION, EXCLUDE THE PUBLIC FROM THE HEARING ON THIS ISSUE. THE COURT SHALL STATE IN WRITING THE REASON FOR ITS DECISION AND WHY THE AWARD MADE WAS FOUND TO BE IN THE BEST INTERESTS OF THE CHILD. ANY DIRECTION MADE PURSUANT TO THIS SUBDIVISION 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] PARENTING TIME rights to the maternal and/or paternal grandparents of any child of the parties.

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

(a-1)(1) Permanent, temporary or successive temporary orders of custody or [visitation] PARENTING TIME. Prior to the issuance of any permanent, temporary or successive temporary order of custody or [visitation] PARENTING TIME where more than one month has passed since the issuance of the previous temporary order, the court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act; and

(ii) reports of the statewide computerized registry of orders of protection and warrants of arrest established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

(2) Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a party appearing pro se, notifying such party of the results thereof, including any court appointed law guardian, the court may issue a temporary, successive temporary or final order of custody or [visitation] PARENTING TIME.

(3) Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, to serve the best interest of the child, the court may issue a temporary emergency order for custody or [visitation] PARENTING TIME in the event that it is not possible to timely review decisions and reports on registries as required pursuant to items (i) and (ii) of subparagraph one of this paragraph.

(4) After issuing a temporary emergency order. After issuing a temporary emergency order of custody or [visitation] PARENTING TIME, the court shall conduct reviews of the decisions and reports on registries as required pursuant to items (i) and (ii) of subparagraph one of this paragraph within twenty-four hours of the issuance of such temporary emergency order. Upon reviewing decisions and reports the court shall notify associated counsel pursuant to subparagraph two of this paragraph and may issue temporary or permanent custody or [visitation] PARENTING TIME orders.

(5) Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing courts with information regarding parties requesting orders of custody or [visitation] PARENTING TIME. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

(b) As used in this section, the following terms shall have the following meanings:

(1) "Health insurance benefits" means any medical, dental, optical and prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans.

(2) "Available health insurance benefits" means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance

benefits that are not reasonable in cost or whose services are not reasonably accessible to such person, shall be considered unavailable.

(c) When the person on whose behalf the petition is brought is a child, the court shall consider the availability of health insurance benefits to all parties and shall take the following action to ensure that health insurance benefits are provided for the benefit of the child:

(1) Where the child is presently covered by health insurance benefits, the court shall direct in the order of support that such coverage be maintained, unless either parent requests the court to make a direction for health insurance benefits coverage pursuant to paragraph two of this subdivision.

(2) Where the child is not presently covered by health insurance benefits, the court shall make a determination as follows:

(i) If only one parent has available health insurance benefits, the court shall direct in the order of support that such parent provide health insurance benefits.

(ii) If both parents have available health insurance benefits the court shall direct in the order of support that either parent or both parents provide such health insurance. The court shall make such determination based on the circumstances of the case, including, but not limited to, the cost and comprehensiveness of the respective health insurance benefits and the best interests of the child.

(iii) If neither parent has available health insurance benefits, the court shall direct in the order of support that the custodial parent apply for the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law and the medical assistance program established pursuant to title eleven of article five of the social services law. If eligible for such coverage, the court shall prorate the cost of any premium or family contribution in accordance with paragraph (d) of this subdivision. A direction issued under this subdivision shall not limit or alter either parent's obligation to obtain health insurance benefits at such time as they become available, as required pursuant to paragraph (a) of this subdivision.

(d) The cost of providing health insurance benefits pursuant to paragraph (c) of this subdivision shall be prorated between the parties in the same proportion as each parent's income is to the combined parental income. If the custodial parent is ordered to provide such benefits, the non-custodial parent's pro rata share of such costs shall be added to the basic support obligation. If the non-custodial parent is ordered to provide such benefits, the custodial parent's pro rata share of such costs shall be deducted from the basic support obligation. Where the court finds that such proration is unjust or inappropriate, the court shall:

(1) order the parties to pay such amount of the cost of health insurance benefits as the court finds just and appropriate;

(2) add or subtract such amount in the manner set forth in this subdivision; and

(3) set forth in the order the factors it considered, the amount of each party's share of the cost and the reason or reasons the court did not order such pro rata apportionment.

(e) The court shall provide in the order of support that the legally responsible relative immediately notify the other party, or the other party and the support collection unit when the order is issued on behalf of a child in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services

law, of any change in health insurance benefits, including any termination of benefits, change in the health insurance benefit carrier, premium, or extent and availability of existing or new benefits.

(f) Where the court determines that health insurance benefits are available, the court shall provide in the order of support that the legally responsible relative immediately enroll the eligible dependents named in the order who are otherwise eligible for such benefits without regard to any seasonal enrollment restrictions. Such order shall further direct the legally responsible relative to maintain such benefits as long as they remain available to such relative. Such order shall further direct the legally responsible relative to assign all insurance reimbursement payments for health care expenses incurred for his or her eligible dependents to the provider of such services or the party actually having incurred and satisfied such expenses, as appropriate.

(g) When the court issues an order of child support or combined child and spousal support on behalf of persons in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, such order shall further direct that the provision of health care benefits shall be immediately enforced pursuant to section fifty-two hundred forty-one of the civil practice law and rules.

(h) When the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall also issue a separate order which shall include the necessary direction to ensure the order's characterization as a qualified medical child support order as defined by section six hundred nine of the employee retirement income security act of 1974 (29 USC 1169). Such order shall: (i) clearly state that it creates or recognizes the existence of the right of the named dependent to be enrolled and to receive benefits for which the legally responsible relative is eligible under the available group health plans, and shall clearly specify the name, social security number and mailing address of the legally responsible relative, and of each dependent to be covered by the order; (ii) provide a clear description of the type of coverage to be provided by the group health plan to each such dependent or the manner in which the type of coverage is to be determined; and (iii) specify the period of time to which the order applies. The court shall not require the group health plan to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred [and ninety-six g] NINETY-SIX-G of title forty-two of the United States code.

(i) Upon a finding that a legally responsible relative wilfully failed to obtain health insurance benefits in violation of a court order, such relative will be presumptively liable for all health care expenses incurred on behalf of such dependents from the first date such dependents were eligible to be enrolled to receive health insurance benefits after the issuance of the order of support directing the acquisition of such coverage.

(j) The order shall be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall, except as provided for herein, be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.

In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the courts shall not direct the schedule of repayment of retroactive support. Where such direction is for child support and paternity has been established by a voluntary acknowledgement of paternity as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgement has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgement with the appropriate registrar within five business days. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under section two hundred thirty-six of this article. Upon the application of either parent, or of any other person or party having the care, custody and control of such child pursuant to such judgment or order, after such notice to the other party, parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules.

1-a. In any proceeding brought pursuant to this section to determine the custody or [visitation] PARENTING TIME of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is some credible evidence of the alleged abuse or maltreatment and that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or his OR HER designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or his OR HER designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by the commissioner or his OR HER designee, shall be admissible if it meets the other requirements of this subdivision and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

S 11. Paragraph c of subdivision 3 of section 240 of the domestic relations law, as amended by chapter 597 of the laws of 1998, is amended to read as follows:

c. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action or in a proceeding to obtain custody of or [visitation] PARENTING TIME with any child under this section, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or [visitation] PARENTING TIME is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

S 12. Section 241 of the domestic relations law, as amended by chapter 892 of the laws of 1986, is amended to read as follows:

S 241. Interference with or withholding of [visitation] PARENTING TIME rights; alimony or maintenance suspension. When it appears to the satisfaction of the court that a custodial parent receiving alimony or maintenance pursuant to an order, judgment or decree of a court of competent jurisdiction has wrongfully interfered with or withheld [visitation] PARENTING TIME rights provided by such order, judgment or decree, the court, in its discretion, [may] SHALL suspend such payments or cancel any arrears that may have accrued during the time that [visitation] PARENTING TIME rights have been or are being interfered with or withheld. Nothing in this section shall constitute a defense in any court to an application to enforce payment of child support or grounds for the cancellation of arrears for child support.

S 13. Section 251 of the domestic relations law, as added by chapter 164 of the laws of 1973, is amended to read as follows:

S 251. Filing of order in family court. When, in a matrimonial action, the supreme court refers the issues of support, custody or [visitation] PARENTING TIME to the family court, the order or judgment shall provide that a copy thereof shall be filed by the plaintiff's attorney, within ten days, with the clerk of the family court therein specified.

S 14. Paragraph (b) of subdivision 1 of section 252 of the domestic relations law, as added by chapter 349 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement, to visit the child at stated periods;

S 15. Subdivision 3 of section 252 of the domestic relations law, as added by chapter 349 of the laws of 1995, is amended to read as follows:

3. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or [visitation] PARENTING TIME is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

S 16. Subdivision 10 of section 358-a of the social services law, as added by chapter 457 of the laws of 1988, is amended to read as follows:

(10) [Visitation] PARENTING TIME rights; non-custodial parents and grandparents. (a) Where a social services official incorporates in an instrument [visitation] PARENTING TIME rights set forth in an order, judgment or agreement as described in paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, such official shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the person having such [visitation] PARENTING TIME rights is a subject or another person named in an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of this chapter, and shall further ascertain, to the extent practicable, whether or not such person is a respondent in a proceeding under article ten of the family court act whereby the respondent has been alleged or adjudicated to have abused or neglected such child.

(b) Where a social services official or the law guardian of the child, if any, opposes incorporation of an order, judgment or agreement conferring [visitation] PARENTING TIME rights as provided for in paragraph (e) of subdivision two of section three hundred eighty-four-a of this chapter, the social services official or law guardian shall apply for an order determining that the provisions of such order, judgment or agreement should not be incorporated into the instrument executed pursuant to such section. Such order shall be granted upon a finding, based on competent, relevant and material evidence, that the child's life or health would be endangered by incorporation and enforcement of [visitation] PARENTING TIME rights as described in such order, judgment or agreement. Otherwise, the court shall deny such application.

(c) Where [visitation] PARENTING TIME rights pursuant to an order, judgment or agreement are incorporated in an instrument, the parties may agree to an alternative schedule of [visitation] PARENTING TIME equiv-

alent to and consistent with the original or modified [visitation] PARENTING TIME order, judgment, or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child. In the absence of such an agreement between the parties, the court may, in its discretion, upon application of any party or the child's law guardian, order an alternative schedule of [visitation] PARENTING TIME, as described herein, where it determines that such schedule is necessary to facilitate [visitation] PARENTING TIME and to protect the best interests of the child.

(d) The order providing an alternative schedule of [visitation] PARENTING TIME shall remain in effect for the length of the placement of the child as provided for in such instrument unless such order is subsequently modified by the court for good cause shown. Whenever the court makes an order denying or modifying [visitation] PARENTING TIME rights pursuant to this subdivision, the instrument described in section three hundred eighty-four-a of this chapter shall be deemed amended accordingly.

S 17. Paragraphs (b), (d) and (f) of subdivision 2 of section 384-a of the social services law, paragraph (b) as added by chapter 669 of the laws of 1976, paragraphs (d) and (f) as added by chapter 457 of the laws of 1988, are amended to read as follows:

(b) No provisions set forth in any such instrument regarding the right of the parent or guardian to visit the child or to have services provided to the child and to the parent or guardian to strengthen the parental relationship may be terminated or limited by the authorized agency having the care and custody of the child unless: (i) the instrument shall have been amended to so limit or terminate such right, pursuant to subdivision three of this section; or (ii) the right of [visitation] PARENTING TIME or to such services would be contrary to or inconsistent with a court order obtained in any proceeding in which the parent or guardian was a party.

(d) In any case where a parent who has transferred care and custody of a child to a social services official pursuant to this section informs the social services official that an order or judgment conferring [visitation] PARENTING TIME rights relating to the child has been entered by the family court or supreme court or that a written agreement as described in section two hundred thirty-six of the domestic relations law between the parents confers such rights, any instrument executed pursuant to this section shall incorporate the provisions of such order, judgment or agreement to the extent that [visitation] PARENTING TIME rights are affected and shall provide for [visitation] PARENTING TIME or other rights as required by such order, judgment or agreement. Such incorporation shall not preclude a social services official from exercising his authority pursuant to paragraph (e) or (f) of this subdivision.

(f) Nothing in this section shall be deemed to prohibit a social services official or a law guardian of the child, if any, from making an application to modify the terms of a [visitation] PARENTING TIME order, incorporated pursuant to this section, for good cause shown, upon notice to all interested parties, or to limit the right of a non-custodial parent or grandparent to seek [visitation] PARENTING TIME pursuant to applicable provisions of law.

S 18. Subparagraph (iv) of paragraph (c) of subdivision 2 of section 384-a of the social services law, as amended by chapter 256 of the laws of 1990, is amended to read as follows:

(iv) that the parent or guardian has a right to supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of [visitation] PARENTING TIME;

S 19. Subparagraph 5 of paragraph (f) of subdivision 7 of section 384-b of the social services law, as added by chapter 911 of the laws of 1983, is amended to read as follows:

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no [visitation] PARENTING TIME between child and incarcerated parent has been arranged for or permitted by the authorized agency because such [visitation] PARENTING TIME is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such [visitation] PARENTING TIME. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility.

S 20. Paragraph (o) of subdivision 6 of section 398 of the social services law, as added by chapter 457 of the laws of 1988, is amended to read as follows:

(o) Compliance with a court order enforcing [visitation] PARENTING TIME rights of a non-custodial parent or grandparent pursuant to part eight of article ten of the family court act, subdivision ten of section three hundred fifty-eight-a or paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, and responsibility for the return of such child after [visitation] PARENTING TIME so ordered.

S 21. Subdivision 1 of section 398-d of the social services law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

1. The legislature finds that the centralized delivery of child protective services, preventive services, adoption services and foster care services in a social [service] SERVICES district with a population of more than two million hinders their effective delivery and adds unnecessary costs. Numerous studies have recommended that such services serve small areas, be located in such areas, and be integrated. Such relocation will: give caseworkers greater knowledge of their assigned community, the residents of that community and the availability of community-based services; increase the availability of caseworkers; reduce travel time for caseworkers; enable children in foster care to remain in their own communities and schools and maintain their friendships; enable children in foster care to have greater [visitation] PARENTING TIME with their parents; provide for more effective delivery of preventive services; and expedite adoptions and otherwise reduce the amount of time children spend in foster care.

The relocation of child welfare service delivery to the community sites will strengthen efforts to provide a wide range of community-based

early intervention programs including, but not limited to, school-based health clinics and community schools, thereby ensuring the continued development of a critical mass of community services.

S 22. Subparagraph 9 of paragraph (f) of subdivision 1 of section 413 of the family court act, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(9) Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising [visitation] PARENTING TIME, or (ii) expenses incurred by the non-custodial parent in extended [visitation] PARENTING TIME provided that the custodial parent's expenses are substantially reduced as a result thereof; and

S 23. Subdivisions (a) and (c) of section 439 of the family court act, as amended by section 1 of chapter 576 of the laws of 2005, are amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to issues specified in subdivision five of section four hundred fifty-four or section four hundred fifty-five of this [act] ARTICLE, issues of contested paternity involving claims of equitable estoppel, custody, [visitation] PARENTING TIME including [visitation] PARENTING TIME as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

(c) The support magistrate, in any proceeding in which issues specified in section four hundred fifty-five of this [act] ARTICLE, or issues of custody, [visitation] PARENTING TIME, including [visitation] PARENTING TIME as a defense, orders of protection or exclusive possession of

the home are present or in which paternity is contested on the grounds of equitable estoppel, shall make a temporary order of support and refer the proceeding to a judge. Upon determination of such issue by a judge, the judge may make a final determination of the issue of support, or immediately refer the proceeding to a support magistrate for further proceedings regarding child support or other matters within the authority of the support magistrate.

S 24. Subdivision (a) of section 439 of the family court act, as amended by section 2 of chapter 576 of the laws of 2005, is amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to issues specified in section four hundred fifty-five of this [act] ARTICLE, issues of contested paternity involving claims of equitable estoppel, custody, [visitation] PARENTING TIME including [visitation] PARENTING TIME as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

S 25. Subdivision (b) of section 446 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement, to visit the child at stated periods;

S 26. Section 447 of the family court act, subdivision (a) as amended by chapter 85 of the laws of 1996, is amended to read as follows:

S 447. Order of [visitation] PARENTING TIME. (a) In the absence of an order of custody or of [visitation] PARENTING TIME entered by the

supreme court, the court may make an order of custody or of [visitation] PARENTING TIME, in accordance with subdivision one of section two hundred forty of the domestic relations law, requiring one parent to permit the other to visit the children at stated periods without an order of protection, even where the parents are divorced and the support order is for a child only.

(b) Any order of the family court under this section shall terminate when the supreme court makes an order of custody or of [visitation] PARENTING TIME concerning the children, unless the supreme court continues the order of the family court.

S 27. Subdivision (a) of section 456 of the family court act, as amended by chapter 809 of the laws of 1963, is amended to read as follows:

(a) No person may be placed on probation under this article unless the court makes an order to that effect, either at the time of the making of an order of support or under section four hundred fifty-four OF THIS PART. The period of probation may continue so long as an order of support, order of protection or order of [visitation] PARENTING TIME applies to such person.

S 28. Subdivisions (a) and (b) of section 467 of the family court act, subdivision (a) as amended and subdivision (b) as added by chapter 40 of the laws of 1981, are amended to read as follows:

(a) In an action for divorce, separation or annulment, the supreme court may refer to the family court the determination of applications to fix temporary or permanent custody or [visitation] PARENTING TIME, applications to enforce judgments and orders of custody or [visitation] PARENTING TIME, and applications to modify judgments and orders of custody which modification may be granted only upon a showing to the family court that there has been a subsequent change of circumstances, SUCH AS LOSS OF EMPLOYMENT OR CHANGE IN INCOME, and that modification is required.

(b) In the event no such referral has been made and unless the supreme court provides in the order or judgment awarding custody or [visitation] PARENTING TIME in an action for divorce, separation or annulment, that it may be enforced or modified only in the supreme court, the family court may: (i) determine an application to enforce the order or judgment awarding custody or [visitation] PARENTING TIME, or (ii) determine an application to modify the order or judgment awarding custody or [visitation] PARENTING TIME upon a showing that there has been a subsequent change of circumstances and modification is required.

S 29. Section 511 of the family court act, as amended by chapter 533 of the laws of 1999, is amended to read as follows:

S 511. Jurisdiction. Except as otherwise provided, the family court has exclusive original jurisdiction in proceedings to establish paternity and, in any such proceedings in which it makes a finding of paternity, to order support and to make orders of custody or of [visitation] PARENTING TIME, as set forth in this article. On its own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with the provisions of article ten of this act. In accordance with the provisions of section one hundred eleven-b of the domestic relations law, the surrogate's court has original jurisdiction concurrent with the family court to determine the issues relating to the establishment of paternity.

S 30. Section 549 of the family court act, as added by chapter 952 of the laws of 1971, subdivision (a) as amended by chapter 85 of the laws of 1996, is amended to read as follows:

S 549. Order of [visitation] PARENTING TIME. (a) If an order of filiation is made or if a paternity agreement or compromise is approved by the court, in the absence of an order of custody or of [visitation] PARENTING TIME entered by the supreme court the family court may make an order of custody or of [visitation] PARENTING TIME, in accordance with subdivision one of section two hundred forty of the domestic relations law, requiring one parent to permit the other to visit the child or children at stated periods.

(b) Any order of the family court under this section shall terminate when the supreme court makes an order of custody or of [visitation] PARENTING TIME concerning the child or children, unless the supreme court continues the order of the family court.

S 31. Subdivision (b) of section 551 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement to visit the child at stated periods;

S 32. Section 651 of the family court act, as amended by chapter 85 of the laws of 1996, subdivisions (b) and (d) as amended by chapter 657 of the laws of 2003, and subdivision (e) as added by chapter 595 of the laws of 2008, is amended to read as follows:

S 651. Jurisdiction over habeas corpus proceedings and petitions for custody and [visitation] PARENTING TIME of minors. (a) When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or [visitation] PARENTING TIME of minors.

(b) When initiated in the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or [visitation] PARENTING TIME of minors, including applications by a grandparent or grandparents for [visitation] PARENTING TIME or custody rights pursuant to section seventy-two or two hundred forty of the domestic relations law.

(c) When initiated in the family court pursuant to a petition under part eight of article ten of this act or section three hundred fifty-eight-a of the social services law, the family court has jurisdiction to enforce or modify orders or judgments of the supreme court relating to the [visitation] PARENTING TIME of minors in foster care, notwithstanding any limitation contained in subdivision (b) of section four hundred sixty-seven of this act.

(d) With respect to applications by a grandparent or grandparents for [visitation] PARENTING TIME or custody rights, made pursuant to section seventy-two or two hundred forty of the domestic relations law, with a child remanded or placed in the care of a person, official, agency or institution pursuant to the provisions of article ten of this act, the applicant, in such manner as the court shall prescribe, shall serve a copy of the application upon the social services official having care and custody of such child, and the child's law guardian, who shall be afforded an opportunity to be heard thereon.

(e) 1. Permanent, temporary or successive temporary orders of custody or visitation. Prior to the issuance of any permanent, temporary or successive temporary order of custody or [visitation] PARENTING TIME where more than one month has passed since the issuance of the previous temporary order, the court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of this act; and

(ii) reports of the statewide computerized registry of orders of protection and warrants of arrest established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

2. Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of this act, and registry reports and notifying counsel involved in the proceeding, or in the event of a party appearing pro se, notifying such party of the results thereof, including any court appointed law guardian, the court may issue a temporary, successive temporary or final order of custody or visitation.

3. Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, to serve the best interest of the child, the court may issue a temporary emergency order for custody or [visitation] PARENTING TIME in the event that it is not possible to timely review decisions and reports on registries as required pursuant to subparagraphs (i) and (ii) of paragraph one of this subdivision.

4. After issuing a temporary emergency order. After issuing a temporary emergency order of custody or [visitation] PARENTING TIME, the court shall conduct reviews of the decisions and reports on registries as required pursuant to subparagraphs (i) and (ii) of paragraph one of this subdivision within twenty-four hours of the issuance of such temporary emergency order. Upon reviewing decisions and reports the court shall notify associated counsel pursuant to paragraph two of this subdivision and may issue temporary or permanent custody or [visitation] PARENTING TIME orders.

5. Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in family courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing family courts with information regarding parties requesting orders of custody or [visitation] PARENTING TIME. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January thirty-first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

S 33. Section 651-a of the family court act, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

S 651-a. Reports of child abuse and maltreatment; admissibility. In any proceeding brought pursuant to this section to determine the custody or [visitation] PARENTING TIME of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five

hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is some credible evidence of the alleged abuse or maltreatment, that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or his OR HER designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or his OR HER designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by the commissioner or his OR HER designee, shall be admissible if it meets the other requirements of this section and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

S 34. Subdivisions (a) and (b) of section 652 of the family court act, subdivision (a) as amended and subdivision (b) as added by chapter 40 of the laws of 1981, are amended to read as follows:

(a) When referred from the supreme court to the family court, the family court has jurisdiction to determine, with the same powers possessed by the supreme court, applications to fix temporary or permanent custody and applications to modify judgments and orders of custody or [visitation] PARENTING TIME in actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage. Applications to modify judgments and orders of custody may be granted by the family court under this section only upon the showing to the family court that there has been a subsequent change of circumstances, SUCH AS LOSS OF EMPLOYMENT OR CHANGE IN INCOME, and that modification is required.

(b) In the event no such referral has been made and unless the supreme court provides in the order or judgment awarding custody or [visitation] PARENTING TIME in an action for divorce, separation or annulment, that it may be enforced or modified only in the supreme court, the family court may: (i) determine an application to enforce the order or judgment awarding custody or [visitation] PARENTING TIME, or (ii) determine an application to modify the order or judgment awarding custody or [visitation] PARENTING TIME upon a showing that there has been a subsequent change of circumstances and modification is required.

S 35. Subdivision (b) of section 656 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement, to visit the child at stated periods;

S 36. Subdivision (b) of section 759 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement, to visit the child at stated periods;

S 37. Subdivision (b) of section 842 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement, to visit the child at stated periods;

S 38. Section 1030 of the family court act, as added by chapter 457 of the laws of 1988, is amended to read as follows:

S 1030. Order of [visitation] PARENTING TIME by a respondent. (a) A respondent shall have the right to reasonable and regularly scheduled [visitation] PARENTING TIME with a child in the temporary custody of a social services official pursuant to this part or pursuant to subdivision (d) of section one thousand fifty-one of this article, unless limited by an order of the family court.

(b) A respondent who has not been afforded such [visitation] PARENTING TIME may apply to the court for an order requiring the local social services official having temporary custody of the child pursuant to this part or pursuant to subdivision (d) of section one thousand fifty-one of this article, to permit the respondent to visit the child at stated periods. Such application shall be made upon notice to the local social services official and to any law guardian appointed to represent the child, who shall be afforded an opportunity to be heard thereon.

(c) A respondent shall be granted reasonable and regularly scheduled [visitation] PARENTING TIME unless the court finds that the child's life or health would be endangered thereby, but the court may order [visitation] PARENTING TIME under the supervision of an employee of a local social services department upon a finding that such supervised [visitation] PARENTING TIME is in the best interest of the child.

(d) An order made under this section may be modified by the court for good cause shown, upon application by any party or the child's law guardian, and upon notice of such application to all other parties and the child's law guardian, who shall be afforded an opportunity to be heard thereon.

(e) An order made under this section shall terminate upon the entry of an order of disposition pursuant to part five of this article.

(F) INTERFERENCE WITH OR WITHHOLDING OF PARENTING TIME WITHOUT CAUSE SHALL RESULT IN IMMEDIATE SANCTIONS. A JUDGE WHO SANCTIONS A PARTY FOR FAILURE TO COMPLY WITH AN ORDER OF PARENTING TIME SHALL HAVE AVAILABLE THE FOLLOWING REMEDIES:

(1) AWARDING OF COUNSEL FEES OF THE AGGRIEVED PARTY AGAINST THE PARTY WHO VIOLATED THE TERMS OF THE ORDER;

(2) MEDIATION EDUCATION;

(3) COMMUNITY SERVICE;

(4) AWARDING OF COMPENSATORY TIME WITH THE CHILD FOR WHICH THE PARTY WAS DEPRIVED; AND

(5) OTHER ECONOMIC SANCTIONS WHICH MAY BE DECIDED ON A CASE TO CASE BASIS.

S 39. Subdivision (e) of section 1035 of the family court act, as amended by chapter 526 of the laws of 2003, is amended to read as follows:

(e) The summons, petition and notice of pendency of a child protective proceeding served on the child's non-custodial parent in accordance with subdivision (d) of this section shall, if applicable, be served together with a notice that the child was removed from his or her home by a social services official. Such notice shall also include the name and address of the official to whom temporary custody of the child has been

transferred, the name and address of the agency or official with whom the child has been temporarily placed, if different, and shall advise such parent of the right to request temporary and permanent custody and to seek enforcement of [visitation] PARENTING TIME rights with the child as provided for in part eight of this article.

S 40. Paragraph (b) of subdivision 1 of section 1056 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

(b) to permit a parent, or a person entitled to [visitation] PARENTING TIME by a court order or a separation agreement, to visit the child at stated periods;

S 41. Part 8 of article 10 of the family court act, as added by chapter 457 of the laws of 1988, section 1085 as amended by chapter 378 of the laws of 1999, is amended to read as follows:

PART 8

[VISITATION OF] PARENTING TIME WITH MINORS IN FOSTER CARE

Section 1081. [Visitation] PARENTING TIME rights.
1082. Approval, modification or denial of [visitation] PARENTING TIME rights.
1083. Duration of orders affecting [visitation] PARENTING TIME rights.
1084. Out-of-wedlock children; paternity.
1085. [Visitation] PARENTING TIME and custody rights unenforceable; murder of parent, custodian, guardian, or child.

S 1081. [Visitation] PARENTING TIME rights. 1. A non-custodial parent or grandparent shall have the [visitation] PARENTING TIME rights with a child remanded or placed in the care of a social services official pursuant to this article as conferred by order of the family court or by any order or judgment of the supreme court, or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law, subject to the provisions of section one thousand eighty-two of this part.

2. A non-custodial parent or any grandparent or grandparents who have not been afforded the [visitation] PARENTING TIME rights described in subdivision one of this section, shall have the right to petition the court for enforcement of [visitation] PARENTING TIME rights with a child remanded or placed in the care of a social services official pursuant to this article, as such [visitation] PARENTING TIME rights have been conferred by order of the family court or by any order or judgment of the supreme court, or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law.

3. (a) The petition by a non-custodial parent shall allege that such parent has [visitation] PARENTING TIME rights conferred by order of the family court or by any order or judgment of the supreme court or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law, shall have a copy of such order, judgment or agreement attached thereto, shall request enforcement of such rights pursuant to this part, and shall state, when known by the petitioner, that [visitation] PARENTING TIME rights with the child by any grandparent or grandparents have been conferred by order of the supreme court or family court pursuant to section seventy-two or two hundred forty of the domestic relations law, and shall provide the name and address of such grandparent or grandparents.

(b) A petition by a grandparent or grandparents shall allege that such grandparent or grandparents have been granted [visitation] PARENTING TIME rights with the child pursuant to section seventy-two or two hundred forty of the domestic relations law, or subdivision (b) of section six hundred fifty-one of this act, shall have a copy of such order or judgment attached thereto, and shall request enforcement of such rights pursuant to this part.

4. The petition shall be served upon the respondent in a proceeding under this article, the local social services official having the care of the child, any grandparent or grandparents named in the petition as having [visitation] PARENTING TIME rights conferred by court order pursuant to section seventy-two or two hundred forty of the domestic relations law, and upon the child's law guardian. The petition shall be served in such manner as the court may direct.

5. Upon receipt of such petition the court shall, subject to the provisions of section one thousand eighty-two of this part, require that any order of a family court or order or judgment of the supreme court, or any agreement between the parents as described in subdivision one of this section, granting [visitation] PARENTING TIME rights to the non-custodial parent, grandparent or grandparents, be incorporated in any preliminary order or order of placement made under this article to the extent that such order, judgment or agreement confers [visitation] PARENTING TIME rights. In any case where a dispositional hearing has not been held or will not be held within thirty days of the filing of such petition the court shall order the person, official, agency or institution caring for the child pursuant to this article to comply with such part of the order, judgment or agreement granting [visitation] PARENTING TIME rights. Violation of such order shall be punishable pursuant to section seven hundred fifty-three of the judiciary law.

S 1082. Approval, modification or denial of [visitation] PARENTING TIME rights. 1. (a) Upon receipt of a petition pursuant to subdivision four of section one thousand eighty-one of this part, the local department of social services shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the petitioner is a subject of an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of the social services law, and shall further ascertain whether or not the petitioner is a respondent in a proceeding under this article whereby the child with whom [visitation] PARENTING TIME is sought has been allegedly abused or neglected or has been adjudicated as an abused or neglected child.

(b) The department, the law guardian and the respondent in a proceeding under this article, shall have the right to be heard in respect to a petition for an order to enforce [visitation] PARENTING TIME rights under this part.

2. Where the local department of social services or the law guardian opposes a petition described in section one thousand eighty-one of this part, the department or the law guardian as appropriate shall serve and file an answer to the petition. The court shall, upon the filing of such answer, set a date for a hearing on such petition and shall notify the parents, grandparent or grandparents, the department and the law guardian of such hearing date.

3. Whenever a hearing described in subdivision two of this section is to be held within ten court days of a dispositional hearing authorized under this article, the court may in its discretion hear such petition as part of such dispositional hearing.

4. In any hearing under this section, the court shall approve such petition unless the court finds upon competent, relevant and material evidence that enforcement of [visitation] PARENTING TIME rights as described in the order, judgment or agreement would endanger the child's life or health. Upon such a finding, the court shall make an order denying such petition or make such other order affecting enforcement of [visitation] PARENTING TIME rights as the court deems to be in the best interests of the child.

5. (a) Where a petition is approved pursuant to this section the parties may agree in writing to an alternative schedule of [visitation] PARENTING TIME equivalent to and consistent with the original or modified [visitation] PARENTING TIME order or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child.

(b) In the absence of such an agreement between the parties, the court may, in its discretion, order an alternative schedule of [visitation] PARENTING TIME as defined herein, where it determines that such schedule is necessary to facilitate [visitation] PARENTING TIME and to protect the best interests of the child.

S 1083. Duration of orders affecting [visitation] PARENTING TIME rights. 1. Where an order of the court has been made incorporating an order, judgment or agreement conferring [visitation] PARENTING TIME rights with a child on a non-custodial parent or grandparent into a dispositional order under this article, or where the court otherwise orders compliance by a person, official, agency or institution caring for the child, with an order, judgment or agreement granting [visitation] PARENTING TIME rights, such order shall remain in effect for the length of time the child remains in such care pursuant to this article, unless such order is subsequently modified by the court for good cause shown.

2. Where the court makes an order denying a petition seeking enforcement of [visitation] PARENTING TIME rights or makes an order modifying [visitation] PARENTING TIME rights, pursuant to the provisions of section one thousand eighty-two of this part, such order shall remain in effect for the length of time the child is placed with a person, official, agency or institution caring for the child pursuant to this article, unless such order is subsequently modified by the court for good cause shown.

S 1084. Out-of-wedlock children; paternity. No [visitation] PARENTING TIME right shall be enforceable under this part concerning any person claiming to be a parent of an out-of-wedlock child without an adjudication of the paternity of such person by a court of competent jurisdiction, or without an acknowledgement of the paternity of such person executed pursuant to applicable provisions of law.

S 1085. [Visitation] PARENTING TIME and custody rights unenforceable; murder of parent, custodian, guardian, or child. 1. No [visitation] PARENTING TIME or custody order shall be enforceable under this part by a person who has been convicted of murder in the first or second degree in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of the child unless:

(i) (A) such child is of suitable age to signify assent and such child assents to such [visitation] PARENTING TIME or custody; or

(B) if such child is not of suitable age to signify assent the child's custodian or legal guardian assents to such order; or

(C) the person who has been convicted of murder in the first or second degree, or an offense in another jurisdiction which if committed in this state, would constitute either murder in the first or second degree, can prove by a preponderance of the evidence that:

(1) he or she, or a family or household member of either party, was a victim of domestic violence by the victim of such murder; and

(2) the domestic violence was causally related to the commission of such murder; and

(ii) the court finds that such [visitation] PARENTING TIME or custody is in the best interest of the child.

2. Pending determination of a petition for [visitation] PARENTING TIME or custody such child shall not visit and no person shall visit, with such child present, such person, legal guardian or legal custodian who has been convicted of murder in the first or second degree in this state, or an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of the other parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of such child, without the consent of such child's custodian or legal guardian.

3. Nothing contained in this section shall be construed to require a court, without petition from any of the interested parties, to review a previously issued order of [visitation] PARENTING TIME or custody or denial of such petition.

4. For the purposes of making a determination pursuant to subparagraph (C) of paragraph (i) of subdivision one of this section, the court shall not be bound by the findings of fact, conclusions of law or ultimate conclusion as determined by the proceedings leading to the conviction of murder in the first or second degree in this state or of an offense in another jurisdiction which, if committed in this state, would constitute murder in either the first or second degree, of a parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding. In all proceedings under this section, a law guardian shall be appointed for the child.

S 42. The domestic relations law is amended by adding a new section 242 to read as follows:

S 242. MATRIMONIAL ACTIONS INVOLVING CUSTODY OF CHILDREN; MEDIATION AND FAMILY COUNSELLING. IN ANY MATRIMONIAL ACTION INVOLVING THE CUSTODY OF CHILDREN, THE COURT SHALL DIRECT THE PARTIES TO ATTEND MEDIATION AND FAMILY COUNSELLING SESSIONS PRIOR TO THE ENTRY OF ANY ORDERS OR JUDGMENTS, EXCEPT FOR TEMPORARY ORDERS OF PROTECTION OR SUPPORT, AS PROVIDED FOR IN THE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS, WHO SHALL PROMULGATE RULES AND REGULATIONS THEREFOR.

S 43. Paragraph (a) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(a) The court shall make its award for child support pursuant to the provisions of this subdivision. The [court may vary from the amount of the basic child support obligation determined pursuant to paragraph (c) of this subdivision only in accordance with paragraph (f) of this subdivision] BURDEN OF CHILD SUPPORT SHALL BE DIVIDED EQUALLY BETWEEN THE PARENTS.

S 44. Paragraphs (e) and (f) of subdivision 1-b of section 240 of the domestic relations law are REPEALED.

S 45. Subparagraph 2 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is 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 or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of [twenty-one] EIGHTEEN years.

S 46. Clause (i) of subparagraph 5 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(i) gross (total) income, EXCLUSIVE OF FEDERAL, STATE, AND LOCAL PERSONAL INCOME TAXES AND CONTRIBUTIONS REQUIRED PURSUANT TO THE FEDERAL INSURANCE CONTRIBUTIONS ACT (SOCIAL SECURITY AND MEDICARE), as should have been or should be reported in the most recent federal income tax return. If an individual files his/her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his/her gross income individually;

S 47. Subdivision 11 of section 111-h of the social services law, as amended by chapter 502 of the laws of 1990, is amended to read as follows:

11. The department may provide for the performance of the collection and disbursement functions of the support collection units by contract with a fiscal agent. For purposes of any reference to support collection unit in this chapter or any other law, the fiscal agent under contract with the department shall be deemed to be part of all support collection units for which the fiscal agent performs collection and disbursement functions. THE DEPARTMENT SHALL PROVIDE BY RULE FOR AN ANNUAL AUDIT AND PERFORMANCE APPRAISAL OF EACH FISCAL AGENT.

S 48. The family court act is amended by adding a new section 385.3 to read as follows:

S 385.3. EVIDENCE. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A FAMILY COURT JUDGE SHALL, IN EVERY PROCEEDING AND HEARING UNDER HIS OR HER JURISDICTION, REVIEW ALL EVIDENCE INCLUDING LAW GUARDIAN REPORTS, CHILD ADVOCATE REPORTS, PHYSICIAN REPORTS, PSYCHOLOGIST REPORTS AND COUNSELING REPORTS, AS WELL AS ALL THIRD PARTY COMMUNICATIONS RELATED TO THE PROCEEDING OR HEARING.

S 49. Subdivision (a) of section 418 of the family court act, as amended by chapter 214 of the laws of 1998, is amended to read as follows:

(a) The court, on its own motion or motion of any party, when paternity is contested, shall order the mother, the child and the alleged father to submit to one or more genetic marker or DNA marker tests of a type generally acknowledged as reliable by an accreditation body designated by the secretary of the federal department of health and human services and performed by a laboratory approved by such an accreditation body and by the commissioner of health or by a duly qualified physician to aid in the determination of whether the alleged father is or is not the father of the child. No such test shall be ordered, however, upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel or the presumption of legitimacy of a child born to a married woman. The record or report of the results of any such genetic marker or DNA test shall be received in evidence, pursuant to subdivision (e) of rule forty-five hundred eighteen of the civil practice law and rules where no timely objection in writing has been made thereto. Any order pursuant to this section shall state in plain language that the results of such test shall be admitted into evidence, pursuant to rule forty-five hundred eighteen of the civil practice law and rules absent timely objections

thereto and that if such timely objections are not made, they shall be deemed waived and shall not be heard by the court. If the record or report of results of any such genetic marker or DNA test or tests indicate at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and, if unrebutted, shall establish the paternity of and liability for the support of a child pursuant to this article and article five of this act. IF CHILD SUPPORT IS BEING PAID AND THE RECORD OR REPORT OF RESULTS OF ANY GENETIC MARKER OR DNA TEST OR TESTS DO NOT INDICATE AT LEAST A NINETY-FIVE PERCENT PROBABILITY OF PATERNITY, IF UNREBUTTED, THE COURT SHALL ORDER THE IMMEDIATE CESSATION OF ALL CHILD SUPPORT REGARDLESS OF THE LENGTH OF TIME THAT CHILD SUPPORT HAS BEEN PAID, EXCEPT IN A CASE WHERE A SPERM DONOR WAS USED AND THE PUTATIVE FATHER WAS AWARE OF AND CONSENTED TO SUCH USE IN WHICH CASE THERE SHALL NOT BE A CESSATION OF SUPPORT.

S 50. The domestic relations law is amended by adding a new section 74-a to read as follows:

S 74-A. PARENTAL ACCESS TO INFORMATION. UNLESS PROHIBITED BY FEDERAL OR STATE LAW, A PARENT SHALL HAVE COMPLETE ACCESS TO RECORDS AND INFORMATION PERTAINING TO THE HEALTH, EDUCATION AND WELFARE OF HIS OR HER MINOR CHILD, REGARDLESS OF WHETHER OR NOT HE OR SHE IS THE CUSTODIAL PARENT, UNLESS A COURT DECREES THAT ACCESS TO THE INFORMATION IS NOT IN THE BEST INTEREST OF THE CHILD.

S 51. Subparagraph 3 of paragraph (b) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

(3) "Child support percentage" shall mean:

(i) seventeen percent of the combined parental income for one child, EXCEPT IN A CASE OF SHARED PARENTING IN WHICH CASE TEN PERCENT OF THE COMBINED PARENTAL INCOME FOR ONE CHILD;

(ii) twenty-five percent of the combined parental income for two children, EXCEPT IN A CASE OF SHARED PARENTING IN WHICH CASE SIXTEEN PERCENT OF THE COMBINED PARENTAL INCOME FOR TWO CHILDREN;

(iii) twenty-nine percent of the combined parental income for three children, EXCEPT IN A CASE OF SHARED PARENTING IN WHICH CASE TWENTY-SIX PERCENT OF THE COMBINED PARENTAL INCOME FOR THREE CHILDREN;

(iv) thirty-one percent of the combined parental income for four children; and

(v) no less than thirty-five percent of the combined parental income for five or more children.

IN ADDITION TO THE PERCENTAGES ESTABLISHED IN THIS SUBPARAGRAPH FOR SHARED PARENTING, THE COURT MAY INCLUDE AN ADDITIONAL SEVEN PERCENT UPON THE DEMONSTRATION OF NECESSITY, BASED UPON RECEIPTS, FOR CLOTHING, CARE, MEDICAL ATTENTION, THE EXPENSE OF EDUCATION, PAYMENT OF FUNERAL EXPENSES, AND OTHER PROPER AND REASONABLE EXPENSES.

S 52. Paragraph (c) of subdivision 1 of section 413 of the family court act is amended by adding a new subparagraph 8 to read as follows:

(8) WHERE THE COURT DETERMINES THAT THE CUSTODIAL PARENT WILL RECEIVE TAX SAVINGS BECAUSE OF BEING ABLE TO FILE AS HEAD OF A HOUSEHOLD, TAKE A CHILD RELATED TAX DEDUCTION AND/OR TAKE A CHILD RELATED EARNED INCOME TAX CREDIT, THE COURT SHALL ADD THE AMOUNT SAVED TO THE CUSTODIAL PARENT'S INCOME WHEN DETERMINING COMBINED PARENTAL INCOME.

S 53. Section 413 of the family court act is amended by adding a new subdivision 2-a to read as follows:

2-A. NOTHING IN THIS ARTICLE SHALL IMPOSE ANY LIABILITY UPON A PERSON TO SUPPORT ANY MINOR CHILD WHO HAS BECOME EMANCIPATED, MARRIED, HAS

CEASED TO ATTEND SCHOOL, OR WHO, IF IT HAS BEEN DETERMINED BY THE COURT, HAS BECOME SELF-SUPPORTING. SUCH LIABILITY SHALL NOT BE IMPOSED FOR SO LONG AS THE MINOR REMAINS EMANCIPATED, MARRIED, HAS CEASED TO ATTEND SCHOOL OR IS SELF-SUPPORTING.

S 54. Paragraph (e) of subdivision 4-a of section 111-b of the social services law, as added by chapter 398 of the laws of 1997, is amended to read as follows:

(e) Information maintained as part of the state case registry shall be made available to other state and federal agencies as provided for in federal statutes and regulations promulgated by the federal secretary of health and human services. EVERY JANUARY, MAY AND SEPTEMBER, A SUPPORT PAYER'S INFORMATION SHALL BE MAILED TO HIM OR HER BY FIRST CLASS MAIL FROM THE NEW YORK STATE CHILD SUPPORT COLLECTION UNIT TO THE SUPPORT OBLIGOR'S KNOWN HOME ADDRESS OR SUCH OTHER PLACE WHERE THE SUPPORT OBLIGOR IS LIKELY TO RECEIVE FIRST CLASS MAIL. THIS SHALL INCLUDE ALL PAYMENTS, INCLUDING ARREARAGES, RECEIVED BY THE CHILD SUPPORT COLLECTION UNIT.

S 55. Subdivision (a) of section 458-a of the family court act, as amended by chapter 624 of the laws of 2002, is amended to read as follows:

(a) If the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to court order for a period of four months, the court may order the department of motor vehicles to suspend the respondent's driving privileges, and if such order issues, the respondent may apply to the department of motor vehicles for a restricted use license pursuant to section five hundred thirty of the vehicle and traffic law. IF THE COURT FINDS THAT THE RESPONDENT HAS IN THE PAST BEEN TIMELY IN PAYING HIS OR HER SUPPORT DUE THEN THE RESPONDENT'S DRIVING PRIVILEGES CANNOT BE SUSPENDED WITHOUT A HEARING. The court may at any time upon payment of arrears or partial payment of arrears by the respondent order the department of motor vehicles to terminate the suspension of respondent's driving privileges. For purposes of determining whether a support obligor has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

S 56. Subdivision 1 of section 454 of the family court act, as amended by chapter 892 of the laws of 1986, is amended to read as follows:

1. If a respondent is brought before the court for failure to obey any lawful order of support [and if, after hearing,] THE PARTIES CAN CHOOSE TO HAVE A HEARING BEFORE THE COURT OR TO GO THROUGH AN ARBITRATOR, IN ORDER TO AVOID A COURT APPEARANCE. AN ARBITRATOR SHALL BE ESTABLISHED THROUGH CHILD SUPPORT COLLECTION TO ARBITRATE DISPUTES WHEN THERE ARE ACCUSATIONS OF CHILD SUPPORT ARREARAGE IN ORDER TO AVERT A COURT APPEARANCE. IF the court is satisfied by competent proof that the respondent has failed to obey any such order, the court may use any or all of the powers conferred upon it by this part. The court has the power to use any or all enforcement powers in every proceeding brought for violation of a court order under this part regardless of the relief requested in the petition.

S 57. Paragraph (a) of subdivision 3 of section 454 of the family court act, as amended by chapter 892 of the laws of 1986, is amended to read as follows:

(a) commit the respondent to jail for a term not to exceed six months. For purposes of this subdivision, failure to pay support, as ordered, shall constitute prima facie evidence of a willful violation. HOWEVER, THE COURT SHALL CONSIDER REAL CIRCUMSTANCES WHEN FINDING THAT A RESPONDENT HAS FAILED TO COMPLY WITH ANY LAWFUL ORDER OF SUPPORT, SUCH AS THAT A PARENT PRESENTLY HAS VOLUNTARILY OR INVOLUNTARILY REDUCED RESOURCES OR INCOME. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. Such commitment does not prevent the court from subsequently committing the respondent for failure thereafter to comply with any such order; or

S 58. Section 451 of the family court act, as amended by chapter 533 of the laws of 1999, is amended to read as follows:

S 451. Continuing jurisdiction. (A) Except as provided in article five-B of this act, the court has continuing jurisdiction over any support proceeding brought under this article until its judgment is completely satisfied and may modify, set aside or vacate any order issued in the course of the proceeding, provided, however, that the modification, set aside or vacatur shall not reduce or annul child support arrears accrued prior to the making of an application pursuant to this section. The court shall not reduce or annul any other arrears unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing payment prior to the accrual of the arrears, in which case the facts and circumstances constituting such good cause shall be set forth in a written memorandum of decision. A modification may increase support payments nunc pro tunc as of the date of the initial application for support based on newly discovered evidence. Any retroactive amount of support due shall be paid in one lump sum or periodic sums, as the court directs, taking into account any amount of support which has been paid. Upon an application to modify, set aside or vacate an order of support, no hearing shall be required unless such application shall be supported by affidavit and other evidentiary material sufficient to establish a prima facie case for the relief requested.

(B) ONCE A YEAR, A MOTION MAY BE MADE BY A CHILD SUPPORT OBLIGOR TO REQUIRE AN ACCOUNTING BY THE PARENT RECEIVING THE CHILD SUPPORT ON BEHALF OF THE CHILD OR CHILDREN. THE ACCOUNTING SHALL ACCOUNT FOR ALL FUNDS EXPENDED ON THE CHILD OR CHILDREN AND SHALL BE USED BY THE COURT IN DETERMINING WHETHER THE FUNDS ARE BEING MISUSED OR NOT FULFILLING THE CHILD OR CHILDREN'S NEEDS. THE ACCOUNTING SHALL INCLUDE, BUT NOT BE LIMITED TO, THE DISPOSITION OF ALL FUNDS PAID BY THE CHILD SUPPORT OBLIGOR AND ALL FUNDS EXPENDED ON BEHALF OF THE CHILD OR CHILDREN. ANY MOTION FILED BY A CHILD SUPPORT OBLIGOR PURSUANT TO THIS SUBDIVISION SHALL BE ACCOMPANIED BY A SWORN AFFIDAVIT THAT THE OBLIGOR HAS REASONABLE GROUNDS TO QUESTION WHETHER THE CHILD SUPPORT FUNDS ARE BEING SPENT APPROPRIATELY AND SHALL STATE THE GROUNDS IN THE AFFIDAVIT.

S 59. The closing paragraph of subdivision 1 of section 460 of the family court act, as amended by chapter 815 of the laws of 1987, is amended to read as follows:

and the party defaults in paying any sum of money due as required by the order directing the payment thereof, the court, without regard to the amount due, shall make an order directing the entry of judgment for the amount of child support arrears, together with costs and disbursements. THIS JUDGMENT SHALL BE DIRECTED TO BE PAID EACH MONTH, AT A RATE NOT TO

EXCEED TEN PERCENT OF THE DEFAULTING PARTY'S REGULAR MONTHLY CHILD SUPPORT PAYMENT, UNTIL THE ARREARS ARE PAID. The court shall make an order directing the entry of judgment for the amount of arrears of any other payments so directed, together with costs and disbursements, unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. The court shall not make an order reducing or [cancelling] CANCELING such arrears unless the facts and circumstances constituting good cause are set forth in a written memorandum of decision. The application for such order shall be made upon such notice to the party or other person as the court may direct. Such judgment shall provide for the payment of interest on the amount of any arrears if the default was willful, in that the defaulting party knowingly, consciously and voluntarily disregarded the obligation under a lawful court order. Such interest shall be computed from the date on which the payment was due, at the prevailing rate of interest on judgments as provided in the civil practice law and rules.

S 60. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided that the amendments to subdivision (a) of section 439 of the family court act made by section twenty-three of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision 19 of section 246 of chapter 81 of the laws of 1995, as amended, when upon such date the provisions of section twenty-four of this act shall take effect and provided further that any and all rules and regulations and any other measures necessary to implement this act on its effective date may be promulgated or taken on or before such date.