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2009-2010 Regular Sessions

I N  S E N A T E

January 12, 2009

Introduced by Sens. LARKIN, LEIBELL, LITTLE, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the domestic relations law, in relation to the child custody and support decision-making process

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

Section 1. Short title. This act shall be known and may be cited as the "child custody reform act".

S 2. Declaration of purposes. The legislature hereby finds and declares that it is in the best interests of a child whose parents are in dispute over his or her custody that:

Parents resolve their dispute as expeditiously as possible in a child-centered manner;

Parents be encouraged to recognize the continuing interest that each has in the welfare of their child and resolve any differences they may have concerning custody, parenting and child support obligations prior to engaging in the adversarial process;

Courts undertake an active role in promoting parental settlements in custody, parenting and child support disputes, and in educating parents about the needs of their child resulting from divorce or separation;

The child centered mediation process, in suitable cases, is an appropriate way to help parents resolve child custody, parenting and child support disputes;

Mediation of custody, parenting and child support disputes should be conducted in collaboration with the courts, in a safe environment, by well-trained, experienced mediators during which the parents attempt to plan cooperatively for the welfare of their child; and

Uniform statewide standards for mediation should be formulated in order to ensure the safety, quality and usefulness of the mediation process to the court as well as to the parents, and to assure compliance

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

LBD05314-01-9

with the due process rights of those involved in custody, parenting and child support disputes.

S 3. The domestic relations law is amended by adding a new section 242 to read as follows:

S 242. SPECIAL PROVISIONS FOR RESOLUTION OF CHILD CUSTODY, PARENTING AND CHILD SUPPORT DISPUTES. (A) DEFINITIONS. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CHILD" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE, OR FOR THE PURPOSES OF SUPPORT UNDER TWENTY-ONE YEARS OF AGE, WHO IS LEGALLY SUBJECT TO PARENTAL, GUARDIANSHIP OR SIMILAR CONTROL. "CHILD" INCLUDES CHILDREN IF MORE THAN ONE CHILD IS THE SUBJECT OF A CUSTODY, PARENTING OR CHILD SUPPORT DISPUTE.

(2) "PARENT" MEANS THE BIOLOGICAL OR ADOPTIVE PARENT, OR OTHER LEGAL CUSTODIAN OR GUARDIAN.

(3) "CUSTODY" MEANS THE RIGHT AND THE RESPONSIBILITY OF A PARENT TO MAKE DECISIONS ABOUT THE HEALTH, WELFARE AND PHYSICAL CARE OF A CHILD, AND TO PARTICIPATE IN THE MAKING AND IMPLEMENTATION OF A PARENTING PLAN.

(4) "PHYSICAL CUSTODY" MEANS THE PARENT WITH WHOM THE CHILD SHALL PRIMARILY RESIDE; PROVIDED HOWEVER, THAT IT SHALL ALSO REFER TO AN ARRANGEMENT WHEREBY THE CHILD SHALL RESIDE WITH EACH PARENT ON A SHARED-TIME BASIS.

(5) "CHILD SUPPORT" OR "SUPPORT" MEANS THE RESPECTIVE SUPPORT OBLIGATIONS OF THE PARENTS UNDER THE CHILD SUPPORT STANDARDS ACT.

(6) "PARENTING PLAN" MEANS A PLAN, DEVELOPED BY BOTH PARENTS, WHICH PROVIDES FOR THE HEALTH, WELFARE AND BEST INTERESTS OF THE CHILD, AND WHICH INCLUDES DESIGNATIONS OF CUSTODY AND PHYSICAL CUSTODY, AND, AS NEEDED, THE AMOUNT OF TIME EACH PARENT WOULD SPEND WITH THE CHILD, INCLUDING VACATIONS, HOLIDAYS AND SPECIAL OCCASIONS, A DESCRIPTION OF EACH PARENT'S AUTHORITY TO MAKE DECISIONS THAT AFFECT THE CHILD, AND A DESCRIPTION OF EACH PARENT'S CHILD SUPPORT OBLIGATION.

(7) "COURT" MEANS ANY TRIAL COURT, INCLUDING BOTH A SUPREME COURT AND A FAMILY COURT OF THIS STATE, IN WHICH A CUSTODY OR PARENTING DISPUTE MAY BE HEARD.

(8) "MEDIATION" MEANS A CONFIDENTIAL, INFORMAL PROCEDURE IN WHICH A NEUTRAL THIRD PERSON HELPS PARENTS TO COMMUNICATE AND MAKE DECISIONS WITH EACH OTHER REGARDING THE BEST INTERESTS AND SUPPORT OF THEIR CHILD, AND TO FORMULATE A PARENTING PLAN.

(9) "MEDIATION PROVIDER" MEANS AN INDIVIDUAL OR ORGANIZATION THAT HAS BEEN CERTIFIED TO PROVIDE MEDIATION SERVICES UNDER GUIDELINES ESTABLISHED BY THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH MEMBERS OF THE STATEWIDE ADVISORY COUNCIL, PURSUANT TO PARAGRAPHS TWO AND THREE OF SUBDIVISION (D) OF THIS SECTION.

(10) "UNSUITABLE" MEANS DISPUTES WHERE DOMESTIC VIOLENCE, ABUSE, SEVERE POWER IMBALANCES OR OTHER FACTORS IN THE PARTICIPANTS' RELATIONSHIP RENDER THE MEDIATION PROCESS INAPPROPRIATE, AS DETERMINED BY THE METHODS FOR IDENTIFICATION AND SCREENING TO BE IMPLEMENTED BY THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH MEMBERS OF THE STATEWIDE ADVISORY COUNCIL, PURSUANT TO PARAGRAPHS TWO AND THREE OF SUBDIVISION (D) OF THIS SECTION.

(11) "SUITABLE" MEANS DISPUTES WHICH ARE APPROPRIATE FOR MEDIATION, AS DETERMINED BY THE METHODS FOR IDENTIFICATION AND SCREENING TO BE IMPLEMENTED BY THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH MEMBERS OF THE STATEWIDE ADVISORY COUNCIL, PURSUANT TO PARAGRAPHS TWO AND THREE OF SUBDIVISION (D) OF THIS SECTION.

(12) "MEDIATION INFORMATION SESSION" MEANS AN INITIAL SESSION WITH THE PARTIES TO THE DISPUTE AND THE MEDIATION PROVIDER, DURING WHICH THE

MEDIATION PROVIDER SCREENS FOR UNSUITABILITY FACTORS, EXPLAINS THE PURPOSE OF THE MEDIATION PROCESS AND ITS VOLUNTARY NATURE, DESCRIBES MEDIATION PROTOCOLS, AND BEGINS, IN SUITABLE DISPUTES, TO IDENTIFY AREAS OF DISPUTE.

(B) PRETRIAL PROCEDURE, JUDICIAL MANAGEMENT AND DETERMINATION IN CUSTODY, PARENTING AND SUPPORT DISPUTES. (1) A CUSTODY, PARENTING OR SUPPORT DISPUTE SHALL, INSOFAR AS IS PRACTICABLE, BE ASSIGNED TO A SINGLE JUDGE OF THE COURT WHERE THE DISPUTE IS PENDING. THE JUDGE ASSIGNED TO THE DISPUTE SHALL OVERSEE ALL PROCEEDINGS IN THE DISPUTE, SEEKING TO PROMOTE SETTLEMENT BETWEEN THE PARTIES, WHERE SETTLEMENT CAN BE SAFELY PROMOTED, INCLUDING A REASONABLY EXPEDITIOUS DETERMINATION OF CUSTODY, SUPPORT AND PARENTAL AGREEMENT ON A PARENTING PLAN.

(2) DURING THE INITIAL APPEARANCE OF THE PARTIES AND AT SUCH SUBSEQUENT TIMES AS DEEMED APPROPRIATE, THE JUDGE TO WHOM THE CUSTODY, PARENTING OR SUPPORT DISPUTE IS ASSIGNED SHALL CONDUCT A CONFERENCE WITH THE PARTIES TO THE DISPUTE, AND THEIR ATTORNEYS, IF ANY, FOR THE PURPOSES OF ASCERTAINING WHETHER OR NOT THE CUSTODY, PARENTING OR SUPPORT DISPUTE IS SUITABLE FOR MEDIATION. THE COURT SHALL NOTIFY THE PARTIES TO THE DISPUTE OR THEIR ATTORNEYS, IF ANY, AND SUCH OTHER PERSONS AS THE COURT DEEMS NECESSARY OF THE TIME AND PLACE OF SUCH CONFERENCE.

(3) IF, AFTER CONFERENCING WITH THE PARTIES, THE COURT DETERMINES THAT THE DISPUTE IS SUITABLE FOR MEDIATION, THE COURT SHALL, PRIOR TO HOLDING A HEARING OR TRIAL TO ADJUDICATE THE DISPUTE, REFER THE DISPUTE TO A MEDIATION INFORMATION SESSION.

(4) THE COURT MAY CONDUCT THE CONFERENCE REFERRED TO IN PARAGRAPH TWO OF THIS SUBDIVISION PRIOR TO DETERMINING ANY OR ALL OTHER ISSUES THAT MAY BE INVOLVED IN A MATRIMONIAL OR OTHER ACTION OR PROCEEDING BETWEEN THE PARTIES TO THE CUSTODY DISPUTE, IF THE BEST INTERESTS OF THE CHILD WILL BE SERVED BY SEPARATING THE ISSUES.

(5) THE PARTIES WHO HAVE BEEN REFERRED TO MEDIATION SHALL BE REQUIRED TO ATTEND A MEDIATION INFORMATION SESSION, BUT MAY THEREAFTER DECLINE MEDIATION SERVICES. IF THEY SO DECLINE OR THE MEDIATOR DETERMINES DURING THE MEDIATION INFORMATION SESSION THAT THE DISPUTE IS NOT SUITABLE FOR MEDIATION, THE CASE SHALL THEN BE CONFIDENTIALLY RETURNED TO THE COURT FOR FURTHER PROCEEDINGS.

(C) MEDIATION OF CUSTODY, PARENTING AND SUPPORT DISPUTES. (1) SUBJECT TO THE PROVISIONS OF PARAGRAPH TWO OF THIS SUBDIVISION, EACH JUDICIAL DISTRICT SHALL PROVIDE, ON A PRIVATE-PAY FEE SCHEDULE BASIS TO BE IMPLEMENTED BY THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH MEMBERS OF THE STATEWIDE ADVISORY COUNCIL PURSUANT TO PARAGRAPHS TWO AND THREE OF SUBDIVISION (D) OF THIS SECTION, MEDIATION SERVICES TO PARENTS IN CUSTODY, PARENTING AND SUPPORT DISPUTES UNDER A SERVICE PLAN OR PLANS ADHERING TO GUIDELINES SO ESTABLISHED BY THE CHIEF ADMINISTRATOR OF THE COURTS.

(2) THE FEE SCHEDULE BASIS ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL PROVIDE FOR FREE OR LOW-COST MEDIATION SERVICES, AS APPROPRIATE, FOR PERSONS WHO ARE INDIGENT OR ARE OTHERWISE UNABLE TO AFFORD SUCH SERVICES.

(3) MEDIATION PROCEEDINGS SHALL BE CONFIDENTIAL. ALL COMMUNICATIONS BETWEEN A MEDIATOR AND THE PARTIES TO A DISPUTE, THE ATTORNEYS FOR THE PARTIES TO THE DISPUTE, THE CHILD AND ANY COURT APPOINTED REPRESENTATIVE OF THE CHILD SHALL BE PRIVILEGED AND INADMISSIBLE IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING. A MEDIATOR SHALL NOT BE CALLED AS A WITNESS. ANY NOTES AND WORK PRODUCT OF THE MEDIATOR CONCERNING THE CUSTODY, PARENTING OR SUPPORT DISPUTE SHALL NOT BE DISCOVERED OR SUBPOENAED BY A

PARTY TO THE DISPUTE, THE ATTORNEYS FOR THE PARTIES TO THE DISPUTE OR THE COURT APPOINTED REPRESENTATIVE OF THE CHILD, IF ANY. A MEDIATOR WHO PROVIDES MEDIATION SERVICES IN A CUSTODY, PARENTING OR SUPPORT DISPUTE SHALL NOT PROVIDE INFORMATION TO THE COURT OR TO ANY PARTY REGARDING THE SUBSTANCE OF THE MEDIATION PROCEEDINGS; PROVIDED HOWEVER, THAT, IF AN AGREEMENT IS REACHED DURING THE MEDIATION PROCEEDINGS, SUCH AGREEMENT SHALL BE IN WRITING AND, WITH THE CONSENT OF THE PARTICIPANTS, BE PROVIDED TO THE COURT.

(4) TERMINATION OF A MEDIATION IF UNSUITABLE. (A) IF, DURING A MEDIATION SESSION, IT IS DETERMINED BY THE MEDIATOR THAT THE DISPUTE HAS BECOME UNSUITABLE, THE MEDIATOR SHALL TERMINATE THE MEDIATION IN ACCORDANCE WITH PROTOCOLS ESTABLISHED BY THE CHIEF ADMINISTRATOR OF THE COURTS, IN CONSULTATION WITH MEMBERS OF THE STATEWIDE ADVISORY COUNCIL, PURSUANT TO PARAGRAPHS TWO AND THREE OF SUBDIVISION (D) OF THIS SECTION.

(B) IF SUCH TERMINATION SHOULD OCCUR, THE MEDIATOR SHALL INFORM THE COURT THAT THE MEDIATION WAS DISCONTINUED.

(D) DUTIES AND POWERS OF THE CHIEF ADMINISTRATOR OF THE COURTS. (1) THE CHIEF ADMINISTRATOR OF THE COURTS SHALL BE RESPONSIBLE FOR:

(A) PROMULGATING STANDARDS AND ADMINISTRATIVE POLICIES TO ENSURE THAT CUSTODY, PARENTING AND SUPPORT DISPUTES ARE HANDLED BY COURTS, AND AFFILIATED PERSONNEL, ATTORNEYS, MEDIATORS AND PARTIES TO A DISPUTE IN A MANNER CONSISTENT WITH THE PURPOSES OF THIS SECTION;

(B) PROMULGATING STANDARDS AND POLICIES TO ENSURE THAT THE SERVICES NECESSARY TO CONDUCT MEDIATION ARE OF HIGH AND REASONABLY UNIFORM QUALITY IN ALL COURTS HEARING CUSTODY, PARENTING AND SUPPORT DISPUTES;

(C) CREATING PLANS FOR DELIVERY OF MEDIATION SERVICES TO COURTS IN JUDICIAL DISTRICTS PURSUANT TO SUBDIVISION (C) OF THIS SECTION;

(D) MONITORING THE IMPLEMENTATION OF THIS SECTION AND SERVICE PLANS IN JUDICIAL DISTRICTS; AND

(E) ORGANIZING AND SUPERVISING TRAINING PROGRAMS FOR PERSONNEL WHO CONDUCT MEDIATION AUTHORIZED BY THIS SECTION.

(2) THE CHIEF ADMINISTRATOR OF THE COURTS SHALL ESTABLISH A STATEWIDE ADVISORY COMMITTEE TO RENDER ADVICE ON THE DEVELOPMENT OF STANDARDS AND ADMINISTRATIVE PRACTICES REQUIRED UNDER THIS SECTION AND ON HOW THE COURTS CAN BETTER PROVIDE SERVICES TO FAMILIES AND CHILDREN INVOLVED IN CUSTODY, PARENTING AND SUPPORT DISPUTES. THIS ADVISORY COMMITTEE SHALL BE CONSTITUTED IN SUCH MANNER AS DEEMED ADVISABLE BY THE CHIEF ADMINISTRATOR OF THE COURTS, EXCEPT THAT IT SHALL INCLUDE AT LEAST TWO MEMBERS OF AN ORGANIZATION THE PURPOSE OF WHICH IS TO MONITOR AND MAKE RECOMMENDATIONS RELATIVE TO THE ISSUE OF DOMESTIC VIOLENCE, AND AT LEAST TWO MEMBERS OF A PRIVATE OR GOVERNMENTAL ORGANIZATION WHICH IS DEDICATED TO THE ADVANCEMENT OF ALTERNATIVE DISPUTE RESOLUTION. SELECTION OF THE MEMBERS OF THE ADVISORY COMMITTEE SHALL BE COMPLETED WITHIN THREE MONTHS OF THE EFFECTIVE DATE OF THIS SECTION.

(3) SPECIAL DUTIES OF THE STATEWIDE ADVISORY COMMITTEE. THE STATEWIDE ADVISORY COMMITTEE SHALL DEVELOP RECOMMENDATIONS FOR DETERMINING TRAINING REQUIREMENTS AND SUCH OTHER REQUIREMENTS AS THE CHIEF ADMINISTRATOR OF THE COURTS SHALL REQUIRE FOR MEDIATORS WHO PROVIDE FAMILY ISSUE MEDIATIONS. SUCH REQUIREMENTS SHALL INCLUDE PROTOCOLS FOR THE CONDUCT OF A MEDIATION SESSION AND PROTOCOLS FOR RECOGNIZING THE EXISTENCE OF ISSUES WHICH ARE UNSUITABLE FOR MEDIATION. THE RECOMMENDATIONS OF THE STATEWIDE ADVISORY COMMITTEE SHALL BE INCLUDED IN A WRITTEN REPORT SUBMITTED TO THE CHIEF ADMINISTRATOR WITHIN NINE MONTHS AFTER THE COMMITTEE MEMBERS SHALL HAVE BEEN APPOINTED. THE MEMBERS OF THE STATEWIDE ADVISORY COMMITTEE SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE ENTITLED TO

REIMBURSEMENT FOR NECESSARY AND REASONABLE EXPENSES INCURRED IN THE COURSE OF THEIR DUTIES.

S 4. This act shall take effect immediately. Provided, that the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act are immediately authorized and directed to be made and completed on an emergency basis.