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

892

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to changing the denotation of visitation to parenting time

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

Section 1. Legislative intent. The legislature hereby finds and declares that the term "visitation" carries a negative connotation with respect to noncustodial parents who want to be a part of their children's lives. Society has given the term "visitation" a negative connotation that can be associated with the visiting of an inmate at a correctional facility or prison. The purpose of this act is to reflect the fact that a parent's time with a child is not merely as a visitor but constitutes parenting time.

S 1-a. Section 2 of the domestic relations law, as amended by chapter 920 of the laws of 1974, is amended to read as follows:

S 2. Definitions. AS USED IN THIS CHAPTER:

1. A "minor" or "infant", [as used in this chapter,] is a person under the age of eighteen years.

2. "VISITATION" REFERS TO TIME PERMITTED TO BE SPENT WITH A CHILD PURSUANT TO A COURT ORDER UNDER THIS CHAPTER, THE FAMILY COURT ACT OR AN ORDER ENFORCED UNDER ARTICLE FIVE-A OF THIS CHAPTER, BY A PERSON WHO IS NOT A PARENT OF THE CHILD. THIS SHALL INCLUDE GRANDPARENTS, SIBLINGS AND STEP-PARENTS.

3. "PARENTING TIME" REFERS TO THE PERIOD OF TIME THAT A PARENT MAY SPEND WITH HIS OR HER CHILD PURSUANT TO A COURT ORDER UNDER THIS CHAPTER, THE FAMILY COURT ACT OR AN ORDER ENFORCED UNDER ARTICLE FIVE-A OF THIS CHAPTER.

S 2. Subdivision (b) of section 70 of the domestic relations law, as added by chapter 457 of the laws of 1988, is amended to read as follows:

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

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(b) Any order under this section which applies to rights of [visitation] PARENTING TIME with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to the provisions of part eight of article ten of such act, sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person or official having care and custody, or temporary care and custody, of such child.

S 3. Subdivisions 3 and 4 of section 75-a of the domestic relations law, as added by chapter 386 of the laws of 2001, are amended to read as follows:

3. "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or [visitation] PARENTING TIME with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

4. "Child custody proceeding" means a proceeding in which legal custody, physical custody, [or] visitation OR PARENTING TIME with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, person in need of supervision, contractual emancipation, or enforcement under title three of this article.

S 4. Subdivision 1 of section 235 of the domestic relations law, as amended by chapter 122 of the laws of 1979, is amended to read as follows:

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

S 5. Subdivision (b) of section 237 of the domestic relations law, as amended by chapter 329 of the laws of 2010, is amended to read as follows:

(b) Upon any application to enforce, annul or modify an order or judgment for alimony, maintenance, distributive award, distribution of marital property or for custody, [visitation,] PARENTING TIME or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty of this article provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, [visitation] PARENTING TIME or maintenance of a child, the court may direct a spouse or parent to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse or parent to enable the other party to carry on or defend the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presump-

tion that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement, between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Any applications for fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

S 6. Paragraphs (a) and (a-1) of subdivision 1 of section 240 of the domestic relations law, paragraph (a) as amended by chapter 476 of the laws of 2009 and paragraph (a-1) as amended by chapter 295 of the laws of 2009, are amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to [visitation] PARENTING TIME with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to [visitation] PARENTING TIME with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, [visitation] PARENTING TIME or contact with the child, or restricted in custody, [visitation] PARENTING TIME or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the [visitation

arrangement] PARENTING TIME that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of [visitation] PARENTING TIME with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may

be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

(a-1)(1) Permanent and initial temporary orders of custody or [visitation] PARENTING TIME. Prior to the issuance of any permanent or initial temporary order of custody or [visitation] PARENTING TIME, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph.

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

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

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act; and

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

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

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

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

(7) Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in courts which are connected to the statewide central register of

child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing courts with information regarding parties requesting orders of custody or [visitation] PARENTING TIME. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

S 7. Subdivision 1-a of section 240 of the domestic relations law, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

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

S 8. Subparagraph 9 of paragraph (f) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

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

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

c. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action or in a proceeding to obtain custody of or [visitation] PARENTING TIME with any child under this section, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the

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

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

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

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

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

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

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

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

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

S 14. Subparagraph 9 of paragraph (f) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

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

S 15. Subdivisions (a) and (c) of section 439 of the family court act, subdivision (a) as amended by section 1 of chapter 468 of the laws of 2012, and subdivision (c) as amended by chapter 576 of the laws of 2005, are amended to read as follows:

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

(c) The support magistrate, in any proceeding in which issues specified in section four hundred fifty-five of this act, or issues of custody, [visitation] PARENTING TIME, including [visitation] PARENTING TIME as a defense, orders of protection or exclusive possession of the home are present or in which paternity is contested on the grounds of equitable estoppel, shall make a temporary order of support and refer the proceeding to a judge. Upon determination of such issue by a judge, the judge may make a final determination of the issue of support, or immediately refer the proceeding to a support magistrate for further proceedings regarding child support or other matters within the authority of the support magistrate.

S 16. Subdivision (a) of section 439 of the family court act, as amended by section 2 of chapter 468 of the laws of 2012, is amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a suffi-

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

S 17. Subdivision (b) of section 446 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

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

S 18. Section 447 of the family court act, subdivision (a) as amended by chapter 85 of the laws of 1996, is amended to read as follows:

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

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

S 19. Subdivision (a) of section 456 of the family court act, as amended by chapter 809 of the laws of 1963, is amended to read as follows:

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

S 20. Subdivisions (a) and (b) of section 467 of the family court act, as amended by chapter 40 of the laws of 1981, are amended to read as follows:

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

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

S 21. Section 511 of the family court act, as amended by chapter 533 of the laws of 1999, is amended to read as follows:

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

S 22. Section 549 of the family court act, as added by chapter 952 of the laws of 1971, subdivision (a) as amended by chapter 85 of the laws of 1996, is amended to read as follows:

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

(b) Any order of the family court under this section shall terminate when the supreme court makes an order of custody or of [visitation]

PARENTING TIME concerning the child or children, unless the supreme court continues the order of the family court.

S 23. Subdivision (b) of section 551 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

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

S 24. Section 651 of the family court act, as amended by chapter 85 of the laws of 1996, subdivision (b) as amended by chapter 657 of the laws of 2003, subdivision (d) as amended by chapter 41 of the laws of 2010, subdivision (e) as amended by chapter 295 of the laws of 2009 and subdivision (f) as added by chapter 473 of the laws of 2009, is amended to read as follows:

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

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

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

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

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

2. Successive temporary orders of custody or [visitation] PARENTING TIME. Prior to the issuance of any successive temporary order of custody or [visitation] PARENTING TIME, the court shall conduct a review of

the decisions and reports listed in paragraph three of this subdivision, unless such a review has been conducted within ninety days prior to the issuance of such order.

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

(i) related decisions in court proceedings initiated pursuant to article ten of this act, and all warrants issued under this act; and

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

4. Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of this act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, including any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or [visitation] PARENTING TIME.

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

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

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

(f) Military service by parent; effect on child custody orders. 1. During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, any orders issued

pursuant to this section, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would materially affect or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order existed on the date the parent was activated, deployed, or temporarily assigned to military service, shall be subject to review pursuant to paragraph three of this subdivision. Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.

2. During such period, the court may enter an order to modify custody if there is clear and convincing evidence that the modification is in the best interests of the child. An attorney for the child shall be appointed in all cases where a modification is sought during such military service. Such order shall be subject to review pursuant to paragraph three of this subdivision. When entering an order pursuant to this section, the court shall consider and provide for, if feasible and if in the best interests of the child, contact between the military service member and his or her child including, but not limited to, electronic communication by e-mail, webcam, telephone, or other available means. During the period of the parent's leave from military service, the court shall consider the best interests of the child when establishing a parenting schedule, including visiting and other contact. For such purpose, 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 subdivision, 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 subdivision shall not apply to assignments to permanent duty stations or permanent changes of station.

S 25. Section 651-a of the family court act, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

S 651-a. Reports of child abuse and maltreatment; admissibility. In any proceeding brought pursuant to this section to determine the custody [or], visitation OR PARENTING TIME of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is some credible evidence of the alleged abuse or maltreatment, that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of [social] THE OFFICE OF CHILDREN AND FAMILY services or his designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of [social] THE OFFICE OF CHILDREN AND FAMILY services or his designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by [the] SUCH commissioner or his designee, shall be admissible

if it meets the other requirements of this section and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

S 26. Subdivisions (a) and (b) of section 652 of the family court act, as amended by chapter 40 of the laws of 1981, are amended to read as follows:

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

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

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

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

S 28. Subdivision (b) of section 759 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

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

S 29. Subdivision (b) of section 842 of the family court act, as amended by chapter 483 of the laws of 1995, is amended to read as follows:

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

S 30. Section 119 of the family court act is amended by adding two new subdivisions (d) and (e) to read as follows:

(D) "VISITATION" REFERS TO TIME PERMITTED TO BE SPENT WITH A CHILD PURSUANT TO A COURT ORDER UNDER THIS CHAPTER, THE FAMILY COURT ACT OR AN ORDER ENFORCED UNDER ARTICLE FIVE-A OF THIS CHAPTER, BY A PERSON WHO IS NOT A PARENT OF THE CHILD. THIS SHALL INCLUDE GRANDPARENTS, SIBLINGS AND STEP-PARENTS.

(E) "PARENTING TIME" REFERS TO THE PERIOD OF TIME THAT A PARENT MAY SPEND WITH HIS OR HER CHILD PURSUANT TO A COURT ORDER UNDER THIS CHAP-

TER, THE FAMILY COURT ACT OR AN ORDER ENFORCED UNDER ARTICLE FIVE-A OF THIS CHAPTER.

S 31. This act shall take effect immediately, provided that the amendments to subdivision (a) of section 439 of the family court act made by section fifteen of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 246 of chapter 81 of the laws of 1995, as amended, when upon such date the provisions of section sixteen of this act shall take effect.