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

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I N A S S E M B L Y

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Introduced by M. of A. PAULIN, TITUS, GALEF, JAFFEE, PEOPLES, N. RIVERA -- Multi-Sponsored by -- M. of A. CROUCH, ENGLEBRIGHT, GORDON, GOTTFRIED, McENENY, MENG, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to provisions applicable to matrimonial actions and proceedings, actions for divorce and actions for separation

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

Section 1. Subparagraph 4 of paragraph d of subdivision 1 of part B of section 236 of the domestic relations law, as amended by chapter 281 of the laws of 1980, is amended and a new subparagraph 5 is added to read as follows:

(4) property described as separate property by written agreement of the parties pursuant to subdivision three of this part[.];

(5) MAINTENANCE OR POST-MARITAL INCOME PAID PURSUANT TO A COURT ORDER OR SIGNED AGREEMENT PAID TO A FORMER SPOUSE DURING THE MARRIAGE.

S 2. Subdivision 6 of part B of section 236 of the domestic relations law, as amended by chapter 884 of the laws of 1986 and paragraph d as added by chapter 415 of the laws of 1992, is amended to read as follows:

6. [Maintenance] INTERIM MAINTENANCE AND POST-MARITAL INCOME OBLIGATION. a. INTERIM MAINTENANCE. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for ALIMONY, maintenance OR POST-MARITAL INCOME, in any matrimonial action the court may order [temporary] INTERIM maintenance [or maintenance] in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor INTERIM maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and

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

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of the respective parties. Such order shall be effective as of the date of the application therefor, and any retroactive amount of INTERIM maintenance due shall be paid in one sum or periodic sums, as the court shall direct[, taking into account any amount of temporary maintenance which has been paid. In determining the amount and duration of maintenance the court shall consider:

(1) the income and property of the respective parties including marital property distributed pursuant to subdivision five of this part;

(2) the duration of the marriage and the age and health of both parties;

(3) the present and future earning capacity of both parties;

(4) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor;

(5) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage;

(6) the presence of children of the marriage in the respective homes of the parties;

(7) the tax consequences to each party;

(8) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;

(9) the wasteful dissipation of marital property by either spouse;

(10) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; and

(11) any other factor which the court shall expressly find to be just and proper.

b. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

c. The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, or upon modification pursuant to paragraph (b) of subdivision nine of section two hundred thirty-six of this part or section two hundred forty-eight of this chapter.

d. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph a of this subdivision].

B. POST-MARITAL INCOME.

(1) EXCEPT WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO SUBDIVISION THREE OF THIS PART PROVIDING FOR ALIMONY, MAINTENANCE OR POST-MARITAL INCOME, THE COURT SHALL MAKE ITS AWARD FOR POST-MARITAL INCOME PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH.

(2) FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL BE USED:

(A) "POST-MARITAL INCOME OBLIGATION" SHALL MEAN THE SUM DERIVED BY ADDING THE AMOUNTS DETERMINED BY THE APPLICATION OF ITEMS (II) AND (III) OF CLAUSE (A) OF SUBPARAGRAPH THREE OF THIS PARAGRAPH FOR THE DURATIONAL PERIOD DETERMINED BY THE APPLICATION OF ITEM (I) OF CLAUSE (B) OF SUBPARAGRAPH THREE OF THIS PARAGRAPH.

(B) "POST-MARITAL INCOME" SHALL MEAN A SUM TO BE PAID PURSUANT TO A FINAL COURT ORDER OR DECREE DISSOLVING OR ANNULLING A MARRIAGE, DECLARING THE NULLITY OF A MARRIAGE, OR A VALID AGREEMENT, BETWEEN THE PARTIES, BY ONE PARTY TO THE OTHER.

(C) "INCOME" SHALL MEAN:
(I) ALL FORMS OF INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED UNDER SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT;
(II) INCOME FROM INCOME PRODUCING PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED PURSUANT TO SUBDIVISION FIVE OF THIS PART.
(D) "CAP" SHALL MEAN COMBINED INCOME OF THE PARTIES OF ONE MILLION DOLLARS ANNUALLY, INCREASED OR DECREASED ON MARCH FIRST OF EACH YEAR BY ANY CHANGE IN THE COST OF LIVING AS DEFINED IN THE ANNUAL "CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, NEW YORK, NEW YORK-NORTHEASTERN NEW JERSEY", AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.
(E) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED UNDER SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT.
(F) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.
(G) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.
(3) THE AMOUNT AND DURATION OF THE POST-MARITAL INCOME OBLIGATION FOR PARTIES WITH INCOMES AT OR BELOW THE CAP SHALL BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBPARAGRAPH:
(A) THE AMOUNT SHALL BE DETERMINED AS FOLLOWS:
(I) THE COURT SHALL DETERMINE THE INCOME OF EACH PARTY.
(II) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE INCOME OF THE PAYEE FROM THIRTY PERCENT OF THE INCOME OF THE PAYOR.
(III) THE COURT SHALL THEN DETERMINE FORTY PERCENT OF THE COMBINED INCOME OF THE PAYOR AND PAYEE.
(IV) THE COURT SHALL CALCULATE THE DIFFERENCE BETWEEN THE AMOUNT DERIVED FROM ITEM (III) OF THIS CLAUSE AND THE INCOME OF THE PAYEE.
(V) THE AMOUNT SHALL BE THE LOWER OF THE AMOUNTS DETERMINED BY ITEMS (II) AND (IV) OF THIS CLAUSE.
(B) THE DURATION SHALL BE DETERMINED AS FOLLOWS:
(I) THE COURT SHALL DETERMINE THE DURATION OF THE AWARD OF POST-MARITAL INCOME IN ACCORDANCE WITH THE FOLLOWING:

LENGTH OF THE MARRIAGE	% OF THE LENGTH OF THE MARRIAGE FOR WHICH POST-MARITAL INCOME SHALL BE PAYABLE
UP TO AND INCLUDING 5 YEARS	30%
OVER 5 YEARS UP TO AND INCLUDING 7.5 YEARS	40%
OVER 7.5 YEARS UP TO AND INCLUDING 10 YEARS	50%
OVER 10 YEARS UP TO AND INCLUDING 12.5 YEARS	60%
OVER 12.5 YEARS UP TO AND INCLUDING 15 YEARS	70%
OVER 15 YEARS UP TO AND INCLUDING 17.5 YEARS	80%
OVER 17.5 YEARS UP TO AND INCLUDING 20 YEARS	90%
OVER 20 YEARS UP TO AND INCLUDING 25 YEARS	100%
OVER 25 YEARS	PERMANENT

(II) NOTWITHSTANDING THE PROVISIONS OF ITEM (I) OF THIS CLAUSE, THE POST-MARITAL INCOME OBLIGATION SHALL TERMINATE UPON THE DEATH OF EITHER PARTY.

(C) THE COURT SHALL ORDER THE POST-MARITAL INCOME OBLIGATION IN ACCORDANCE WITH CLAUSES (A) AND (B) OF THIS SUBPARAGRAPH, UNLESS THE COURT FINDS THAT THE POST-MARITAL INCOME OBLIGATION IS UNJUST OR INAPPROPRIATE AND ADJUSTS THE POST-MARITAL INCOME ACCORDINGLY BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS:

(I) THE AGE AND HEALTH OF THE PARTIES;

(II) THE FUTURE EARNING CAPACITY OF THE PARTIES;

(III) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

(IV) THE TRANSFER OR ENCUMBRANCE MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;

(V) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-DIVORCE SEPARATE HOUSEHOLD;

(VI) ACTS BY ONE PARTY AGAINST ANOTHER THAT CONSTITUTE EGREGIOUS FAULT LIKELY TO SHOCK THE CONSCIENCE;

(VII) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

(VIII) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED OR CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY;

(IX) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO AGE OR ABSENCE FROM THE WORKFORCE;

(X) THE TAX CONSEQUENCES TO EACH PARTY;

(XI) THE EQUITABLE DISTRIBUTION OF THE MARITAL PROPERTY; AND

(XII) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST AND PROPER.

(D) WHERE THE COURT FINDS THAT THE POST-MARITAL INCOME OBLIGATION IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE POST-MARITAL INCOME OBLIGATION PURSUANT TO THIS PARAGRAPH, THE COURT SHALL SET FORTH, IN A WRITTEN ORDER, THE AMOUNT OF THE UNADJUSTED POST-MARITAL INCOME OBLIGATION, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE POST-MARITAL INCOME OBLIGATION. SUCH WRITTEN ORDER MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

(E) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT ENTER A POST-MARITAL INCOME OBLIGATION ORDER OR JUDGMENT UNLESS THE UNREPRESENTED PARTY OR PARTIES HAVE BEEN INFORMED OF THE POST-MARITAL INCOME OBLIGATION.

(4) THE POST-MARITAL INCOME OBLIGATION FOR PARTIES WHOSE INCOME IS ABOVE THE CAP SHALL BE ORDERED BY THE COURT IN SUCH AMOUNT AS JUSTICE REQUIRES.

(A) THE COURT SHALL TAKE INTO CONSIDERATION THE FOLLOWING FACTORS IN SETTING POST-MARITAL INCOME PURSUANT TO THIS SUBPARAGRAPH:

(I) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE;

(II) THE AGE AND HEALTH OF THE PARTIES;

(III) THE PRESENT AND FUTURE EARNING CAPACITY OF THE PARTIES;

(IV) THE DURATION OF THE MARRIAGE;

(V) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

(VI) THE EXTREME DIFFERENCES IN THE INCOMES OF THE PARTIES;

(VII) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

(VIII) THE TRANSFER OR ENCUMBRANCE MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;

(IX) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-DIVORCE SEPARATE HOUSEHOLD;

(X) ACTS BY ONE PARTY AGAINST ANOTHER THAT CONSTITUTE EGREGIOUS FAULT LIKELY TO SHOCK THE CONSCIENCE;

(XI) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

(XII) THE CARE OF THE CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED OR CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY;

(XIII) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO AGE OR ABSENCE FROM THE WORKFORCE;

(XIV) THE TAX CONSEQUENCES TO EACH PARTY;

(XV) THE EQUITABLE DISTRIBUTION OF THE MARITAL PROPERTY;

(XVI) THE REDUCED OR LOST LIFETIME EARNING CAPACITY OF THE PARTY SEEKING POST-MARITAL INCOME AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(XVII) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING POST-MARITAL INCOME AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY; AND

(XVIII) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST AND PROPER.

(B) IN ANY DECISION MADE PURSUANT TO THIS SUBPARAGRAPH, THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION. SUCH WRITTEN ORDER MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

(C) THE POST-MARITAL INCOME OBLIGATION SHALL TERMINATE UPON THE DEATH OF EITHER PARTY.

(5) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, AND WHERE THERE ARE NO UNEMANCIPATED CHILDREN OF THE MARRIAGE UNDER THE AGE OF TWENTY-ONE, AND WHERE THE ANNUAL AMOUNT OF THE POST-MARITAL INCOME OBLIGATION WOULD REDUCE THE PAYOR'S INCOME BELOW THE POVERTY INCOME GUIDELINES AMOUNT FOR A SINGLE PERSON AS REPORTED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE POST-MARITAL INCOME OBLIGATION SHALL BE TWENTY-FIVE DOLLARS PER MONTH OR THE DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS GREATER.

(6) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, AND WHERE THERE ARE NO UNEMANCIPATED CHILDREN OF THE MARRIAGE UNDER THE AGE OF TWENTY-ONE, AND WHERE THE ANNUAL AMOUNT OF THE POST-MARITAL INCOME OBLIGATION WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE BUT NOT BELOW THE POVERTY INCOME GUIDELINES AMOUNT FOR A SINGLE PERSON AS REPORTED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE POST-MARITAL INCOME OBLIGATION SHALL BE FIFTY DOLLARS PER MONTH OR THE DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS GREATER.

(7) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, AND WHERE THERE ARE UNEMANCIPATED CHILDREN OF THE MARRIAGE UNDER THE AGE OF TWENTY-ONE, AND WHERE THE ANNUAL AMOUNT OF THE POST-MARITAL INCOME OBLIGATION WOULD REDUCE THE PAYOR'S INCOME BELOW THE POVERTY INCOME GUIDELINES AMOUNT FOR A SINGLE PERSON AS REPORTED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES, NO POST-MARITAL INCOME SHALL BE AWARDED.

(8) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, AND WHERE THERE ARE UNEMANCIPATED CHILDREN OF THE MARRIAGE UNDER THE AGE OF TWENTY-ONE, AND WHERE THE ANNUAL AMOUNT OF THE POST-MARITAL INCOME OBLIGATION WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE BUT NOT BELOW THE POVERTY INCOME GUIDELINES AMOUNT FOR A SINGLE PERSON AS REPORTED BY THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES, NO POST-MARITAL INCOME SHALL BE AWARDED.

(9) A VALIDLY EXECUTED AGREEMENT OR STIPULATION VOLUNTARILY ENTERED INTO BETWEEN THE PARTIES AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH PRESENTED TO THE COURT FOR INCORPORATION IN AN ORDER OR JUDGMENT SHALL INCLUDE A PROVISION STATING THAT THE PARTIES HAVE BEEN ADVISED OF THE PROVISIONS OF THIS PARAGRAPH AND THE AMOUNT AND DURATION OF POST-MARITAL INCOME OBLIGATION. IN THE EVENT THAT SUCH AGREEMENT OR STIPULATION DEVIATES FROM THE POST-MARITAL INCOME OBLIGATION, THE AGREEMENT OR STIPULATION SHALL SPECIFY THE REASON OR REASONS THAT SUCH AGREEMENT OR STIPULATION DOES NOT PROVIDE FOR PAYMENT OF THAT AMOUNT. THE PROVISIONS OF THIS PARAGRAPH MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO VOLUNTARILY ENTER INTO VALIDLY EXECUTED AGREEMENTS OR STIPULATIONS WHICH DEVIATE FROM THE POST-MARITAL INCOME OBLIGATION PROVIDED SUCH AGREEMENTS OR STIPULATIONS COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH. THE COURT SHALL, HOWEVER, RETAIN DISCRETION WITH RESPECT TO POST-MARITAL INCOME PURSUANT TO THIS SECTION. ANY COURT ORDER OR JUDGMENT INCORPORATING A VALIDLY EXECUTED AGREEMENT OR STIPULATION WHICH DEVIATES FROM THE POST-MARITAL INCOME OBLIGATION SHALL SET FORTH THE COURT'S REASONS FOR SUCH DEVIATION.

(10) IN ADDITION TO FINANCIAL DISCLOSURE REQUIRED IN THIS SECTION, THE COURT MAY REQUIRE THAT THE INCOME AND/OR EXPENSES OF EITHER PARTY BE VERIFIED WITH DOCUMENTATION INCLUDING, BUT NOT LIMITED TO, PAST AND PRESENT INCOME TAX RETURNS, EMPLOYER STATEMENTS, PAY STUBS, CORPORATE, BUSINESS, OR PARTNERSHIP BOOKS AND RECORDS, CORPORATE AND BUSINESS TAX RETURNS, AND RECEIPTS FOR EXPENSES OR SUCH OTHER MEANS OF VERIFICATION AS THE COURT DETERMINES APPROPRIATE. NOTHING IN THIS SUBPARAGRAPH SHALL AFFECT ANY PARTY'S RIGHT TO PURSUE DISCOVERY PURSUANT TO THIS CHAPTER OR THE CIVIL PRACTICE LAW AND RULES.

(11) WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED WITH INSUFFICIENT EVIDENCE TO DETERMINE GROSS INCOME, THE COURT SHALL ORDER THE POST-MARITAL INCOME OBLIGATION BASED UPON THE STANDARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE DIVORCE ACTION. SUCH ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES.

(12) POST-MARITAL INCOME MAY BE MODIFIED PURSUANT TO PARAGRAPH B OF SUBDIVISION NINE OF THIS PART.

(13) IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, BROUGHT PURSUANT TO THIS ARTICLE, THE POST-MARITAL INCOME STANDARDS SET FORTH IN THIS PARAGRAPH SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH ORDER.

S 3. The domestic relations law is amended by adding a new article 14 to read as follows:

ARTICLE 14

RIGHT TO ASSISTANCE OF COUNSEL

SECTION 260. LEGISLATIVE FINDINGS AND PURPOSE.

261. RIGHT TO ASSISTANCE OF COUNSEL.

S 260. LEGISLATIVE FINDINGS AND PURPOSE. THE PURPOSE OF THIS ARTICLE IS TO IDENTIFY THOSE CASES IN WHICH A PARTY WHO CANNOT AFFORD AN ATTORNEY HAS A RIGHT TO COURT-ORDERED LEGAL REPRESENTATION. MATRIMONIAL ACTIONS ARE OFTEN COMPLEX. LITIGATION DETERMINES THE DIVISION OF MARITAL PROPERTY, THE CUSTODY OF CHILDREN, AND THE RESOLUTION OF THE FUTURE FINANCIAL ARRANGEMENTS BETWEEN THE PARTIES AND SUPPORT OF THE CHILDREN, ALL ISSUES THAT MAY HAVE A PROFOUND IMPACT ON THE LIVES AND WELL-BEING OF FAMILY MEMBERS FOR YEARS TO COME.

THE INTERESTS OF FAIRNESS TO THE PARTIES AND OF JUDICIAL ECONOMY IN MATRIMONIAL ACTIONS, WHICH SO OFTEN INVOLVE IMPORTANT RIGHTS OF THE PARTIES AND THEIR CHILDREN, FORM THE BASIS FOR A RIGHT TO THE ASSISTANCE OF COUNSEL. LITIGANTS WITHOUT COUNSEL UNWITTINGLY COMPROMISE THEIR RIGHTS AND INTERESTS, RESULTING IN LASTING DAMAGE TO THEMSELVES AND THEIR CHILDREN. ALSO, CASES IN WHICH PARTIES ARE NOT REPRESENTED BY COUNSEL REQUIRE ADDITIONAL JUDICIAL RESOURCES TO MAKE SURE THAT ONE PARTY DOES NOT TAKE ADVANTAGE OF THE OTHER PARTY'S LACK OF FAMILIARITY WITH LAW AND LEGAL PROCEEDINGS. ACROSS THE STATE, LEGAL REPRESENTATION IS VIEWED AS A TOP PRIORITY IN ALLOWING PEOPLE MEANINGFUL ACCESS TO THE COURT SYSTEM IN MATRIMONIAL ACTIONS.

JUDGES SHALL NOT REQUIRE THE DEPLETION OF THE MARITAL ESTATE TO PAY FOR THE PARTIES' PRIVATE COUNSEL BEFORE THEY ORDER FREE COUNSEL FOR A PARTY WHO CANNOT REASONABLY AFFORD TO PAY COUNSEL FEES. THE RIGHT TO ASSISTANCE OF COUNSEL SHALL BE IMPLEMENTED BY JUDGES IN A WAY THAT DOES NOT IMPOVERISH THE PARTIES, ESPECIALLY WHERE THE MARITAL ESTATE SHALL BE NEEDED IN THE FUTURE TO SUPPORT CHILDREN OF THE MARRIAGE OR AGING, DISABLED OR OTHERWISE VULNERABLE PARTIES.

S 261. RIGHT TO ASSISTANCE OF COUNSEL. 1. THE JUDGE IN A MATRIMONIAL ACTION SHALL ORDER COURT-APPOINTED COUNSEL FOR A PARTY WHO CANNOT REASONABLY AFFORD TO OBTAIN COUNSEL WHERE THE OTHER PARTY TO THE ACTION HAS OBTAINED OR CAN REASONABLY AFFORD TO OBTAIN COUNSEL.

2. THE JUDGE IN A MATRIMONIAL ACTION MAY ORDER COURT-APPOINTED COUNSEL FOR BOTH PARTIES TO THE ACTION WHERE NEITHER PARTY HAS OBTAINED COUNSEL AND NEITHER PARTY CAN REASONABLY AFFORD TO OBTAIN COUNSEL OR FOR EITHER PARTY WHEN JUSTICE REQUIRES.

S 4. Section 200 of the domestic relations law, as amended by chapter 254 of the laws of 1966, subdivision 3 as amended by chapter 300 of the laws of 1981, subdivision 4 as amended by chapter 264 of the laws of 2003 and subdivision 5 as amended by chapter 702 of the laws of 1968, is amended to read as follows:

S 200. Action for separation. (A) An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties [from bed and board,] forever[,] or for a limited time[,] for any of the following [causes] GROUNDS:

1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

2. The abandonment of the plaintiff by the defendant.

3. The neglect or refusal of the defendant-spouse to provide for the support of the plaintiff-spouse where the defendant-spouse is chargeable with such support under the provisions of FORMER section thirty-two of this chapter or of section four hundred twelve of the family court act.

4. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal

sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.

5. The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

(B) UNLESS THE PARTIES SHALL AGREE OTHERWISE OR UPON GOOD CAUSE SHOWN, THE COURT SHALL NOT ENTER A JUDGMENT OF SEPARATION UNDER THIS SECTION UNTIL THE PARTIES HAVE AGREED IN WRITING OR ON THE RECORD, OR FINDINGS HAVE BEEN MADE ON THE RECORD, RESOLVING CUSTODY AND THE ECONOMIC ISSUES OF THE PARTIES' MARRIAGE, INCLUDING, BUT NOT LIMITED TO, THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY, THE PAYMENT OR WAIVER OF POST-MARITAL INCOME, CHILD SUPPORT, AND COUNSEL FEES AND EXPENSES, AND THE RESOLUTION OF ALL SUCH ISSUES HAS BEEN INCORPORATED IN THE FINAL JUDGMENT OF SEPARATION.

S 5. Paragraph (b) of subdivision 1-b of section 240 of the domestic relations law is amended by adding a new subparagraph 5-a to read as follows:

(5-A) "INCOME CAP" SHALL MEAN COMBINED INCOME OF THE PARTIES OF FIVE HUNDRED THOUSAND DOLLARS ANNUALLY, INCREASED OR DECREASED ON MARCH FIRST OF EACH YEAR BY ANY CHANGE IN THE COST OF LIVING AS DEFINED IN THE ANNUAL CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, NEW YORK, NEW YORK-NORTHEASTERN NEW JERSEY, AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

S 6. Subparagraphs 2 and 3 of paragraph (c) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, are amended to read as follows:

(2) The court shall multiply the combined parental income up to [eighty thousand dollars] THE INCOME CAP by the appropriate child support percentage and such amount shall be prorated in the same proportion as each parent's income is to the combined parental income.

(3) Where the combined parental income exceeds the [dollar amount set forth in subparagraph two of this paragraph] INCOME CAP, the court shall determine the amount of child support for the amount of the combined parental income in excess of [such dollar amount] THE INCOME CAP through consideration of the factors set forth in paragraph (f) of this subdivision and/or the child support percentage.

S 7. Subparagraph 5 of paragraph (b), paragraph (d), subparagraph 8 of paragraph (f) and paragraph (g) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

(5) "Income" shall mean, but shall not be limited to, the sum of the amounts determined by the application of clauses (i), (ii), (iii), (iv), (v) [and], (vi) AND (VII) of this subparagraph reduced by the amount determined by the application of clause [(vii)] (VIII) of this subparagraph:

(i) gross (total) income 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;

(ii) to the extent not already included in gross income in clause (i) of this subparagraph, investment income reduced by sums expended in connection with such investment;

(iii) TO THE EXTENT NOT ALREADY INCLUDED IN GROSS INCOME IN CLAUSES (I) AND (II) OF THIS SUBPARAGRAPH, POST-MARITAL INCOME AND MAINTENANCE AWARDS;

(IV) to the extent not already included in gross income in clauses (i) [and], (ii) AND (III) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

(A) workers' compensation,

(B) disability benefits,

(C) unemployment insurance benefits,

(D) social security benefits,

(E) veterans benefits,

(F) pensions and retirement benefits,

(G) fellowships and stipends, and

(H) annuity payments;

[(iv)] (V) at the discretion of the court, the court may attribute or impute income from, such other resources as may be available to the parent, including, but not limited to:

(A) non-income producing assets,

(B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or [indirecly] INDIRECTLY confer personal economic benefits,

(C) fringe benefits provided as part of compensation for employment, and

(D) money, goods, or services provided by relatives and friends;

[(v)] (VI) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support;

[(vi)] (VII) to the extent not already included in gross income in clauses (i) [and], (ii) AND (III) of this subparagraph, the following self-employment deductions attributable to self-employment carried on by the taxpayer:

(A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and

(B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures;

[(vii)] (VIII) the following shall be deducted from income prior to applying the provisions of paragraph (c) of this subdivision:

(A) unreimbursed employee business expenses except to the extent said expenses reduce personal expenditures,

(B) alimony or maintenance actually paid to a spouse not a party to the instant action pursuant to court order or validly executed written agreement,

(C) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, provided the order or agreement provides for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse,

(D) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the parent has a legal duty of support and who is not subject to the instant action,

(E) public assistance,

(F) supplemental security income,

(G) New York city or Yonkers income or earnings taxes actually paid, and

(H) federal insurance contributions act (FICA) taxes actually paid.

(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT the basic child support obligation shall be twenty-five dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater.

(8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclause (D) of clause [(vii)] (VIII) of subparagraph five of paragraph (b) of this subdivision, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action;

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. [In no instance shall the court order child support below twenty-five dollars per month.] Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

S 8. Section 210 of the domestic relations law, as amended by chapter 641 of the laws of 1985, is amended to read as follows:

S 210. Limitations on actions for divorce and separation. No action for divorce or separation may be maintained on a ground which arose more

than five years before the date of the commencement of that action for divorce or separation except where:

(a) In an action for divorce, the grounds therefor are one of those specified in [subdivision (2), (4), (5) or (6)] PARAGRAPH TWO, FOUR, FIVE OR SIX OF SUBDIVISION (A) of section one hundred seventy of this chapter, or

(b) In an action for separation, the grounds therefor are one of those specified in [subdivision 2 or 4] PARAGRAPH TWO OR FOUR of SUBDIVISION (A) OF section two hundred of this chapter.

S 9. Subdivision a of section 170-a of the domestic relations law, as added by chapter 415 of the laws of 1975, is amended to read as follows:

a. A spouse against whom a decree of divorce has been obtained under the provisions of [subdivision] PARAGRAPH five or six of SUBDIVISION (A) OF section one hundred seventy of this [chapter] ARTICLE, where the decree, judgment or agreement of separation was obtained or entered into prior to January twenty-first, nineteen hundred seventy, may institute an action in which there shall be recoverable, in addition to any rights under this or any other provisions of law, an amount equivalent to the value of any economic and property rights of which the spouse was deprived by virtue of such decree, except where the grounds for the separation judgment would have excluded recovery of economic and property rights.

S 10. Subdivision 4 of section 253 of the domestic relations law, as amended by chapter 945 of the laws of 1984, is amended to read as follows:

4. In any action for divorce based on [subdivisions] PARAGRAPHS five and six of SUBDIVISION (A) OF section one hundred seventy of this chapter in which the defendant enters a general appearance and does not contest the requested relief, no final judgment of annulment or divorce shall be entered unless both parties shall have filed and served sworn statements: (i) that he or she has, to the best of his or her knowledge, taken all steps solely within his or her power to remove all barriers to the other party's remarriage following the annulment or divorce; or (ii) that the other party has waived in writing the requirements of this subdivision.

S 11. Section 170 of the domestic relations law, as added by chapter 254 of the laws of 1966, subdivisions 2 and 5 as amended by chapter 835 of the laws of 1970, subdivision 3 as amended by chapter 700 of the laws of 1968, subdivision 4 as amended by chapter 264 of the laws of 2003 and subdivision 6 as amended by chapter 801 of the laws of 1971, is amended to read as follows:

S 170. Action for divorce. (A) An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds:

(1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

(2) The abandonment of the plaintiff by the defendant for a period of one or more years.

(3) The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

(4) The commission of an act of adultery, provided that adultery for the purposes of [articles ten,] THIS ARTICLE AND ARTICLES eleven[,] and eleven-A of this chapter, is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct,

voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.

(5) The husband and wife have lived apart pursuant to a decree or judgment of separation for a period of one or more years after the granting of such decree or judgment, and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such decree or judgment.

(6) The husband and wife have lived separate and apart pursuant to a written agreement of separation, subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded, for a period of one or more years after the execution of such agreement and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such agreement. Such agreement shall be filed in the office of the clerk of the county wherein either party resides. In lieu of filing such agreement, either party to such agreement may file a memorandum of such agreement, which memorandum shall be similarly subscribed and acknowledged or proved as was the agreement of separation and shall contain the following information: (a) the names and addresses of each of the parties, (b) the date of marriage of the parties, (c) the date of the agreement of separation and (d) the date of this subscription and acknowledgment or proof of such agreement of separation.

(B) UNLESS THE PARTIES SHALL AGREE OTHERWISE OR UPON GOOD CAUSE SHOWN, THE COURT SHALL NOT ENTER A JUDGMENT OF DIVORCE UNDER THIS SECTION UNTIL THE PARTIES HAVE AGREED IN WRITING OR ON THE RECORD, OR FINDINGS HAVE BEEN MADE ON THE RECORD, RESOLVING CUSTODY AND THE ECONOMIC ISSUES OF THE PARTIES' MARRIAGE, INCLUDING, BUT NOT LIMITED TO, THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY, THE PAYMENT OR WAIVER OF POST-MARITAL INCOME, CHILD SUPPORT, AND COUNSEL FEES AND EXPENSES AS OTHERWISE DEFINED IN THIS ARTICLE, AND THE RESOLUTION OF ALL SUCH ISSUES HAS BEEN INCORPORATED IN THE FINAL JUDGMENT OF DIVORCE.

S 12. Paragraph (b) of subdivision 1 of section 413 of the family court act is amended by adding a new subparagraph 5-a to read as follows:

(5-A) "INCOME CAP" SHALL MEAN COMBINED INCOME OF THE PARTIES OF FIVE HUNDRED THOUSAND DOLLARS ANNUALLY, INCREASED OR DECREASED ON MARCH FIRST OF EACH YEAR BY ANY CHANGE IN THE COST OF LIVING AS DEFINED IN THE ANNUAL CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, NEW YORK, NEW YORK-NORTHEASTERN NEW JERSEY, AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF LABOR.

S 13. Subparagraphs 2 and 3 of paragraph (c) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, are amended to read as follows:

(2) The court shall multiply the combined parental income up to [eighty thousand dollars] THE INCOME CAP by the appropriate child support percentage and such amount shall be prorated in the same proportion as each parent's income is to the combined parental income.

(3) Where the combined parental income exceeds the [dollar amount set forth in subparagraph two of this paragraph] INCOME CAP, the court shall determine the amount of child support for the amount of the combined parental income in excess of [such dollar amount] THE INCOME CAP through consideration of the factors set forth in paragraph (f) of this subdivision and/or the child support percentage.

S 14. Subparagraph 5 of paragraph (b), paragraph (d), subparagraph 8 of paragraph (f) and paragraph (g) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

(5) "Income" shall mean, but shall not be limited to, the sum of the amounts determined by the application of clauses (i), (ii), (iii), (iv), (v) [and], (vi), AND (VII) of this subparagraph reduced by the amount determined by the application of clause [(vii)] (VIII) of this subparagraph:

(i) gross (total) income 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;

(ii) to the extent not already included in gross income in clause (i) of this subparagraph, investment income reduced by sums expended in connection with such investment;

(iii) TO THE EXTENT NOT ALREADY INCLUDED IN GROSS INCOME IN CLAUSES (I) AND (II) OF THIS SUBPARAGRAPH, POST-MARITAL INCOME AND MAINTENANCE AWARDS;

(IV) to the extent not already included in gross income in clauses (i) [and], (ii), AND (III) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

(A) workers' compensation,

(B) disability benefits,

(C) unemployment insurance benefits,

(D) social security benefits,

(E) veterans benefits,

(F) pensions and retirement benefits,

(G) fellowships and stipends, and

(H) annuity payments;

[(iv)] (V) at the discretion of the court, the court may attribute or impute income from, such other resources as may be available to the parent, including, but not limited to:

(A) non-income producing assets,

(B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or [indirecly] INDIRECTLY confer personal economic benefits,

(C) fringe benefits provided as part of compensation for employment, and

(D) money, goods, or services provided by relatives and friends;

[(v)] (VI) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support;

[(vi)] (VII) to the extent not already included in gross income in clauses (i) [and], (ii) AND (III) of this subparagraph, the following self-employment deductions attributable to self-employment carried on by the taxpayer:

(A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and

(B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures;

[(vii)] (VIII) the following shall be deducted from income prior to applying the provisions of paragraph (c) of this subdivision:

(A) unreimbursed employee business expenses except to the extent said expenses reduce personal expenditures,

(B) alimony or maintenance actually paid to a spouse not a party to the instant action pursuant to court order or validly executed written agreement,

(C) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, provided the order or agreement provides for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse,

(D) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the parent has a legal duty of support and who is not subject to the instant action,

(E) public assistance,

(F) supplemental security income,

(G) New York city or Yonkers income or earnings taxes actually paid, and

(H) federal insurance contributions act (FICA) taxes actually paid.

(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, THERE IS A REBUTTABLE PRESUMPTION THAT the basic child support obligation shall be twenty-five dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater.

(8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclause (D) of clause [(vii)] (VIII) of subparagraph five of paragraph (b) of this subdivision, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action;

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child

support obligation. Such written order may not be waived by either party or counsel; provided however, and notwithstanding any other provision of law, including but not limited to section four hundred fifteen of this act, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. [In no instance shall the court order child support below twenty-five dollars per month.] Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

S 15. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to any action or proceeding commenced on or after such effective date.