

6457

2013-2014 Regular Sessions

I N   A S S E M B L Y

April 1, 2013

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Introduced by M. of A. KOLB, CROUCH, FINCH, MONTESANO -- Multi-Sponsored  
by -- M. of A. GIGLIO, HAWLEY, 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;  
and to amend the family court act and the social services law, in  
relation to the payment of child support

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

1     Section 1.     Legislative findings and intent. The legislature hereby  
2 finds that, in cases of child custody, the court's paramount concern is  
3 always the best interests of the child. Shared parenting, where both  
4 parents share as equally as possible in the legal responsibility, living  
5 experience, and physical care of the child, has been found to be in the  
6 child's best interests in certain circumstances. Where the relationship  
7 between the parent and child is free from domestic violence, abuse,  
8 neglect and other harmful circumstances, shared parenting is beneficial  
9 to both parent and child. This legislation seeks to encourage courts and  
10 interested parties to work towards the goal of shared parenting whenever  
11 practical and when in the best interests of the child.

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

LBD09120-02-3

1 S 2. Short title. This act shall be known and may be cited as the  
2 "family court reform act of 2013".

3 S 3. The domestic relations law is amended by adding a new section  
4 240-d to read as follows:

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

20 1-A. (A) UPON THE INITIAL APPEARANCE IN COURT IN AN ACTION FOR  
21 DIVORCE, NULLITY OR SEPARATE MAINTENANCE WHERE CUSTODY, VISITATION OR  
22 SUPPORT OF A MINOR CHILD IS AT ISSUE, AND WHERE BOTH PARTIES AGREE TO  
23 SHARED PARENTING, THE COURT SHALL APPOINT AN INDEPENDENT EVALUATOR WITH  
24 EXPERTISE IN THE FIELD, INCLUDING BUT NOT LIMITED TO, CHILD PSYCHOLOGY,  
25 DOMESTIC VIOLENCE COUNSELING, ETC., TO INVESTIGATE THE FAMILY DYNAMIC  
26 AND INTERVIEW THE PARENTS, CHILDREN AND OTHER INTERESTED PARTIES,  
27 INCLUDING BUT NOT LIMITED TO, FAMILY MEMBERS, FRIENDS AND CO-WORKERS.  
28 THE INDEPENDENT EVALUATOR'S GOAL IS TO DETERMINE WHETHER SHARED PARENT-  
29 ING IS IN THE BEST INTERESTS OF THE CHILD AND TO ENSURE THAT DOMESTIC  
30 VIOLENCE AND/OR ANY OTHER TYPE OF ABUSE, REPORTED OR UNREPORTED BY THE  
31 VICTIM OR BY AN APPROPRIATE FEDERAL, STATE OR MUNICIPAL AGENCY, IS NOT  
32 PRESENT IN THE HOUSEHOLD SETTING. THE COURT SHALL UTILIZE THE INDEPEND-  
33 ENT EVALUATOR'S ANALYSIS AND REPORT, ALONG WITH OTHER SUPPORTING DOCU-  
34 MENTS PROVIDED BY THE PARTIES, TO DETERMINE THE BEST INTERESTS OF THE  
35 CHILD AND TO AWARD CUSTODY BASED ON THAT DETERMINATION.

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

39 (C) IF EITHER PARENT HAS BEEN CONVICTED OF ABUSE, INCLUDING BUT NOT  
40 LIMITED TO, DOMESTIC VIOLENCE AND SEXUAL ABUSE AGAINST EITHER THE OTHER  
41 PARENT AND/OR THE CHILD, SHARED PARENTING SHALL NOT BE A CUSTODIAL  
42 OPTION. IF EITHER PARENT ACCUSES THE OTHER PARENT OF DOMESTIC VIOLENCE,  
43 SEXUAL ABUSE, ETC., AGAINST HIM OR HERSELF, AND/OR THE CHILD, THE COURT  
44 SHALL SUSPEND ITS DETERMINATION AS TO WHETHER OR NOT SHARED PARENTING IS  
45 IN THE BEST INTERESTS OF THE CHILD, UNTIL THE ACCUSATION HAS BEEN INVE-  
46 TIGATED AND A DETERMINATION HAS BEEN MADE BY LAW ENFORCEMENT OR APPRO-  
47 PRIATE FEDERAL, STATE OR MUNICIPAL AGENCIES. IF SUCH AGENCIES DETERMINE  
48 THAT THE ABUSE OCCURRED, SHARED PARENTING SHALL NOT BE A CUSTODIAL  
49 OPTION. IF SUCH AGENCY FINDS THAT ABUSE WAS NOT PRESENT, THE COURT SHALL  
50 RESUME ITS DETERMINATION AS TO WHETHER OR NOT SHARED PARENTING IS IN THE  
51 BEST INTERESTS OF THE CHILD. SHOULD SUCH ALLEGATIONS BE PROVEN FALSE AND  
52 THE COURT DETERMINED UPON MOTION BY THE ACCUSED PARTY THAT SUCH ALLEGA-  
53 TIONS WERE MADE MALICIOUSLY AND IN BAD FAITH, THE COURT SHALL HAVE THE  
54 AUTHORITY TO SANCTION THE ACCUSING PARTY PURSUANT TO THE POWERS GRANTED  
55 TO THE COURT PURSUANT TO SECTION TWO HUNDRED FORTY OF THIS ARTICLE.

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

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

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

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

30 S 4. The domestic relations law is amended by adding a new section  
31 240-e to read as follows:

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

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

44 3. THE COURT SHALL APPOINT AN INDEPENDENT EVALUATOR WITH EXPERTISE IN,  
45 BUT NOT LIMITED TO, CHILD PSYCHOLOGY, DOMESTIC VIOLENCE COUNSELING, ETC.  
46 TO INVESTIGATE THE FAMILY DYNAMIC AND INTERVIEW THE PARENTS, CHILDREN  
47 AND OTHER INTERESTED PARTIES, INCLUDING BUT NOT LIMITED TO, FAMILY  
48 MEMBERS, FRIENDS AND CO-WORKERS. THE INDEPENDENT EVALUATOR'S GOAL IS TO  
49 DETERMINE WHAT CUSTODY ARRANGEMENT IS IN THE BEST INTERESTS OF THE CHILD  
50 AND TO ENSURE THAT DOMESTIC VIOLENCE AND/OR ANY OTHER TYPE OF ABUSE,  
51 REPORTED OR UNREPORTED BY THE VICTIM OR BY AN APPROPRIATE FEDERAL, STATE  
52 OR MUNICIPAL AGENCY, IS NOT PRESENT IN THE HOUSEHOLD SETTING. THE COURT  
53 SHALL UTILIZE THE INDEPENDENT EVALUATOR'S ANALYSIS AND REPORT, ALONG  
54 WITH OTHER SUPPORTING DOCUMENTS PROVIDED BY THE PARTIES, TO DETERMINE  
55 THE BEST INTERESTS OF THE CHILD AND TO AWARD CUSTODY BASED ON THAT  
56 DETERMINATION. IF ONE PARTY SOUGHT SHARED PARENTING, AND THE COURT FOUND

1 THAT SUCH AN AWARD WOULD NOT BE IN THE BEST INTERESTS OF THE CHILD, THE  
2 COURT MUST STATE ITS REASONING BEHIND SUCH DETERMINATION IN THE ORDER  
3 SETTING OUT THE CUSTODY AWARD.

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

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

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

16 (b) Any order under this section which applies to rights of visitation  
17 OR PARENTING TIME with a child remanded or placed in the care of a  
18 person, official, agency or institution pursuant to article ten of the  
19 family court act or pursuant to an instrument approved under section  
20 three hundred fifty-eight-a of the social services law, shall be  
21 enforceable pursuant to the provisions of part eight of article ten of  
22 [such] THE FAMILY COURT act, sections three hundred fifty-eight-a and  
23 three hundred eighty-four-a of the social services law and other appli-  
24 cable provisions of law against any person or official having care and  
25 custody, or temporary care and custody, of such child.

26 S 6. Subdivision 1 of section 235 of the domestic relations law, as  
27 amended by chapter 122 of the laws of 1979, is amended to read as  
28 follows:

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

39 S 7. Subdivision (b) of section 237 of the domestic relations law, as  
40 amended by chapter 329 of the laws of 2010, is amended to read as  
41 follows:

42 (b) Upon any application to enforce, annul or modify an order or judg-  
43 ment for alimony, maintenance, distributive award, distribution of mari-  
44 tal property or for custody, [visitation] PARENTING TIME, or maintenance  
45 of a child, made as in section two hundred thirty-six or section two  
46 hundred forty of this article provided, or upon any application by writ  
47 of habeas corpus or by petition and order to show cause concerning  
48 custody, [visitation] PARENTING TIME or maintenance of a child, the  
49 court may direct a spouse or parent to pay counsel fees and fees and  
50 expenses of experts directly to the attorney of the other spouse or  
51 parent to enable the other party to carry on or defend the application  
52 or proceeding by the other spouse or parent as, in the court's  
53 discretion, justice requires, having regard to the circumstances of the  
54 case and of the respective parties. There shall be a rebuttable presump-  
55 tion that counsel fees shall be awarded to the less monied spouse. In  
56 exercising the court's discretion, the court shall seek to assure that

1 each party shall be adequately represented and that where fees and  
2 expenses are to be awarded, they shall be awarded on a timely basis,  
3 pendente lite, so as to enable adequate representation from the  
4 commencement of the proceeding. Applications for the award of fees and  
5 expenses may be made at any time or times prior to final judgment. Both  
6 parties to the action or proceeding and their respective attorneys,  
7 shall file an affidavit with the court detailing the financial agree-  
8 ment, between the party and the attorney. Such affidavit shall include  
9 the amount of any retainer, the amounts paid and still owing thereunder,  
10 the hourly amount charged by the attorney, the amounts paid, or to be  
11 paid, any experts, and any additional costs, disbursements or expenses.  
12 Any applications for fees and expenses may be maintained by the attorney  
13 for either spouse in counsel's own name in the same proceeding. Payment  
14 of any retainer fees to the attorney for the petitioning party shall not  
15 preclude any awards of fees and expenses to an applicant which would  
16 otherwise be allowed under this section.

17 S 8. Subdivisions 1 and 1-a of section 240 of the domestic relations  
18 law, subdivision 1 as amended by chapter 624 of the laws of 2002, para-  
19 graph (a) of subdivision 1 as amended by chapter 476 of the laws of  
20 2009, paragraph (a-1) of subdivision 1 as amended by chapter 295 of the  
21 laws of 2009, paragraph (a-2) of subdivision 1 as added by chapter 473  
22 of the laws of 2009, subparagraph 3 of paragraph (b) and paragraph (d)  
23 of subdivision 1 as added and clause (iii) of subparagraph 2 of para-  
24 graph (c) of subdivision 1 as amended by chapter 215 of the laws of  
25 2009, and subdivision 1-a as amended by chapter 12 of the laws of 1996,  
26 are amended to read as follows:

27 1. (a) In any action or proceeding brought (1) to annul a marriage or  
28 to declare the nullity of a void marriage, or (2) for a separation, or  
29 (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by  
30 petition and order to show cause, the custody of or right to [visita-  
31 tion] PARENTING TIME with any child of a marriage, the court shall  
32 require verification of the status of any child of the marriage with  
33 respect to such child's custody and support, including any prior orders,  
34 and shall enter orders for custody and support as, in the court's  
35 discretion, justice requires, having regard to the circumstances of the  
36 case and of the respective parties and to the best interests of the  
37 child and subject to the provisions of subdivision one-c of this  
38 section. Where either party to an action concerning custody of or a  
39 right to [visitation] PARENTING TIME with a child alleges in a sworn  
40 petition or complaint or sworn answer, cross-petition, counterclaim or  
41 other sworn responsive pleading that the other party has committed an  
42 act of domestic violence against the party making the allegation or a  
43 family or household member of either party, as such family or household  
44 member is defined in article eight of the family court act, and such  
45 allegations are proven by a preponderance of the evidence, the court  
46 must consider the effect of such domestic violence upon the best inter-  
47 ests of the child, together with such other facts and circumstances as  
48 the court deems relevant in making a direction pursuant to this section  
49 and state on the record how such findings, facts and circumstances  
50 factored into the direction. HOWEVER, SHOULD SUCH ALLEGATIONS BE PROVEN  
51 FALSE, THE COURT SHALL HAVE WITHIN ITS POWER THE AUTHORITY TO SANCTION  
52 THE ACCUSING PARTY. THE SUBJECT OF AN UNFOUNDED REPORT OF DOMESTIC ABUSE  
53 WHO BELIEVES THE REPORT WAS MADE MALICIOUSLY AND IN BAD FAITH MAY PRES-  
54 ENT A WRITTEN REQUEST TO THE COURT FOR A DETERMINATION THAT THE REPORTER  
55 ACTED MALICIOUSLY OR IN BAD FAITH AND MUST BE SANCTIONED. If a parent  
56 makes a good faith allegation based on a reasonable belief supported by

1 facts that the child is the victim of child abuse, child neglect, or the  
2 effects of domestic violence, and if that parent acts lawfully and in  
3 good faith in response to that reasonable belief to protect the child or  
4 seek treatment for the child, then that parent shall not be deprived of  
5 custody, [visitation] PARENTING TIME or contact with the child, or  
6 restricted in custody, [visitation] PARENTING TIME or contact, based  
7 solely on that belief or the reasonable actions taken based on that  
8 belief. If an allegation that a child is abused is supported by a  
9 preponderance of the evidence, then the court shall consider such  
10 evidence of abuse in determining the [visitation] PARENTING TIME  
11 arrangement that is in the best interest of the child, and the court  
12 shall not place a child in the custody of a parent who presents a  
13 substantial risk of harm to that child, and shall state on the record  
14 how such findings were factored into the determination. An order direct-  
15 ing the payment of child support shall contain the social security  
16 numbers of the named parties. [In all cases there shall be no prima  
17 facie right to the custody of the child in either parent. Such direc-  
18 tion] BEFORE THE COURT MAKES ANY ORDER AWARDING CUSTODY TO A PERSON OR  
19 PERSONS OTHER THAN A PARENT WITHOUT CONSENT OF THE PARENTS, IT SHALL  
20 MAKE A FINDING THAT AN AWARD OF CUSTODY TO A PARENT WOULD BE DETRIMENTAL  
21 TO THE CHILD AND THE AWARD TO THE NONPARENT IS REQUIRED TO SERVE THE  
22 BEST INTERESTS OF THE CHILD. ALLEGATIONS THAT PARENTAL CUSTODY WOULD BE  
23 DETRIMENTAL TO THE CHILD, OTHER THAN A STATEMENT OF THE ULTIMATE FACT,  
24 SHALL NOT APPEAR IN THE PLEADINGS. THE COURT MAY, IN ITS DISCRETION,  
25 EXCLUDE THE PUBLIC FOR THE HEARING ON THIS ISSUE. THE COURT SHALL STATE  
26 IN WRITING THE REASONS FOR ITS DECISION AND WHY THE AWARD MADE WAS FOUND  
27 TO BE IN THE BEST INTEREST OF THE CHILD. ANY DIRECTION MADE PURSUANT TO  
28 THIS SUBDIVISION shall make provision for child support out of the prop-  
29 erty of [either or] both parents. The court shall make its award for  
30 child support pursuant to subdivision one-b of this section. Such direc-  
31 tion may provide for reasonable visitation rights to the maternal and/or  
32 paternal grandparents of any child of the parties. Such direction as it  
33 applies to rights of visitation OR PARENTING TIME with a child remanded  
34 or placed in the care of a person, official, agency or institution  
35 pursuant to article ten of the family court act, or pursuant to an  
36 instrument approved under section three hundred fifty-eight-a of the  
37 social services law, shall be enforceable pursuant to part eight of  
38 article ten of the family court act and sections three hundred fifty-  
39 eight-a and three hundred eighty-four-a of the social services law and  
40 other applicable provisions of law against any person having care and  
41 custody, or temporary care and custody, of the child. Notwithstanding  
42 any other provision of law, any written application or motion to the  
43 court for the establishment, modification or enforcement of a child  
44 support obligation for persons not in receipt of public assistance and  
45 care must contain either a request for child support enforcement  
46 services which would authorize the collection of the support obligation  
47 by the immediate issuance of an income execution for support enforcement  
48 as provided for by this chapter, completed in the manner specified in  
49 section one hundred eleven-g of the social services law; or a statement  
50 that the applicant has applied for or is in receipt of such services; or  
51 a statement that the applicant knows of the availability of such  
52 services, has declined them at this time and where support enforcement  
53 services pursuant to section one hundred eleven-g of the social services  
54 law have been declined that the applicant understands that an income  
55 deduction order may be issued pursuant to subdivision (c) of section  
56 fifty-two hundred forty-two of the civil practice law and rules without

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

26 (a-1)(1) Permanent and initial temporary orders of custody or [visita-  
27 tion] PARENTING TIME. Prior to the issuance of any permanent or initial  
28 temporary order of custody or [visitation] PARENTING TIME, the court  
29 shall conduct a review of the decisions and reports listed in subpara-  
30 graph three of this paragraph.

31 (2) Successive temporary orders of custody or [visitation] PARENTING  
32 TIME. Prior to the issuance of any successive temporary order of custody  
33 or [visitation] PARENTING TIME, the court shall conduct a review of the  
34 decisions and reports listed in subparagraph three of this paragraph,  
35 unless such a review has been conducted within ninety days prior to the  
36 issuance of such order.

37 (3) Decisions and reports for review. The court shall conduct a review  
38 of the following:

39 (i) related decisions in court proceedings initiated pursuant to arti-  
40 cle ten of the family court act, and all warrants issued under the fami-  
41 ly court act; and

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

47 (4) Notifying counsel and issuing orders. Upon consideration of deci-  
48 sions pursuant to article ten of the family court act, and registry  
49 reports and notifying counsel involved in the proceeding, or in the  
50 event of a self-represented party, notifying such party of the results  
51 thereof, including any court appointed attorney for children, the court  
52 may issue a temporary, successive temporary or final order of custody or  
53 [visitation] PARENTING TIME.

54 (5) Temporary emergency order. Notwithstanding any other provision of  
55 the law, upon emergency situations, including computer malfunctions, to  
56 serve the best interest of the child, the court may issue a temporary

1 emergency order for custody or [visitation] PARENTING TIME in the event  
2 that it is not possible to timely review decisions and reports on regis-  
3 tries as required pursuant to subparagraph three of this paragraph.

4 (6) After issuing a temporary emergency order. After issuing a tempo-  
5 rary emergency order of custody or [visitation] PARENTING TIME, the  
6 court shall conduct reviews of the decisions and reports on registries  
7 as required pursuant to subparagraph three of this paragraph within  
8 twenty-four hours of the issuance of such temporary emergency order.  
9 Should such twenty-four hour period fall on a day when court is not in  
10 session, then the required reviews shall take place the next day the  
11 court is in session. Upon reviewing decisions and reports the court  
12 shall notify associated counsel, self-represented parties and attorneys  
13 for children pursuant to subparagraph four of this paragraph and may  
14 issue temporary or permanent custody or [visitation] PARENTING TIME  
15 orders.

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

31 (a-2) Military service by parent; effect on child custody orders. (1)  
32 During the period of time that a parent is activated, deployed or tempo-  
33 rarily assigned to military service, such that the parent's ability to  
34 continue as a joint caretaker or the primary caretaker of a minor child  
35 is materially affected by such military service, any orders issued  
36 pursuant to this section, based on the fact that the parent is acti-  
37 vated, deployed or temporarily assigned to military service, which would  
38 materially affect or change a previous judgment or order regarding  
39 custody of that parent's child or children as such judgment or order  
40 existed on the date the parent was activated, deployed, or temporarily  
41 assigned to military service, shall be subject to review pursuant to  
42 subparagraph three of this paragraph. Any relevant provisions of the  
43 Service Member's Civil Relief Act shall apply to all proceedings  
44 governed by this section.

45 (2) During such period, the court may enter an order to modify custody  
46 if there is clear and convincing evidence that the modification is in  
47 the best interests of the child. An attorney for the child shall be  
48 appointed in all cases where a modification is sought during such mili-  
49 tary service. Such order shall be subject to review pursuant to subpara-  
50 graph three of this paragraph. When entering an order pursuant to this  
51 section, the court shall consider and provide for, if feasible and if in  
52 the best interests of the child, contact between the military service  
53 member and his or her child, including, but not limited to, electronic  
54 communication by e-mail, webcam, telephone, or other available means.  
55 During the period of the parent's leave from military service, the court  
56 shall consider the best interests of the child when establishing a



parenting schedule, including [visiting] PARENTING TIME and other contact. For such purposes, a "leave from military service" shall be a period of not more than three months.

(3) Unless the parties have otherwise stipulated or agreed, if an order is issued pursuant to this paragraph, the return of the parent from active military service, deployment or temporary assignment shall be considered a substantial change in circumstances. Upon the request of either parent, the court shall determine on the basis of the child's best interests whether the custody judgment or order previously in effect should be modified.

(4) This paragraph shall not apply to assignments to permanent duty stations or permanent changes of station.

(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.

(3) When the person on whose behalf the petition is brought is a child in accordance with paragraph (c) of this subdivision, health insurance benefits shall be considered "reasonable in cost" if the cost of health insurance benefits does not exceed five percent of the combined parental gross income. The cost of health insurance benefits shall refer to the cost of the premium and deductible attributable to adding the child or children to existing coverage or the difference between such costs for self-only and family coverage. Provided, however, the presumption that the health insurance benefits are reasonable in cost may be rebutted upon a finding that the cost is unjust or inappropriate which finding shall be based on the circumstances of the case, the cost and comprehensiveness of the health insurance benefits for which the child or children may otherwise be eligible, and the best interests of the child or children. In no instance shall health insurance benefits be considered "reasonable in cost" if a parent's share of the cost of extending such coverage would reduce the income of that parent below the self-support reserve. Health insurance benefits are "reasonably accessible" if the child lives within the geographic area covered by the plan or lives within thirty minutes or thirty miles of travel time from the child's residence to the services covered by the health insurance benefits or through benefits provided under a reciprocal agreement; provided, however, this presumption may be rebutted for good cause shown including, but not limited to, the special health needs of the child. The court shall set forth such finding and the reasons therefor in the order of support.

(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

1 maintained, unless either parent requests the court to make a direction  
2 for health insurance benefits coverage pursuant to paragraph two of this  
3 subdivision.

4 (2) Where the child is not presently covered by health insurance bene-  
5 fits, the court shall make a determination as follows:

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

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

15 (iii) If neither parent has available health insurance benefits, the  
16 court shall direct in the order of support that the custodial parent  
17 apply for the state's child health insurance plan pursuant to title  
18 one-A of article twenty-five of the public health law and the medical  
19 assistance program established pursuant to title eleven of article five  
20 of the social services law. A direction issued under this subdivision  
21 shall not limit or alter either parent's obligation to obtain health  
22 insurance benefits at such time as they become available, as required  
23 pursuant to paragraph (a) of this subdivision. Nothing in this subdivi-  
24 sion shall alter or limit the authority of the medical assistance  
25 program to determine when it is considered cost effective to require a  
26 custodial parent to enroll a child in an available group health insur-  
27 ance plan pursuant to paragraphs (b) and (c) of subdivision one of  
28 section three hundred sixty-seven-a of the social services law.

29 (d) The cost of providing health insurance benefits or benefits under  
30 the state's child health insurance plan or the medical assistance  
31 program, pursuant to paragraph (c) of this subdivision, shall be deemed  
32 cash medical support, and the court shall determine the obligation of  
33 either or both parents to contribute to the cost thereof pursuant to  
34 subparagraph five of paragraph (c) of subdivision one-b of this section.

35 (e) The court shall provide in the order of support that the legally  
36 responsible relative immediately notify the other party, or the other  
37 party and the support collection unit when the order is issued on behalf  
38 of a child in receipt of public assistance and care or in receipt of  
39 services pursuant to section one hundred eleven-g of the social services  
40 law, of any change in health insurance benefits, including any termi-  
41 nation of benefits, change in the health insurance benefit carrier,  
42 premium, or extent and availability of existing or new benefits.

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

54 (g) When the court issues an order of child support or combined child  
55 and spousal support on behalf of persons in receipt of public assistance  
56 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 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

1 parties whether the acknowledgement has been duly filed, and unless  
2 satisfied that it has been so filed shall require the clerk of the court  
3 to file such acknowledgement with the appropriate registrar within five  
4 business days. Such direction may be made in the final judgment in such  
5 action or proceeding, or by one or more orders from time to time before  
6 or subsequent to final judgment, or by both such order or orders and the  
7 final judgment. Such direction may be made notwithstanding that the  
8 court for any reason whatsoever, other than lack of jurisdiction,  
9 refuses to grant the relief requested in the action or proceeding. Any  
10 order or judgment made as in this section provided may combine in one  
11 lump sum any amount payable to the custodial parent under this section  
12 with any amount payable to such parent under section two hundred thir-  
13 ty-six of this article. Upon the application of either parent, or of any  
14 other person or party having the care, custody and control of such child  
15 pursuant to such judgment or order, after such notice to the other  
16 party, parties or persons having such care, custody and control and  
17 given in such manner as the court shall direct, the court may annul or  
18 modify any such direction, whether made by order or final judgment, or  
19 in case no such direction shall have been made in the final judgment  
20 may, with respect to any judgment of annulment or declaring the nullity  
21 of a void marriage rendered on or after September first, nineteen  
22 hundred forty, or any judgment of separation or divorce whenever  
23 rendered, amend the judgment by inserting such direction. Subject to  
24 the provisions of section two hundred forty-four of this article, no  
25 such modification or annulment shall reduce or annul arrears accrued  
26 prior to the making of such application unless the defaulting party  
27 shows good cause for failure to make application for relief from the  
28 judgment or order directing such payment prior to the accrual of such  
29 arrears. Such modification may increase such child support nunc pro tunc  
30 as of the date of application based on newly discovered evidence. Any  
31 retroactive amount of child support due shall be support arrears/past  
32 due support and shall be paid in one lump sum or periodic sums, as the  
33 court shall direct, taking into account any amount of temporary child  
34 support which has been paid. In addition, such retroactive child support  
35 shall be enforceable in any manner provided by law including, but not  
36 limited to, an execution for support enforcement pursuant to subdivision  
37 (b) of section fifty-two hundred forty-one of the civil practice law and  
38 rules.

39 1-a. In any proceeding brought pursuant to this section to determine  
40 the custody or [visitation] PARENTING TIME of minors, a report made to  
41 the statewide central register of child abuse and maltreatment, pursuant  
42 to title six of article six of the social services law, or a portion  
43 thereof, which is otherwise admissible as a business record pursuant to  
44 rule forty-five hundred eighteen of the civil practice law and rules  
45 shall not be admissible in evidence, notwithstanding such rule, unless  
46 an investigation of such report conducted pursuant to title six of arti-  
47 cle six of the social services law has determined that there is some  
48 credible evidence of the alleged abuse or maltreatment and that the  
49 subject of the report has been notified that the report is indicated. In  
50 addition, if such report has been reviewed by the state commissioner of  
51 [social services] CHILDREN AND FAMILY SERVICES or his OR HER designee  
52 and has been determined to be unfounded, it shall not be admissible in  
53 evidence. If such report has been so reviewed and has been amended to  
54 delete any finding, each such deleted finding shall not be admissible.  
55 If the state commissioner of [social services] CHILDREN AND FAMILY  
56 SERVICES or his OR HER designee has amended the report to add any new

1 finding, each such new finding, together with any portion of the  
2 original report not deleted by the commissioner or his designee, shall  
3 be admissible if it meets the other requirements of this subdivision and  
4 is otherwise admissible as a business record. If such a report, or  
5 portion thereof, is admissible in evidence but is uncorroborated, it  
6 shall not be sufficient to make a fact finding of abuse or maltreatment  
7 in such proceeding. Any other evidence tending to support the reliabil-  
8 ity of such report shall be sufficient corroboration.

9 S 9. Paragraph c of subdivision 3 of section 240 of the domestic  
10 relations law, as amended by chapter 597 of the laws of 1998, is amended  
11 to read as follows:

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

24 S 10. Section 241 of the domestic relations law, as amended by chapter  
25 892 of the laws of 1986, is amended to read as follows:

26 S 241. Interference with or withholding of [visitation] PARENTING TIME  
27 rights; alimony or maintenance suspension. When it appears to the satis-  
28 faction of the court that a custodial parent receiving alimony or main-  
29 tenance pursuant to an order, judgment or decree of a court of competent  
30 jurisdiction has wrongfully interfered with or withheld [visitation]  
31 PARENTING TIME rights provided by such order, judgment or decree, the  
32 court, in its discretion, [may] SHALL suspend such payments or cancel  
33 any arrears that may have accrued during the time that [visitation]  
34 PARENTING TIME rights have been or are being interfered with or with-  
35 held. Nothing in this section shall constitute a defense in any court to  
36 an application to enforce payment of child support or grounds for the  
37 cancellation of arrears for child support.

38 S 11. Section 251 of the domestic relations law, as added by chapter  
39 164 of the laws of 1973, is amended to read as follows:

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

45 S 12. Paragraph (b) of subdivision 1 of section 252 of the domestic  
46 relations law, as added by chapter 349 of the laws of 1995, is amended  
47 to read as follows:

48 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
49 ING TIME by a court order or a separation agreement, to visit the child  
50 at stated periods;

51 S 13. Subdivision 3 of section 252 of the domestic relations law, as  
52 added by chapter 349 of the laws of 1995, is amended to read as follows:

53 3. An order of protection entered pursuant to this subdivision may be  
54 made in the final judgment in any matrimonial action, or by one or more  
55 orders from time to time before or subsequent to final judgment, or by  
56 both such order or orders and the final judgment. The order of

1 protection may remain in effect after entry of a final matrimonial judg-  
2 ment and during the minority of any child whose custody or [visitation]  
3 PARENTING TIME is the subject of a provision of a final judgment or any  
4 order. An order of protection may be entered notwithstanding that the  
5 court for any reason whatsoever, other than lack of jurisdiction,  
6 refuses to grant the relief requested in the action or proceeding.

7 S 14. Subdivision 10 of section 358-a of the social services law, as  
8 added by chapter 457 of the laws of 1988, paragraphs (b) and (c) as  
9 amended by chapter 41 of the laws of 2010, is amended to read as  
10 follows:

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

25 (b) Where a social services official or the attorney for the child  
26 opposes incorporation of an order, judgment or agreement conferring  
27 visitation rights OR PARENTING TIME as provided for in paragraph (e) of  
28 subdivision two of section three hundred eighty-four-a of this chapter,  
29 the social services official or attorney for the child shall apply for  
30 an order determining that the provisions of such order, judgment or  
31 agreement should not be incorporated into the instrument executed pursu-  
32 ant to such section. Such order shall be granted upon a finding, based  
33 on competent, relevant and material evidence, that the child's life or  
34 health would be endangered by incorporation and enforcement of visita-  
35 tion rights OR PARENTING TIME as described in such order, judgment or  
36 agreement. Otherwise, the court shall deny such application.

37 (c) Where visitation rights OR PARENTING TIME pursuant to an order,  
38 judgment or agreement are incorporated in an instrument, the parties may  
39 agree to an alternative schedule of visitation OR PARENTING TIME equiv-  
40 alent to and consistent with the original or modified visitation OR  
41 PARENTING TIME order, judgment, or agreement where such alternative  
42 schedule reflects changed circumstances of the parties and is consistent  
43 with the best interests of the child. In the absence of such an agree-  
44 ment between the parties, the court may, in its discretion, upon appli-  
45 cation of any party or the child's attorney, order an alternative sched-  
46 ule of visitation OR PARENTING TIME, as described herein, where it  
47 determines that such schedule is necessary to facilitate visitation and  
48 to protect the best interests of the child.

49 (d) The order providing an alternative schedule of visitation OR  
50 PARENTING TIME shall remain in effect for the length of the placement of  
51 the child as provided for in such instrument unless such order is subse-  
52 quently modified by the court for good cause shown. Whenever the court  
53 makes an order denying or modifying visitation OR PARENTING TIME rights  
54 pursuant to this subdivision, the instrument described in section three  
55 hundred eighty-four-a of this chapter shall be deemed amended according-  
56 ly.

1 S 15. Paragraphs (b), (d) and (f) of subdivision 2 of section 384-a of  
2 the social services law, paragraph (b) as added by chapter 669 of the  
3 laws of 1976, paragraph (d) as added by chapter 457 of the laws of 1988  
4 and paragraph (f) as amended by chapter 41 of the laws of 2010, are  
5 amended to read as follows:

6 (b) No provisions set forth in any such instrument regarding the right  
7 of the parent or guardian to visit the child or to have services  
8 provided to the child and to the parent or guardian to strengthen the  
9 parental relationship may be terminated or limited by the authorized  
10 agency having the care and custody of the child unless: (i) the instru-  
11 ment shall have been amended to so limit or terminate such right, pursu-  
12 ant to subdivision three of this section; or (ii) the right of visita-  
13 tion OR PARENTING TIME or to such services would be contrary to or  
14 inconsistent with a court order obtained in any proceeding in which the  
15 parent or guardian was a party.

16 (d) In any case where a parent who has transferred care and custody of  
17 a child to a social services official pursuant to this section informs  
18 the social services official that an order or judgment conferring [visi-  
19 tation] PARENTING TIME rights relating to the child has been entered by  
20 the family court or supreme court or that a written agreement as  
21 described in section two hundred thirty-six of the domestic relations  
22 law between the parents confers such rights, any instrument executed  
23 pursuant to this section shall incorporate the provisions of such order,  
24 judgment or agreement to the extent that [visitation] PARENTING TIME  
25 rights are affected and shall provide for [visitation] PARENTING TIME or  
26 other rights as required by such order, judgment or agreement. Such  
27 incorporation shall not preclude a social services official from exer-  
28 cising his authority pursuant to paragraph (e) or (f) of this subdivi-  
29 sion.

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

37 S 16. Subparagraph (iv) of paragraph (c) of subdivision 2 of section  
38 384-a of the social services law, as amended by chapter 256 of the laws  
39 of 1990, is amended to read as follows:

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

45 S 17. Subparagraph 5 of paragraph (f) of subdivision 7 of section  
46 384-b of the social services law, as amended by chapter 113 of the laws  
47 of 2010, is amended to read as follows:

48 (5) making suitable arrangements with a correctional facility and  
49 other appropriate persons for an incarcerated parent to [visit] HAVE  
50 PARENTING TIME WITH the child within the correctional facility, if such  
51 [visiting] PARENTING TIME is in the best interests of the child. When no  
52 [visitation] PARENTING TIME between child and incarcerated parent has  
53 been arranged for or permitted by the authorized agency because such  
54 [visitation] PARENTING TIME is determined not to be in the best interest  
55 of the child, then no permanent neglect proceeding under this subdivi-  
56 sion shall be initiated on the basis of the lack of such [visitation]

1 PARENTING TIME. Such arrangements shall include, but shall not be  
2 limited to, the transportation of the child to the correctional facili-  
3 ty, and providing or suggesting social or rehabilitative services to  
4 resolve or correct the problems other than incarceration itself which  
5 impair the incarcerated parent's ability to maintain contact with the  
6 child. When the parent is incarcerated in a correctional facility  
7 located outside the state, the provisions of this subparagraph shall be  
8 construed to require that an authorized agency make such arrangements  
9 with the correctional facility only if reasonably feasible and permissi-  
10 ble in accordance with the laws and regulations applicable to such  
11 facility; and

12 S 18. Paragraph (o) of subdivision 6 of section 398 of the social  
13 services law, as added by chapter 457 of the laws of 1988, is amended to  
14 read as follows:

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

22 S 19. Subdivision 1 of section 398-d of the social services law, as  
23 added by chapter 83 of the laws of 1995, is amended to read as follows:

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

39 The relocation of child welfare service delivery to the community  
40 sites will strengthen efforts to provide a wide range of community-based  
41 early intervention programs including, but not limited to, school-based  
42 health clinics and community schools, thereby ensuring the continued  
43 development of a critical mass of community services.

44 S 20. Subparagraph 9 of paragraph (f) of subdivision 1 of section 413  
45 of the family court act, as added by chapter 567 of the laws of 1989, is  
46 amended to read as follows:

47 (9) Provided that the child is not on public assistance (i) extraor-  
48 dinary expenses incurred by the non-custodial parent in exercising  
49 [visitation] PARENTING TIME, or (ii) expenses incurred by the non-custo-  
50 dial parent in extended [visitation] PARENTING TIME provided that the  
51 custodial parent's expenses are substantially reduced as a result there-  
52 of; and

53 S 21. Subdivisions (a) and (c) of section 439 of the family court act,  
54 subdivision (a) as amended by section 1 of chapter 468 of the laws of  
55 2012 and subdivision (c) as amended by section 1 of chapter 576 of the  
56 laws of 2005, are amended to read as follows:



1 (a) The chief administrator of the courts shall provide, in accordance  
2 with subdivision (f) of this section, for the appointment of a suffi-  
3 cient number of support magistrates to hear and determine support  
4 proceedings. Except as hereinafter provided, support magistrates shall  
5 be empowered to hear, determine and grant any relief within the powers  
6 of the court in any proceeding under this article, articles five,  
7 five-A, and five-B and sections two hundred thirty-four and two hundred  
8 thirty-five of this act, and objections raised pursuant to section five  
9 thousand two hundred forty-one of the civil practice law and rules.  
10 Support magistrates shall not be empowered to hear, determine and grant  
11 any relief with respect to issues specified in section four hundred  
12 fifty-five of this article, issues of contested paternity involving  
13 claims of equitable estoppel, custody, [visitation] PARENTING TIME  
14 including [visitation] PARENTING TIME as a defense, and orders of  
15 protection or exclusive possession of the home, which shall be referred  
16 to a judge as provided in subdivision (b) or (c) of this section. Where  
17 an order of filiation is issued by a judge in a paternity proceeding and  
18 child support is in issue, the judge, or support magistrate upon refer-  
19 ral from the judge, shall be authorized to immediately make a temporary  
20 or final order of support, as applicable. A support magistrate shall  
21 have the authority to hear and decide motions and issue summonses and  
22 subpoenas to produce persons pursuant to section one hundred fifty-three  
23 of this act, hear and decide proceedings and issue any order authorized  
24 by subdivision (g) of section five thousand two hundred forty-one of the  
25 civil practice law and rules, issue subpoenas to produce prisoners  
26 pursuant to section two thousand three hundred two of the civil practice  
27 law and rules and make a determination that any person before the  
28 support magistrate is in violation of an order of the court as author-  
29 ized by section one hundred fifty-six of this act subject to confirma-  
30 tion by a judge of the court who shall impose any punishment for such  
31 violation as provided by law. A determination by a support magistrate  
32 that a person is in willful violation of an order under subdivision  
33 three of section four hundred fifty-four of this article and that recom-  
34 mends commitment shall be transmitted to the parties, accompanied by  
35 findings of fact, but the determination shall have no force and effect  
36 until confirmed by a judge of the court.

37 (c) The support magistrate, in any proceeding in which issues speci-  
38 fied in section four hundred fifty-five of this [act] ARTICLE, or issues  
39 of custody, [visitation] PARENTING TIME, including [visitation] PARENT-  
40 ING TIME as a defense, orders of protection or exclusive possession of  
41 the home are present or in which paternity is contested on the grounds  
42 of equitable estoppel, shall make a temporary order of support and refer  
43 the proceeding to a judge. Upon determination of such issue by a judge,  
44 the judge may make a final determination of the issue of support, or  
45 immediately refer the proceeding to a support magistrate for further  
46 proceedings regarding child support or other matters within the authori-  
47 ty of the support magistrate.

48 S 22. Subdivision (a) of section 439 of the family court act, as  
49 amended by section 2 of chapter 468 of the laws of 2012, is amended to  
50 read as follows:

51 (a) The chief administrator of the courts shall provide, in accordance  
52 with subdivision (f) of this section, for the appointment of a suffi-  
53 cient number of support magistrates to hear and determine support  
54 proceedings. Except as hereinafter provided, support magistrates shall  
55 be empowered to hear, determine and grant any relief within the powers  
56 of the court in any proceeding under this article, articles five,

1 five-A, and five-B and sections two hundred thirty-four and two hundred  
2 thirty-five of this act, and objections raised pursuant to section five  
3 thousand two hundred forty-one of the civil practice law and rules.  
4 Support magistrates shall not be empowered to hear, determine and grant  
5 any relief with respect to issues specified in section four hundred  
6 fifty-five of this article, issues of contested paternity involving  
7 claims of equitable estoppel, custody, [visitation] PARENTING TIME  
8 including [visitation] PARENTING TIME as a defense, and orders of  
9 protection or exclusive possession of the home, which shall be referred  
10 to a judge as provided in subdivision (b) or (c) of this section. Where  
11 an order of filiation is issued by a judge in a paternity proceeding and  
12 child support is in issue, the judge, or support magistrate upon refer-  
13 ral from the judge, shall be authorized to immediately make a temporary  
14 or final order of support, as applicable. A support magistrate shall  
15 have the authority to hear and decide motions and issue summonses and  
16 subpoenas to produce persons pursuant to section one hundred fifty-three  
17 of this act, hear and decide proceedings and issue any order authorized  
18 by subdivision (g) of section five thousand two hundred forty-one of the  
19 civil practice law and rules, issue subpoenas to produce prisoners  
20 pursuant to section two thousand three hundred two of the civil practice  
21 law and rules and make a determination that any person before the  
22 support magistrate is in violation of an order of the court as author-  
23 ized by section one hundred fifty-six of this act subject to confirma-  
24 tion by a judge of the court who shall impose any punishment for such  
25 violation as provided by law. A determination by a support magistrate  
26 that a person is in willful violation of an order under subdivision  
27 three of section four hundred fifty-four of this article and that recom-  
28 mends commitment shall be transmitted to the parties, accompanied by  
29 findings of fact, but the determination shall have no force and effect  
30 until confirmed by a judge of the court.

31 S 23. Subdivision (b) of section 446 of the family court act, as  
32 amended by chapter 483 of the laws of 1995, is amended to read as  
33 follows:

34 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
35 ING TIME by a court order or a separation agreement, to visit OR HAVE  
36 TIME WITH the child at stated periods;

37 S 24. Section 447 of the family court act, subdivision (a) as amended  
38 by chapter 85 of the laws of 1996, is amended to read as follows:

39 S 447. Order of [visitation] PARENTING TIME. (a) In the absence of an  
40 order of custody or of [visitation] PARENTING TIME entered by the  
41 supreme court, the court may make an order of custody or of [visitation]  
42 PARENTING TIME, in accordance with subdivision one of section two  
43 hundred forty of the domestic relations law, requiring one parent to  
44 permit the other to visit the children at stated periods without an  
45 order of protection, even where the parents are divorced and the support  
46 order is for a child only.

47 (b) Any order of the family court under this section shall terminate  
48 when the supreme court makes an order of custody or of [visitation]  
49 PARENTING TIME concerning the children, unless the supreme court contin-  
50 ues the order of the family court.

51 S 25. Subdivision (a) of section 456 of the family court act, as  
52 amended by chapter 809 of the laws of 1963, is amended to read as  
53 follows:

54 (a) No person may be placed on probation under this article unless the  
55 court makes an order to that effect, either at the time of the making of  
56 an order of support or under section four hundred fifty-four OF THIS

1 PART. The period of probation may continue so long as an order of  
2 support, order of protection or order of [visitation] PARENTING TIME  
3 applies to such person.

4 S 26. Subdivisions (a) and (b) of section 467 of the family court act,  
5 subdivision (a) as amended and subdivision (b) as added by chapter 40 of  
6 the laws of 1981, are amended to read as follows:

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

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

25 S 27. Section 511 of the family court act, as amended by chapter 533  
26 of the laws of 1999, is amended to read as follows:

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

38 S 28. Section 549 of the family court act, as added by chapter 952 of  
39 the laws of 1971, subdivision (a) as amended by chapter 85 of the laws  
40 of 1996, is amended to read as follows:

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

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

53 S 29. Subdivision (b) of section 551 of the family court act, as  
54 amended by chapter 483 of the laws of 1995, is amended to read as  
55 follows:

1 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
2 ING TIME by a court order or a separation agreement to visit the child  
3 at stated periods;

4 S 30. Section 651 of the family court act, as amended by chapter 85 of  
5 the laws of 1996, subdivision (b) as amended by chapter 657 of the laws  
6 of 2003, subdivision (d) as amended by chapter 41 of the laws of 2010,  
7 subdivision (e) as amended by chapter 295 of the laws of 2009, and  
8 subdivision (f) as added by chapter 473 of the laws of 2009, is amended  
9 to read as follows:

10 S 651. Jurisdiction over habeas corpus proceedings and petitions for  
11 custody [and] OF, visitation of, OR PARENTING TIME WITH minors. (a) When  
12 referred from the supreme court or county court to the family court, the  
13 family court has jurisdiction to determine, in accordance with subdivi-  
14 sion one of section two hundred forty of the domestic relations law and  
15 with the same powers possessed by the supreme court in addition to its  
16 own powers, habeas corpus proceedings and proceedings brought by peti-  
17 tion and order to show cause, for the determination of the custody [or]  
18 OF, visitation of OR PARENTING TIME WITH minors.

19 (b) When initiated in the family court, the family court has jurisdic-  
20 tion to determine, in accordance with subdivision one of section two  
21 hundred forty of the domestic relations law and with the same powers  
22 possessed by the supreme court in addition to its own powers, habeas  
23 corpus proceedings and proceedings brought by petition and order to show  
24 cause, for the determination of the custody OF or visitation of OR  
25 PARENTING TIME WITH minors, including applications by a grandparent or  
26 grandparents for visitation or custody rights pursuant to section seven-  
27 ty-two or two hundred forty of the domestic relations law.

28 (c) When initiated in the family court pursuant to a petition under  
29 part eight of article ten of this act or section three hundred fifty-  
30 eight-a of the social services law, the family court has jurisdiction to  
31 enforce or modify orders or judgments of the supreme court relating to  
32 the visitation of OR PARENTING TIME WITH minors in foster care, notwith-  
33 standing any limitation contained in subdivision (b) of section four  
34 hundred sixty-seven of this act.

35 (d) With respect to applications by a grandparent or grandparents for  
36 visitation or custody rights, made pursuant to section seventy-two or  
37 two hundred forty of the domestic relations law, with a child remanded  
38 or placed in the care of a person, official, agency or institution  
39 pursuant to the provisions of article ten of this act, the applicant, in  
40 such manner as the court shall prescribe, shall serve a copy of the  
41 application upon the social services official having care and custody of  
42 such child, and the child's attorney, who shall be afforded an opportu-  
43 nity to be heard thereon.

44 (e) 1. Permanent and initial temporary orders of custody or visitation  
45 OR PARENTING TIME. Prior to the issuance of any permanent or initial  
46 temporary order of custody or visitation, the court shall conduct a  
47 review of the decisions and reports listed in paragraph three of this  
48 subdivision.

49 2. Successive temporary orders of custody [or], visitation OR PARENT-  
50 ING TIME. Prior to the issuance of any successive temporary order of  
51 custody or visitation, OR PARENTING TIME the court shall conduct a  
52 review of the decisions and reports listed in paragraph three of this  
53 subdivision, unless such a review has been conducted within ninety days  
54 prior to the issuance of such order.

55 3. Decisions and reports for review. The court shall conduct a review  
56 of the following:

1 (i) related decisions in court proceedings initiated pursuant to arti-  
2 cle ten of this act, and all warrants issued under this act; and

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

8 4. Notifying counsel and issuing orders. Upon consideration of deci-  
9 sions pursuant to article ten of this act, and registry reports and  
10 notifying counsel involved in the proceeding, or in the event of a self-  
11 represented party, notifying such party of the results thereof, includ-  
12 ing any court appointed attorney for children, the court may issue a  
13 temporary, successive temporary or final order of custody [or], visita-  
14 tion OR PARENTING TIME.

15 5. Temporary emergency order. Notwithstanding any other provision of  
16 the law, upon emergency situations, including computer malfunctions, to  
17 serve the best interest of the child, the court may issue a temporary  
18 emergency order for custody [or], visitation OR PARENTING TIME in the  
19 event that it is not possible to timely review decisions and reports on  
20 registries as required pursuant to paragraph three of this subdivision.

21 6. After issuing a temporary emergency order. After issuing a tempo-  
22 rary emergency order of custody [or], visitation OR PARENTING TIME, the  
23 court shall conduct reviews of the decisions and reports on registries  
24 as required pursuant to paragraph three of this subdivision within twen-  
25 ty-four hours of the issuance of such temporary emergency order. Should  
26 such twenty-four hour period fall on a day when court is not in session,  
27 then the required reviews shall take place the next day the court is in  
28 session. Upon reviewing decisions and reports the court shall notify  
29 associated counsel, self-represented parties and attorneys for children  
30 pursuant to paragraph four of this subdivision and may issue temporary  
31 or permanent custody [or], visitation OR PARENTING TIME orders.

32 7. Feasibility study. The commissioner of the office of children and  
33 family services, in conjunction with the office of court administration,  
34 is hereby authorized and directed to examine, study, evaluate and make  
35 recommendations concerning the feasibility of the utilization of comput-  
36 ers in family courts which are connected to the statewide central regis-  
37 ter of child abuse and maltreatment established and maintained pursuant  
38 to section four hundred twenty-two of the social services law, as a  
39 means of providing family courts with information regarding parties  
40 requesting orders of custody or visitation. Such commissioner shall make  
41 a preliminary report to the governor and the legislature of findings,  
42 conclusions and recommendations not later than January thirty-first, two  
43 thousand nine, and a final report of findings, conclusions and recommen-  
44 dations not later than June first, two thousand nine, and shall submit  
45 with the reports such legislative proposals as are deemed necessary to  
46 implement the commissioner's recommendations.

47 (f) Military service by parent; effect on child custody orders. 1.  
48 During the period of time that a parent is activated, deployed or tempo-  
49 rarily assigned to military service, such that the parent's ability to  
50 continue as a joint caretaker or the primary caretaker of a minor child  
51 is materially affected by such military service, any orders issued  
52 pursuant to this section, based on the fact that the parent is acti-  
53 vated, deployed or temporarily assigned to military service, which would  
54 materially affect or change a previous judgment or order regarding  
55 custody of that parent's child or children as such judgment or order  
56 existed on the date the parent was activated, deployed, or temporarily

1 assigned to military service, shall be subject to review pursuant to  
2 paragraph three of this subdivision. Any relevant provisions of the  
3 Service Member's Civil Relief Act shall apply to all proceedings  
4 governed by this section.

5 2. During such period, the court may enter an order to modify custody  
6 if there is clear and convincing evidence that the modification is in  
7 the best interests of the child. An attorney for the child shall be  
8 appointed in all cases where a modification is sought during such mili-  
9 tary service. Such order shall be subject to review pursuant to para-  
10 graph three of this subdivision. When entering an order pursuant to this  
11 section, the court shall consider and provide for, if feasible and if in  
12 the best interests of the child, contact between the military service  
13 member and his or her child including, but not limited to, electronic  
14 communication by e-mail, webcam, telephone, or other available means.  
15 During the period of the parent's leave from military service, the court  
16 shall consider the best interests of the child when establishing a  
17 parenting schedule, including [visiting] PARENTING TIME and other  
18 contact. For such purpose, a "leave from military service" shall be a  
19 period of not more than three months.

20 3. Unless the parties have otherwise stipulated or agreed, if an order  
21 is issued pursuant to this subdivision, the return of the parent from  
22 active military service, deployment or temporary assignment shall be  
23 considered a substantial change in circumstances. Upon the request of  
24 either parent, the court shall determine on the basis of the child's  
25 best interests whether the custody judgment or order previously in  
26 effect should be modified.

27 4. This subdivision shall not apply to assignments to permanent duty  
28 stations or permanent changes of station.

29 S 31. Section 651-a of the family court act, as amended by chapter 12  
30 of the laws of 1996, is amended to read as follows:

31 S 651-a. Reports of child abuse and maltreatment; admissibility. In  
32 any proceeding brought pursuant to this section to determine the custody  
33 [or], visitation OR PARENTING TIME of minors, a report made to the  
34 statewide central register of child abuse and maltreatment, pursuant to  
35 title six of article six of the social services law, or a portion there-  
36 of, which is otherwise admissible as a business record pursuant to rule  
37 forty-five hundred eighteen of the civil practice law and rules shall  
38 not be admissible in evidence, notwithstanding such rule, unless an  
39 investigation of such report conducted pursuant to title six of article  
40 six of the social services law has determined that there is some credi-  
41 ble evidence of the alleged abuse or maltreatment, that the subject of  
42 the report has been notified that the report is indicated. In addition,  
43 if such report has been reviewed by the state commissioner of [social  
44 services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or his OR HER  
45 designee and has been determined to be unfounded, it shall not be admis-  
46 sible in evidence. If such report has been so reviewed and has been  
47 amended to delete any finding, each such deleted finding shall not be  
48 admissible. If the state commissioner of [social services] THE OFFICE OF  
49 CHILDREN AND FAMILY SERVICES or his OR HER designee has amended the  
50 report to add any new finding, each such new finding, together with any  
51 portion of the original report not deleted by the commissioner or his OR  
52 HER designee, shall be admissible if it meets the other requirements of  
53 this section and is otherwise admissible as a business record. If such a  
54 report, or portion thereof, is admissible in evidence but is uncorrob-  
55 orated, it shall not be sufficient to make a fact finding of abuse or

1 maltreatment in such proceeding. Any other evidence tending to support  
2 the reliability of such report shall be sufficient corroboration.

3 S 32. Subdivisions (a) and (b) of section 652 of the family court act,  
4 subdivision (a) as amended and subdivision (b) as added by chapter 40 of  
5 the laws of 1981, are amended to read as follows:

6 (a) When referred from the supreme court to the family court, the  
7 family court has jurisdiction to determine, with the same powers  
8 possessed by the supreme court, applications to fix temporary or perma-  
9 nent custody and applications to modify judgments and orders of custody  
10 or [visitation] PARENTING TIME in actions and proceedings for marital  
11 separation, divorce, annulment of marriage and dissolution of marriage.  
12 Applications to modify judgments and orders of custody may be granted by  
13 the family court under this section only upon the showing to the family  
14 court that there has been a subsequent change of circumstances and that  
15 modification is required.

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

25 S 33. Subdivision (b) of section 656 of the family court act, as  
26 amended by chapter 483 of the laws of 1995, is amended to read as  
27 follows:

28 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
29 ING TIME by a court order or a separation agreement, to visit the child  
30 at stated periods;

31 S 34. Subdivision (b) of section 759 of the family court act, as  
32 amended by chapter 483 of the laws of 1995, is amended to read as  
33 follows:

34 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
35 ING TIME by a court order or a separation agreement, to visit the child  
36 at stated periods;

37 S 35. Subdivision (b) of section 842 of the family court act, as  
38 amended by chapter 483 of the laws of 1995, is amended to read as  
39 follows:

40 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
41 ING TIME by a court order or a separation agreement, to visit the child  
42 at stated periods;

43 S 36. Section 1030 of the family court act, as added by chapter 457 of  
44 the laws of 1988, and subdivisions (b) and (d) as amended by chapter 41  
45 of the laws of 2010, is amended to read as follows:

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

52 (b) A respondent who has not been afforded such visitation OR PARENT-  
53 ING TIME may apply to the court for an order requiring the local social  
54 services official having temporary custody of the child pursuant to this  
55 part or pursuant to subdivision (d) of section one thousand fifty-one of  
56 this article, to permit the respondent to visit the child at stated

1 periods. Such application shall be made upon notice to the local social  
2 services official and to any attorney appointed to represent the child,  
3 who shall be afforded an opportunity to be heard thereon.

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

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

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

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

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

22 (2) MEDIATION EDUCATION;

23 (3) COMMUNITY SERVICE;

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

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

28 S 37. Subdivision (e) of section 1035 of the family court act, as  
29 amended by chapter 526 of the laws of 2003, is amended to read as  
30 follows:

31 (e) The summons, petition and notice of pendency of a child protective  
32 proceeding served on the child's non-custodial parent in accordance with  
33 subdivision (d) of this section shall, if applicable, be served together  
34 with a notice that the child was removed from his or her home by a  
35 social services official. Such notice shall also include the name and  
36 address of the official to whom temporary custody of the child has been  
37 transferred, the name and address of the agency or official with whom  
38 the child has been temporarily placed, if different, and shall advise  
39 such parent of the right to request temporary and permanent custody and  
40 to seek enforcement of [visitation] PARENTING TIME rights with the child  
41 as provided for in part eight of this article.

42 S 38. Paragraph (b) of subdivision 1 of section 1056 of the family  
43 court act, as amended by chapter 483 of the laws of 1995, is amended to  
44 read as follows:

45 (b) to permit a parent, or a person entitled to visitation OR PARENT-  
46 ING TIME by a court order or a separation agreement, to visit the child  
47 at stated periods;

48 S 39. Part 8 of article 10 of the family court act, as added by chap-  
49 ter 457 of the laws of 1988, subdivision 4 of section 1081, paragraph  
50 (b) of subdivision 1, subdivision 2 of section 1082 and subdivision 4 of  
51 section 1085 as amended by chapter 41 of the laws of 2010, and section  
52 1085 as amended by chapter 378 of the laws of 1999, is amended to read  
53 as follows:

54 PART 8

55 VISITATION [OF] AND PARENTING TIME WITH  
56 MINORS IN FOSTER CARE



1 Section 1081. Visitation OR PARENTING TIME rights.

2 1082. Approval, modification or denial of visitation OR PARENT-  
3 ING TIME rights.

4 1083. Duration of orders affecting visitation OR PARENTING TIME  
5 rights.

6 1084. Out-of-wedlock children; paternity.

7 1085. Visitation, PARENTING TIME and custody rights unenforcea-  
8 ble; murder of parent, custodian, guardian, or child.

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

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

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

39 (b) A petition by a grandparent or grandparents shall allege that such  
40 grandparent or grandparents have been granted visitation rights with the  
41 child pursuant to section seventy-two or two hundred forty of the domes-  
42 tic relations law, or subdivision (b) of section six hundred fifty-one  
43 of this act, shall have a copy of such order or judgment attached there-  
44 to, and shall request enforcement of such rights pursuant to this part.

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

52 5. Upon receipt of such petition the court shall, subject to the  
53 provisions of section one thousand eighty-two of this part, require that  
54 any order of a family court or order or judgment of the supreme court,  
55 or any agreement between the parents as described in subdivision one of  
56 this section, granting visitation OR PARENTING TIME rights to the non-

1 custodial parent, grandparent or grandparents, be incorporated in any  
2 preliminary order or order of placement made under this article to the  
3 extent that such order, judgment or agreement confers visitation OR  
4 PARENTING TIME rights. In any case where a dispositional hearing has not  
5 been held or will not be held within thirty days of the filing of such  
6 petition the court shall order the person, official, agency or institu-  
7 tion caring for the child pursuant to this article to comply with such  
8 part of the order, judgment or agreement granting visitation OR PARENT-  
9 ING TIME rights. Violation of such order shall be punishable pursuant to  
10 section seven hundred fifty-three of the judiciary law.

11 S 1082. Approval, modification or denial of visitation OR PARENTING  
12 TIME rights. 1. (a) Upon receipt of a petition pursuant to subdivision  
13 four of section one thousand eighty-one of this part, the local depart-  
14 ment of social services shall make inquiry of the state central register  
15 of child abuse and maltreatment to determine whether or not the peti-  
16 tioner is a subject of an indicated report of child abuse or maltreat-  
17 ment, as such terms are defined in section four hundred twelve of the  
18 social services law, and shall further ascertain whether or not the  
19 petitioner is a respondent in a proceeding under this article whereby  
20 the child with whom visitation OR PARENTING TIME is sought has been  
21 allegedly abused or neglected or has been adjudicated as an abused or  
22 neglected child.

23 (b) The department, the child's attorney and the respondent in a  
24 proceeding under this article, shall have the right to be heard with  
25 respect to a petition for an order to enforce visitation OR PARENTING  
26 TIME rights under this part.

27 2. Where the local department of social services or the child's attor-  
28 ney opposes a petition described in section one thousand eighty-one of  
29 this part, the department or the child's attorney as appropriate shall  
30 serve and file an answer to the petition. The court shall, upon the  
31 filing of such answer, set a date for a hearing on such petition and  
32 shall notify the parents, grandparent or grandparents, the department  
33 and the child's attorney of such hearing date.

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

38 4. In any hearing under this section, the court shall approve such  
39 petition unless the court finds upon competent, relevant and material  
40 evidence that enforcement of visitation OR PARENTING TIME rights as  
41 described in the order, judgment or agreement would endanger the child's  
42 life or health. Upon such a finding, the court shall make an order deny-  
43 ing such petition or make such other order affecting enforcement of  
44 visitation OR PARENTING TIME rights as the court deems to be in the best  
45 interests of the child.

46 5. (a) Where a petition is approved pursuant to this section the  
47 parties may agree in writing to an alternative schedule of visitation OR  
48 PARENTING TIME equivalent to and consistent with the original or modi-  
49 fied visitation OR PARENTING TIME order or agreement where such alterna-  
50 tive schedule reflects changed circumstances of the parties and is  
51 consistent with the best interests of the child.

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

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

12 2. Where the court makes an order denying a petition seeking enforce-  
13 ment of visitation OR PARENTING TIME rights or makes an order modifying  
14 visitation OR PARENTING TIME rights, pursuant to the provisions of  
15 section one thousand eighty-two of this part, such order shall remain in  
16 effect for the length of time the child is placed with a person, offi-  
17 cial, agency or institution caring for the child pursuant to this arti-  
18 cle, unless such order is subsequently modified by the court for good  
19 cause shown.

20 S 1084. Out-of-wedlock children; paternity. No [visitation] PARENTING  
21 TIME right shall be enforceable under this part concerning any person  
22 claiming to be a parent of an out-of-wedlock child without an adjudi-  
23 cation of the paternity of such person by a court of competent jurisdic-  
24 tion, or without an acknowledgement of the paternity of such person  
25 executed pursuant to applicable provisions of law.

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

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

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

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

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

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

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

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

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

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

15 S 40. The domestic relations law is amended by adding a new section  
16 242 to read as follows:

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

24 S 41. Clause (i) of subparagraph 5 of paragraph (b) of subdivision 1-b  
25 of section 240 of the domestic relations law, as added by chapter 567 of  
26 the laws of 1989, is amended to read as follows:

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

35 S 42. Subdivision 11 of section 111-h of the social services law, as  
36 amended by chapter 502 of the laws of 1990, is amended to read as  
37 follows:

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

46 S 43. The family court act is amended by adding a new section 385.3 to  
47 read as follows:

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

54 S 44. Subdivision (a) of section 418 of the family court act, as  
55 amended by chapter 214 of the laws of 1998, is amended to read as  
56 follows:

1 (a) The court, on its own motion or motion of any party, when paterni-  
2 ty is contested, shall order the mother, the child and the alleged  
3 father to submit to one or more genetic marker or DNA marker tests of a  
4 type generally acknowledged as reliable by an accreditation body desig-  
5 nated by the secretary of the federal department of health and human  
6 services and performed by a laboratory approved by such an accreditation  
7 body and by the commissioner of health or by a duly qualified physician  
8 to aid in the determination of whether the alleged father is or is not  
9 the father of the child. No such test shall be ordered, however, upon a  
10 written finding by the court that it is not in the best interests of the  
11 child on the basis of res judicata, equitable estoppel or the presump-  
12 tion of legitimacy of a child born to a married woman. The record or  
13 report of the results of any such genetic marker or DNA test shall be  
14 received in evidence, pursuant to subdivision (e) of rule forty-five  
15 hundred eighteen of the civil practice law and rules where no timely  
16 objection in writing has been made thereto. Any order pursuant to this  
17 section shall state in plain language that the results of such test  
18 shall be admitted into evidence, pursuant to rule forty-five hundred  
19 eighteen of the civil practice law and rules absent timely objections  
20 thereto and that if such timely objections are not made, they shall be  
21 deemed waived and shall not be heard by the court. If the record or  
22 report of results of any such genetic marker or DNA test or tests indi-  
23 cate at least a ninety-five percent probability of paternity, the admis-  
24 sion of such record or report shall create a rebuttable presumption of  
25 paternity, and, if unrebutted, shall establish the paternity of and  
26 liability for the support of a child pursuant to this article and arti-  
27 cle five of this act. IF CHILD SUPPORT IS BEING PAID AND THE RECORD OR  
28 REPORT OF RESULTS OF ANY GENETIC MARKER OR DNA TEST OR TESTS DO NOT  
29 INDICATE AT LEAST A NINETY-FIVE PERCENT PROBABILITY OF PATERNITY, IF  
30 UNREBUTTED, THE COURT SHALL ORDER THE IMMEDIATE CESSATION OF ALL CHILD  
31 SUPPORT REGARDLESS OF THE LENGTH OF TIME THAT CHILD SUPPORT HAS BEEN  
32 PAID, EXCEPT IN A CASE WHERE A SPERM DONOR WAS USED AND THE PUTATIVE  
33 FATHER WAS AWARE OF AND CONSENTED TO SUCH USE IN WHICH CASE THERE SHALL  
34 NOT BE A CESSATION OF SUPPORT.

35 S 45. The domestic relations law is amended by adding a new section  
36 74-a to read as follows:

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

43 S 46. Subparagraph 3 of paragraph (b) of subdivision 1 of section 413  
44 of the family court act, as amended by chapter 567 of the laws of 1989,  
45 is amended to read as follows:

46 (3) "Child support percentage" shall mean:

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

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

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

1 (iv) thirty-one percent of the combined parental income for four chil-  
2 dren; and

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

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

10 S 47. Paragraph (c) of subdivision 1 of section 413 of the family  
11 court act is amended by adding a new subparagraph 8 to read as follows:

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

17 S 48. Section 413 of the family court act is amended by adding a new  
18 subdivision 2-a to read as follows:

19 2-A. NOTHING IN THIS ARTICLE SHALL IMPOSE ANY LIABILITY UPON A PERSON  
20 TO SUPPORT ANY MINOR CHILD WHO HAS BECOME EMANCIPATED, MARRIED, HAS  
21 CEASED TO ATTEND SCHOOL, OR WHO, IF IT HAS BEEN DETERMINED BY THE COURT,  
22 HAS BECOME SELF-SUPPORTING. SUCH LIABILITY SHALL NOT BE IMPOSED FOR SO  
23 LONG AS THE MINOR REMAINS EMANCIPATED, MARRIED, HAS CEASED TO ATTEND  
24 SCHOOL OR IS SELF-SUPPORTING.

25 S 49. Paragraph (e) of subdivision 4-a of section 111-b of the social  
26 services law, as added by chapter 398 of the laws of 1997, is amended to  
27 read as follows:

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

38 S 50. Subdivision (a) of section 458-a of the family court act, as  
39 amended by chapter 624 of the laws of 2002, is amended to read as  
40 follows:

41 (a) If the respondent has accumulated support arrears equivalent to or  
42 greater than the amount of support due pursuant to court order for a  
43 period of four months, the court may order the department of motor vehi-  
44 cles to suspend the respondent's driving privileges, and if such order  
45 issues, the respondent may apply to the department of motor vehicles for  
46 a restricted use license pursuant to section five hundred thirty of the  
47 vehicle and traffic law. IF THE COURT FINDS THAT THE RESPONDENT HAS IN  
48 THE PAST BEEN TIMELY IN PAYING HIS OR HER SUPPORT DUE THEN THE RESPOND-  
49 ENT'S DRIVING PRIVILEGES CANNOT BE SUSPENDED WITHOUT A HEARING. The  
50 court may at any time upon payment of arrears or partial payment of  
51 arrears by the respondent order the department of motor vehicles to  
52 terminate the suspension of respondent's driving privileges. For  
53 purposes of determining whether a support obligor has accumulated  
54 support arrears equivalent to or greater than the amount of support due  
55 for a period of four months, the amount of any retroactive support,  
56 other than periodic payments of retroactive support which are past due,

1 shall not be included in the calculation of support arrears pursuant to  
2 this section.

3 S 51. Subdivision 1 of section 454 of the family court act, as amended  
4 by chapter 892 of the laws of 1986, is amended to read as follows:

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

17 S 52. Paragraph (a) of subdivision 3 of section 454 of the family  
18 court act, as amended by chapter 892 of the laws of 1986, is amended to  
19 read as follows:

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

33 S 53. Section 451 of the family court act, as amended by chapter 182  
34 of the laws of 2010, is amended to read as follows:

35 S 451. Continuing jurisdiction. 1. (A) Except as provided in article  
36 five-B of this act, the court has continuing jurisdiction over any  
37 support proceeding brought under this article until its judgment is  
38 completely satisfied and may modify, set aside or vacate any order  
39 issued in the course of the proceeding, provided, however, that the  
40 modification, set aside or vacatur shall not reduce or annul child  
41 support arrears accrued prior to the making of an application pursuant  
42 to this section. The court shall not reduce or annul any other arrears  
43 unless the defaulting party shows good cause for failure to make appli-  
44 cation for relief from the judgment or order directing payment prior to  
45 the accrual of the arrears, in which case the facts and circumstances  
46 constituting such good cause shall be set forth in a written memorandum  
47 of decision. A modification may increase support payments nunc pro tunc  
48 as of the date of the initial application for support based on newly  
49 discovered evidence. Any retroactive amount of support due shall be paid  
50 and be enforceable as provided in section four hundred forty of this  
51 article. Upon an application to modify, set aside or vacate an order of  
52 support, no hearing shall be required unless such application shall be  
53 supported by affidavit and other evidentiary material sufficient to  
54 establish a prima facie case for the relief requested.

55 (B) ONCE A YEAR, A MOTION MAY BE MADE BY A CHILD SUPPORT OBLIGOR TO  
56 REQUIRE AN ACCOUNTING BY THE PARENT RECEIVING THE CHILD SUPPORT ON

1 BEHALF OF THE CHILD OR CHILDREN. THE ACCOUNTING SHALL ACCOUNT FOR ALL  
2 FUNDS EXPENDED ON THE CHILD OR CHILDREN AND SHALL BE USED BY THE COURT  
3 IN DETERMINING WHETHER THE FUNDS ARE BEING MISUSED OR NOT FULFILLING THE  
4 CHILD'S OR CHILDREN'S NEEDS. THE ACCOUNTING SHALL INCLUDE, BUT NOT BE  
5 LIMITED TO, THE DISPOSITION OF ALL FUNDS PAID BY THE CHILD SUPPORT OBLI-  
6 GOR AND ALL FUNDS EXPENDED ON BEHALF OF THE CHILD OR CHILDREN. ANY  
7 MOTION FILED BY A CHILD SUPPORT OBLIGOR PURSUANT TO THIS SUBDIVISION  
8 SHALL BE ACCOMPANIED BY A SWORN AFFIDAVIT THAT THE OBLIGOR HAS REASON-  
9 ABLE GROUNDS TO QUESTION WHETHER THE CHILD SUPPORT FUNDS ARE BEING SPENT  
10 APPROPRIATELY AND SHALL STATE THE GROUNDS IN THE AFFIDAVIT.

11 2. (a) The court may modify an order of child support, including an  
12 order incorporating without merging an agreement or stipulation of the  
13 parties, upon a showing of a substantial change in circumstances.  
14 Incarceration shall not be a bar to finding a substantial change in  
15 circumstances provided such incarceration is not the result of non-pay-  
16 ment of a child support order, or an offense against the custodial  
17 parent or child who is the subject of the order or judgment.

18 (b) In addition, unless the parties have specifically opted out of the  
19 following provisions in a validly executed agreement or stipulation  
20 entered into between the parties, the court may modify an order of child  
21 support where:

22 (i) three years have passed since the order was entered, last modified  
23 or adjusted; or

24 (ii) there has been a change in either party's gross income by fifteen  
25 percent or more since the order was entered, last modified, or adjusted.  
26 A reduction in income shall not be considered as a ground for modifica-  
27 tion unless it was involuntary and the party has made diligent attempts  
28 to secure employment commensurate with his or her education, ability,  
29 and experience.

30 S 54. The closing paragraph of subdivision 1 of section 460 of the  
31 family court act, as amended by chapter 815 of the laws of 1987, is  
32 amended to read as follows:

33 and the party defaults in paying any sum of money due as required by the  
34 order directing the payment thereof, the court, without regard to the  
35 amount due, shall make an order directing the entry of judgment for the  
36 amount of child support arrears, together with costs and disbursements.  
37 THIS JUDGMENT SHALL BE DIRECTED TO BE PAID EACH MONTH, AT A RATE NOT TO  
38 EXCEED TEN PERCENT OF THE DEFAULTING PARTY'S REGULAR MONTHLY CHILD  
39 SUPPORT PAYMENT, UNTIL THE ARREARS ARE PAID. The court shall make an  
40 order directing the entry of judgment for the amount of arrears of any  
41 other payments so directed, together with costs and disbursements,  
42 unless the defaulting party shows good cause for failure to make appli-  
43 cation for relief from the judgment or order directing such payment  
44 prior to the accrual of such arrears. The court shall not make an order  
45 reducing or [cancelling] CANCELING such arrears unless the facts and  
46 circumstances constituting good cause are set forth in a written memo-  
47 randum of decision. The application for such order shall be made upon  
48 such notice to the party or other person as the court may direct. Such  
49 judgment shall provide for the payment of interest on the amount of any  
50 arrears if the default was willful, in that the defaulting party know-  
51 ingly, consciously and voluntarily disregarded the obligation under a  
52 lawful court order. Such interest shall be computed from the date on  
53 which the payment was due, at the prevailing rate of interest on judg-  
54 ments as provided in the civil practice law and rules.

55 S 55. This act shall take effect on the first of January next succeed-  
56 ing the date on which it shall have become a law, provided that the



1 amendments to subdivision (a) of section 439 of the family court act  
2 made by section twenty-one of this act shall be subject to the expira-  
3 tion and reversion of such subdivision pursuant to subdivision 19 of  
4 section 246 of chapter 81 of the laws of 1995, as amended, when upon  
5 such date the provisions of section twenty-two of this act shall take  
6 effect and provided further that any and all rules and regulations and  
7 any other measures necessary to implement this act on its effective date  
8 may be promulgated or taken on or before such date.