

7645

2015-2016 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. WEINSTEIN, JAFFEE, SEAWRIGHT, SIMOTAS, TITUS, WRIGHT -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, GOTTFRIED, HEVESI -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to the duration and amount of maintenance and of spousal support

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

1 Section 1. Paragraph a of subdivision 1 of part B of section 236 of
2 the domestic relations law, as amended by chapter 371 of the laws of
3 2010, is amended to read as follows:

4 a. The term "maintenance" shall mean payments provided for in a valid
5 agreement between the parties or awarded by the court in accordance with
6 the provisions of subdivisions five-a and six of this part, to be paid
7 at fixed intervals for a definite or indefinite period of time, but an
8 award of maintenance shall terminate upon the death of either party or
9 upon the [recipient's] PAYEE'S valid or invalid marriage, or upon
10 modification pursuant to paragraph [(b)] B of subdivision nine of
11 [section two hundred thirty-six of] this part or section two hundred
12 forty-eight of this chapter.

13 S 2. Subparagraph 7 of paragraph d of subdivision 5 of part B of
14 section 236 of the domestic relations law, as amended by chapter 281 of
15 the laws of 1980 and as renumbered by chapter 229 of the laws of 2009,
16 is amended to read as follows:

17 (7) any equitable claim to, interest in, or direct or indirect
18 contribution made to the acquisition of such marital property by the
19 party not having title, including joint efforts or expenditures and
20 contributions and services as a spouse, parent, wage earner and homemak-
21 er, and to the career or career potential of the other party. THE COURT
22 SHALL NOT CONSIDER AS MARITAL PROPERTY SUBJECT TO DISTRIBUTION THE VALUE

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

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1 OF A SPOUSE'S ENHANCED EARNING CAPACITY ARISING FROM A LICENSE, DEGREE,
2 CELEBRITY GOODWILL, OR CAREER ENHANCEMENT. HOWEVER, IN ARRIVING AT AN
3 EQUITABLE DIVISION OF MARITAL PROPERTY, THE COURT SHALL CONSIDER THE
4 DIRECT OR INDIRECT CONTRIBUTIONS TO THE DEVELOPMENT DURING THE MARRIAGE
5 OF THE ENHANCED EARNING CAPACITY OF THE OTHER SPOUSE;

6 S 3. Subdivision 5-a of part B of section 236 of the domestic
7 relations law, as added by chapter 371 of the laws of 2010, is amended
8 to read as follows:

9 5-a. Temporary maintenance awards. a. Except where the parties have
10 entered into an agreement [pursuant to subdivision three of this part]
11 providing for maintenance PURSUANT TO SUBDIVISION THREE OF THIS PART, in
12 any matrimonial action the court, UPON APPLICATION BY A PARTY, shall
13 make its award for temporary maintenance pursuant to the provisions of
14 this subdivision.

15 b. For purposes of this subdivision, the following definitions shall
16 be used:

17 (1) "Payor" shall mean the spouse with the higher income.

18 (2) "Payee" shall mean the spouse with the lower income.

19 (3) "Length of marriage" shall mean the period from the date of
20 marriage until the date of commencement of action.

21 (4) "Income" shall mean[:

22 (a)] income as defined in the child support standards act and codified
23 in section two hundred forty of this article and section four hundred
24 thirteen of the family court act[; and

25 (b) income from income producing property to be distributed pursuant
26 to subdivision five of this part] WITHOUT SUBTRACTING ALIMONY OR MAINTENANCE
27 ACTUALLY PAID OR TO BE PAID TO A SPOUSE THAT IS A PARTY TO THE
28 INSTANT ACTION PURSUANT TO SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH
29 FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE-B OF SECTION TWO HUNDRED FORTY
30 OF THIS ARTICLE AND SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE
31 OF PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF
32 THE FAMILY COURT ACT AND WITHOUT SUBTRACTING SPOUSAL SUPPORT PAID PURSU-
33 ANT TO SECTION FOUR HUNDRED TWELVE OF SUCH ACT.

34 (5) "Income cap" shall mean up to and including [five hundred] ONE
35 HUNDRED SEVENTY-FIVE thousand dollars of the payor's annual income;
36 provided, however, beginning January thirty-first, two thousand [twelve]
37 SIXTEEN and every two years thereafter, the [payor's annual] income CAP
38 amount shall increase by the [product] SUM of the average annual
39 percentage changes in the consumer price index for all urban consumers
40 (CPI-U) as published by the United States department of labor bureau of
41 labor statistics for the PRIOR two [year period] YEARS MULTIPLIED BY THE
42 THEN INCOME CAP AND THEN rounded to the nearest one thousand dollars.
43 The office of court administration shall determine and publish the
44 income cap.

45 (6) "Guideline amount of temporary maintenance" shall mean the [sum]
46 DOLLAR AMOUNT derived by the application of paragraph c OR D of this
47 subdivision.

48 (7) ["Guideline duration" shall mean the durational period determined
49 by the application of paragraph d of this subdivision] "SELF-SUPPORT
50 RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS DEFINED IN THE CHILD
51 SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THIS
52 ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT.

53 (8) ["Presumptive award" shall mean the guideline amount of the tempo-
54 rary maintenance award for the guideline duration prior to the court's
55 application of any adjustment factors as provided in subparagraph one of
56 paragraph e of this subdivision.

1 (9) "Self-support reserve" shall mean the self-support reserve as
2 defined in the child support standards act and codified in section two
3 hundred forty of this article and section four hundred thirteen of the
4 family court act] "AGREEMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN
5 SUBDIVISION THREE OF THIS PART.

6 c. [The] WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME
7 CAP, THE court shall determine the guideline amount of temporary mainte-
8 nance [in accordance with the provisions of this paragraph after deter-
9 mining the income of the parties] AS FOLLOWS:

10 (1) Where [the payor's income is up to and including the income cap]
11 CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE AND WHERE THE
12 PAYOR AS DEFINED IN THIS SUBDIVISION IS ALSO THE NON-CUSTODIAL PARENT
13 PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

14 (a) the court shall subtract [twenty] TWENTY-FIVE percent of the
15 PAYEE'S income [of the payee] from [thirty] TWENTY percent of the
16 PAYOR'S income [up to the income cap of the payor].

17 (b) the court shall then multiply the sum of the payor's income [up to
18 and including the income cap] and [all of] the payee's income by forty
19 percent.

20 (c) the court shall subtract the PAYEE'S income [of the payee] from
21 the amount derived from clause (b) of this subparagraph.

22 (d) the COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY
23 CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

24 (E) THE guideline amount of temporary maintenance shall be the [lower
25 of the amounts] AMOUNT determined by [clauses (a) and (c) of this
26 subparagraph;] CLAUSE (D) OF THIS SUBPARAGRAPH EXCEPT THAT, if the
27 amount determined by clause [(c) of this subparagraph] (D) OF THIS
28 SUBPARAGRAPH is less than or equal to zero, the guideline amount OF
29 TEMPORARY MAINTENANCE shall be zero dollars.

30 (F) TEMPORARY MAINTENANCE SHALL BE CALCULATED PRIOR TO CHILD SUPPORT
31 BECAUSE THE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE SUBTRACTED FROM THE
32 PAYOR'S INCOME AND ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCU-
33 LATION OF THE CHILD SUPPORT OBLIGATION.

34 (2) Where [the income of the payor exceeds the income cap]:

35 (a) the court shall determine the guideline amount of temporary main-
36 tenance for that portion of the payor's income that is up to and includ-
37 ing the income cap according to subparagraph one of this paragraph, and,
38 for the payor's income in excess of the income cap, the court shall
39 determine any additional guideline amount of temporary maintenance
40 through consideration of the following factors:

41 (i) the length of the marriage;

42 (ii) the substantial differences in the incomes of the parties;

43 (iii) the standard of living of the parties established during the
44 marriage;

45 (iv) the age and health of the parties;

46 (v) the present and future earning capacity of the parties;

47 (vi) the need of one party to incur education or training expenses;

48 (vii) the wasteful dissipation of marital property;

49 (viii) the transfer or encumbrance made in contemplation of a matrimo-
50 nial action without fair consideration;

51 (ix) the existence and duration of a pre-marital joint household or a
52 pre-divorce separate household;

53 (x) acts by one party against another that have inhibited or continue
54 to inhibit a party's earning capacity or ability to obtain meaningful
55 employment. Such acts include but are not limited to acts of domestic

1 violence as provided in section four hundred fifty-nine-a of the social
2 services law;

3 (xi) the availability and cost of medical insurance for the parties;

4 (xii) the care of the children or stepchildren, disabled adult chil-
5 dren or stepchildren, elderly parents or in-laws that has inhibited or
6 continues to inhibit a party's earning capacity or ability to obtain
7 meaningful employment;

8 (xiii) the inability of one party to obtain meaningful employment due
9 to age or absence from the workforce;

10 (xiv) the need to pay for exceptional additional expenses for the
11 child or children, including, but not limited to, schooling, day care
12 and medical treatment;

13 (xv) the tax consequences to each party;

14 (xvi) marital property subject to distribution pursuant to subdivision
15 five of this part;

16 (xvii) the reduced or lost earning capacity of the party seeking
17 temporary maintenance as a result of having foregone or delayed educa-
18 tion, training, employment or career opportunities during the marriage;

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

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

24 (b) In any decision made pursuant to this subparagraph, the court
25 shall set forth the factors it considered and the reasons for its deci-
26 sion. Such written order may not be waived by either party or counsel.]
27 CHILD SUPPORT WILL NOT BE PAID FOR CHILDREN OF THE MARRIAGE, OR WHERE
28 CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS
29 DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO THE
30 CHILD SUPPORT STANDARDS ACT:

31 (A) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM
32 THIRTY PERCENT OF THE PAYOR'S INCOME.

33 (B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
34 THE PAYEE'S INCOME BY FORTY PERCENT.

35 (C) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
36 DERIVED FROM CLAUSE (B) OF THIS SUBPARAGRAPH.

37 (D) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY
38 CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

39 (E) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE AMOUNT
40 DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH EXCEPT THAT, IF THE AMOUNT
41 DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH IS LESS THAN OR EQUAL TO
42 ZERO, THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE ZERO
43 DOLLARS.

44 (F) IF CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE
45 PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO
46 THE CHILD SUPPORT STANDARDS ACT, TEMPORARY MAINTENANCE SHALL BE CALCU-
47 LATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF TEMPORARY MAINTENANCE
48 SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME PURSUANT TO THIS SUBDIVISION
49 AND ADDED TO THE PAYEE'S INCOME PURSUANT TO THIS SUBDIVISION AS PART OF
50 THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

51 [(3) Notwithstanding the provisions of this paragraph, where the
52 guideline amount of temporary maintenance would reduce the payor's
53 income below the self-support reserve for a single person, the presump-
54 tive amount of the guideline amount of temporary maintenance shall be
55 the difference between the payor's income and the self-support reserve.

1 If the payor's income is below the self-support reserve, there is a
2 rebuttable presumption that no temporary maintenance is awarded.]

3 d. [The] WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE court
4 shall determine the guideline [duration] AMOUNT of temporary maintenance
5 [by considering the length of the marriage. Temporary maintenance shall
6 terminate upon the issuance of the final award of maintenance or the
7 death of either party, whichever occurs first] AS FOLLOWS:

8 (1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN PARAGRAPH C
9 OF THIS SUBDIVISION FOR THE INCOME OF THE PAYOR UP TO AND INCLUDING THE
10 INCOME CAP; AND

11 (2) FOR INCOME EXCEEDING THE CAP, THE AMOUNT OF ADDITIONAL MAINTENANCE
12 AWARDED, IF ANY, SHALL BE WITHIN THE DISCRETION OF THE COURT WHICH SHALL
13 TAKE INTO CONSIDERATION ANY ONE OR MORE OF THE FACTORS SET FORTH IN
14 SUBPARAGRAPH ONE OF PARAGRAPH H OF THIS SUBDIVISION; AND

15 (3) THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE
16 REASONS FOR ITS DECISION IN WRITING OR ON THE RECORD. SUCH DECISION,
17 WHETHER IN WRITING OR ON THE RECORD, MAY NOT BE WAIVED BY EITHER PARTY
18 OR COUNSEL.

19 e. [(1) The court shall order the presumptive award of temporary main-
20 tenance in accordance with paragraphs c and d of this subdivision,
21 unless the court finds that the presumptive award is unjust or inappro-
22 priate and adjusts the presumptive award of temporary maintenance
23 accordingly based upon consideration of the following factors:

24 (a) the standard of living of the parties established during the
25 marriage;

26 (b) the age and health of the parties;

27 (c) the earning capacity of the parties;

28 (d) the need of one party to incur education or training expenses;

29 (e) the wasteful dissipation of marital property;

30 (f) the transfer or encumbrance made in contemplation of a matrimonial
31 action without fair consideration;

32 (g) the existence and duration of a pre-marital joint household or a
33 pre-divorce separate household;

34 (h) acts by one party against another that have inhibited or continue
35 to inhibit a party's earning capacity or ability to obtain meaningful
36 employment. Such acts include but are not limited to acts of domestic
37 violence as provided in section four hundred fifty-nine-a of the social
38 services law;

39 (i) the availability and cost of medical insurance for the parties;

40 (j) the care of the children or stepchildren, disabled adult children
41 or stepchildren, elderly parents or in-laws that has inhibited or
42 continues to inhibit a party's earning capacity or ability to obtain
43 meaningful employment;

44 (k) the inability of one party to obtain meaningful employment due to
45 age or absence from the workforce;

46 (l) the need to pay for exceptional additional expenses for the child
47 or children, including, but not limited to, schooling, day care and
48 medical treatment;

49 (m) the tax consequences to each party;

50 (n) marital property subject to distribution pursuant to subdivision
51 five of this part;

52 (o) the reduced or lost earning capacity of the party seeking tempo-
53 rary maintenance as a result of having foregone or delayed education,
54 training, employment or career opportunities during the marriage;

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

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

6 (2) Where the court finds that the presumptive award of temporary
7 maintenance is unjust or inappropriate and the court adjusts the
8 presumptive award of temporary maintenance pursuant to this paragraph,
9 the court shall set forth, in a written order, the amount of the unad-
10 justed presumptive award of temporary maintenance, the factors it
11 considered, and the reasons that the court adjusted the presumptive
12 award of temporary maintenance. Such written order shall not be waived
13 by either party or counsel.

14 (3) Where either or both parties are unrepresented, the court shall
15 not enter a temporary maintenance order unless the unrepresented party
16 or parties have been informed of the presumptive award of temporary
17 maintenance] NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE
18 THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE WOULD REDUCE THE PAYOR'S
19 INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE
20 AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE DIFFERENCE BETWEEN THE
21 PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS
22 BELOW THE SELF-SUPPORT RESERVE, THERE SHALL BE A REBUTTABLE PRESUMPTION
23 THAT NO TEMPORARY MAINTENANCE IS AWARDED.

24 f. [A validly executed agreement or stipulation voluntarily entered
25 into between the parties in an action commenced after the effective date
26 of this subdivision presented to the court for incorporation in an order
27 shall include a provision stating that the parties have been advised of
28 the provisions of this subdivision, and that the presumptive award
29 provided for therein results in the correct amount of temporary mainte-
30 nance. In the event that such agreement or stipulation deviates from the
31 presumptive award of temporary maintenance, the agreement or stipulation
32 must specify the amount that such presumptive award of temporary mainte-
33 nance would have been and the reason or reasons that such agreement or
34 stipulation does not provide for payment of that amount. Such provision
35 may not be waived by either party or counsel. Nothing contained in this
36 subdivision shall be construed to alter the rights of the parties to
37 voluntarily enter into validly executed agreements or stipulations which
38 deviate from the presumptive award of temporary maintenance provided
39 such agreements or stipulations comply with the provisions of this
40 subdivision.] The court shall[, however, retain discretion with respect
41 to temporary, and post-divorce maintenance awards pursuant to this
42 section. Any court order incorporating a validly executed agreement or
43 stipulation which deviates from the presumptive award of temporary main-
44 tenance shall set forth the court's reasons for such deviation] DETER-
45 MINE THE DURATION OF TEMPORARY MAINTENANCE BY CONSIDERING THE LENGTH OF
46 THE MARRIAGE.

47 g. [When a party has defaulted and/or the court is otherwise presented
48 with insufficient evidence to determine gross income, the court shall
49 order the temporary maintenance award based upon the needs of the payee
50 or the standard of living of the parties prior to commencement of the
51 divorce action, whichever is greater. Such order may be retroactively
52 modified upward without a showing of change in circumstances upon a
53 showing of newly discovered or obtained evidence.] TEMPORARY MAINTENANCE
54 SHALL TERMINATE NO LATER THAN THE ISSUANCE OF THE JUDGMENT OF DIVORCE OR
55 THE DEATH OF EITHER PARTY, WHICHEVER OCCURS FIRST.

1 h. [In any action or proceeding for modification of an order of main-
2 tenance or alimony existing prior to the effective date of this subdivi-
3 sion, brought pursuant to this article, the temporary maintenance guide-
4 lines set forth in this subdivision shall not constitute a change of
5 circumstances warranting modification of such support order] (1) THE
6 COURT SHALL ORDER THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE UP TO
7 THE INCOME CAP IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION,
8 UNLESS THE COURT FINDS THAT THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON
9 CONSIDERATION OF ANY ONE OR MORE OF THE FOLLOWING FACTORS, AND ADJUSTS
10 THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE ACCORDINGLY BASED UPON
11 SUCH CONSIDERATION:

12 (A) THE AGE AND HEALTH OF THE PARTIES;

13 (B) THE PRESENT OR FUTURE EARNING CAPACITY OF THE PARTIES, INCLUDING A
14 HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

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

16 (D) THE TERMINATION OF A CHILD SUPPORT AWARD DURING THE PENDENCY OF
17 THE TEMPORARY MAINTENANCE AWARD WHEN THE CALCULATION OF TEMPORARY MAIN-
18 TENANCE WAS BASED UPON CHILD SUPPORT BEING AWARDED AND WHICH RESULTED IN
19 A MAINTENANCE AWARD LOWER THAN IT WOULD HAVE BEEN HAD CHILD SUPPORT NOT
20 BEEN AWARDED;

21 (E) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS
22 OR ENCUMBRANCES MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT
23 FAIR CONSIDERATION;

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

26 (G) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE
27 TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL
28 EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC
29 VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
30 SERVICES LAW;

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

32 (I) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR
33 STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS PROVIDED DURING THE MARRIAGE
34 THAT INHIBITS A PARTY'S EARNING CAPACITY;

35 (J) THE TAX CONSEQUENCES TO EACH PARTY;

36 (K) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE
37 MARRIAGE;

38 (L) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF
39 HAVING FORGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER
40 OPPORTUNITIES DURING THE MARRIAGE; AND

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

43 (2) WHERE THE COURT FINDS THAT THE GUIDELINE AMOUNT OF TEMPORARY MAIN-
44 TENANCE IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE GUIDELINE
45 AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO THIS PARAGRAPH, THE COURT
46 SHALL SET FORTH, IN A WRITTEN DECISION OR ON THE RECORD, THE GUIDELINE
47 AMOUNT OF TEMPORARY MAINTENANCE, THE FACTORS IT CONSIDERED, AND THE
48 REASONS THAT THE COURT ADJUSTED THE GUIDELINE AMOUNT OF TEMPORARY MAIN-
49 TENANCE. SUCH DECISION, WHETHER IN WRITING OR ON THE RECORD, SHALL NOT
50 BE WAIVED BY EITHER PARTY OR COUNSEL.

51 (3) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL
52 NOT ENTER A TEMPORARY MAINTENANCE ORDER UNLESS THE COURT INFORMS THE
53 UNREPRESENTED PARTY OR PARTIES OF THE GUIDELINE AMOUNT OF TEMPORARY
54 MAINTENANCE.
55

1 i. [In any decision made pursuant to] NOTHING CONTAINED IN this subdi-
2 vision [the court] shall[, where appropriate, consider the effect of a
3 barrier to remarriage, as defined in subdivision six of section two
4 hundred fifty-three of this article, on the factors enumerated in this
5 subdivision] BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO VOLUN-
6 TARILY ENTER INTO AGREEMENTS OR STIPULATIONS AS DEFINED IN SUBDIVISION
7 THREE OF THIS PART WHICH DEVIATE FROM THE PRESUMPTIVE AWARD OF TEMPORARY
8 MAINTENANCE.

9 J. WHEN A PAYOR HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED
10 WITH INSUFFICIENT EVIDENCE TO DETERMINE INCOME, THE COURT SHALL ORDER
11 THE TEMPORARY MAINTENANCE AWARD BASED UPON THE NEEDS OF THE PAYEE OR THE
12 STANDARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE DIVORCE
13 ACTION, WHICHEVER IS GREATER. SUCH ORDER MAY BE RETROACTIVELY MODIFIED
14 UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A SHOWING OF
15 NEWLY DISCOVERED EVIDENCE.

16 K. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, BROUGHT PURSUANT TO THIS ARTICLE, THE TEMPORARY MAINTENANCE GUIDELINES SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

21 L. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PROVIDING FOR MAINTENANCE PURSUANT TO SUBDIVISION THREE OF THIS PART ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, BROUGHT PURSUANT TO THIS ARTICLE, THE TEMPORARY MAINTENANCE GUIDELINES SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

27 M. IN DETERMINING TEMPORARY MAINTENANCE, THE COURT SHALL CONSIDER AND ALLOCATE, WHERE APPROPRIATE, THE RESPONSIBILITIES OF THE RESPECTIVE SPOUSES FOR THE FAMILY'S EXPENSES DURING THE PENDENCY OF THE PROCEEDING.

30 N. THE TEMPORARY MAINTENANCE ORDER SHALL NOT PREJUDICE THE RIGHTS OF EITHER PARTY REGARDING A POST-DIVORCE MAINTENANCE AWARD.

32 S 4. Subdivision 6 of part B of section 236 of the domestic relations law, as amended by chapter 371 of the laws of 2010, is amended to read as follows:

35 6. Post-divorce maintenance awards. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action, the court [may order], UPON APPLICATION BY A PARTY, SHALL MAKE ITS AWARD FOR POST-DIVORCE maintenance [in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and of the respective parties. Such order shall be effective as of the date of the application therefor, and any retroactive amount of maintenance due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary maintenance which has been paid. In determining the amount and duration of maintenance the court shall consider:

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

52 (2) the length of the marriage;

53 (3) the age and health of both parties;

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

55 (5) the need of one party to incur education or training expenses;

1 (6) the existence and duration of a pre-marital joint household or a
2 pre-divorce separate household;

3 (7) acts by one party against another that have inhibited or continue
4 to inhibit a party's earning capacity or ability to obtain meaningful
5 employment. Such acts include but are not limited to acts of domestic
6 violence as provided in section four hundred fifty-nine-a of the social
7 services law;

8 (8) the ability of the party seeking maintenance to become self-sup-
9 porting and, if applicable, the period of time and training necessary
10 therefor;

11 (9) reduced or lost lifetime earning capacity of the party seeking
12 maintenance as a result of having foregone or delayed education, train-
13 ing, employment, or career opportunities during the marriage;

14 (10) the presence of children of the marriage in the respective homes
15 of the parties;

16 (11) the care of the children or stepchildren, disabled adult children
17 or stepchildren, elderly parents or in-laws that has inhibited or
18 continues to inhibit a party's earning capacity;

19 (12) the inability of one party to obtain meaningful employment due to
20 age or absence from the workforce;

21 (13) the need to pay for exceptional additional expenses for the
22 child/children, including but not limited to, schooling, day care and
23 medical treatment;

24 (14) the tax consequences to each party;

25 (15) the equitable distribution of marital property;

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

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

30 (18) the transfer or encumbrance made in contemplation of a matrimoni-
31 al action without fair consideration;

32 (19) the loss of health insurance benefits upon dissolution of the
33 marriage, and the availability and cost of medical insurance for the
34 parties; and

35 (20) any other factor which the court shall expressly find to be just
36 and proper] PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

37 b. [In any decision made pursuant to this subdivision, the court shall
38 set forth the factors it considered and the reasons for its decision and
39 such may not be waived by either party or counsel] FOR PURPOSES OF THIS
40 SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL BE USED:

41 (1) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.

42 (2) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.

43 (3) "INCOME" SHALL MEAN:

44 (A) INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED
45 IN SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED
46 THIRTEEN OF THE FAMILY COURT ACT, WITHOUT SUBTRACTING ALIMONY OR MAINTE-
47 NANCE ACTUALLY PAID OR TO BE PAID TO A SPOUSE THAT IS A PARTY TO THE
48 INSTANT ACTION PURSUANT TO SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH
49 FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE-B OF SECTION TWO HUNDRED FORTY
50 OF THIS ARTICLE AND SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE
51 OF PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF
52 THE FAMILY COURT ACT AND WITHOUT SUBTRACTING SPOUSAL SUPPORT PAID PURSU-
53 ANT TO SECTION FOUR HUNDRED TWELVE OF SUCH ACT; AND

54 (B) INCOME FROM INCOME-PRODUCING PROPERTY DISTRIBUTED OR TO BE
55 DISTRIBUTED PURSUANT TO SUBDIVISION FIVE OF THIS PART.

1 (4) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING ONE HUNDRED
2 SEVENTY-FIVE THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED,
3 HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND SIXTEEN AND EVERY
4 TWO YEARS THEREAFTER, THE INCOME CAP AMOUNT SHALL INCREASE BY THE SUM OF
5 THE AVERAGE ANNUAL PERCENTAGE CHANGES IN THE CONSUMER PRICE INDEX FOR
6 ALL URBAN CONSUMERS (CPI-U) AS PUBLISHED BY THE UNITED STATES DEPARTMENT
7 OF LABOR BUREAU OF LABOR STATISTICS FOR THE PRIOR TWO YEARS MULTIPLIED
8 BY THE THEN INCOME CAP AND THEN ROUNDED TO THE NEAREST ONE THOUSAND
9 DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL DETERMINE AND PUBLISH
10 THE INCOME CAP.

11 (5) "GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE" SHALL MEAN THE
12 DOLLAR AMOUNT DERIVED BY THE APPLICATION OF PARAGRAPH C OR D OF THIS
13 SUBDIVISION.

14 (6) "GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE" SHALL MEAN THE
15 DURATIONAL PERIOD DETERMINED BY THE APPLICATION OF PARAGRAPH F OF THIS
16 SUBDIVISION.

17 (7) "POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION" SHALL MEAN THE
18 GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AND THE GUIDELINE DURATION
19 OF POST-DIVORCE MAINTENANCE.

20 (8) "LENGTH OF MARRIAGE" SHALL MEAN THE PERIOD FROM THE DATE OF
21 MARRIAGE UNTIL THE DATE OF COMMENCEMENT OF THE ACTION.

22 (9) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS
23 DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO
24 HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE
25 FAMILY COURT ACT.

26 (10) "AGREEMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVI-
27 SION THREE OF THIS PART.

28 c. [The court may award permanent maintenance, but an award of mainte-
29 nance shall terminate upon the death of either party or upon the recipi-
30 ent's valid or invalid marriage, or upon modification pursuant to para-
31 graph b of subdivision nine of this part or section two hundred
32 forty-eight of this chapter] WHERE THE PAYOR'S INCOME IS LOWER THAN OR
33 EQUAL TO THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT
34 OF POST-DIVORCE MAINTENANCE AS FOLLOWS:

35 (1) WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE AND
36 WHERE THE PAYOR AS DEFINED IN THIS SUBDIVISION IS ALSO THE NON-CUSTODIAL
37 PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

38 (A) THE COURT SHALL SUBTRACT TWENTY-FIVE PERCENT OF THE PAYEE'S INCOME
39 FROM TWENTY PERCENT OF THE PAYOR'S INCOME.

40 (B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
41 THE PAYEE'S INCOME BY FORTY PERCENT.

42 (C) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
43 DERIVED FROM CLAUSE (B) OF THIS SUBPARAGRAPH.

44 (D) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY
45 CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

46 (E) THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE
47 AMOUNT DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH EXCEPT THAT, IF THE
48 AMOUNT DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH IS LESS THAN OR
49 EQUAL TO ZERO, THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE
50 ZERO DOLLARS.

51 (F) NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE THE
52 GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE WOULD REDUCE THE PAYOR'S
53 INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE
54 AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE DIFFERENCE BETWEEN THE
55 PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS

1 BELOW THE SELF-SUPPORT RESERVE, THERE SHALL BE A REBUTTABLE PRESUMPTION
2 THAT NO POST-DIVORCE MAINTENANCE IS AWARDED.

3 (G) MAINTENANCE SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE
4 AMOUNT OF MAINTENANCE SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME AND
5 ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCULATION OF THE CHILD
6 SUPPORT OBLIGATION.

7 (2) WHERE CHILD SUPPORT WILL NOT BE PAID FOR CHILDREN OF THE MARRIAGE,
8 OR WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE
9 PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO
10 THE CHILD SUPPORT STANDARDS ACT:

11 (A) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM
12 THIRTY PERCENT OF THE PAYOR'S INCOME.

13 (B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
14 THE PAYEE'S INCOME BY FORTY PERCENT.

15 (C) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
16 DERIVED FROM CLAUSE (B) OF THIS SUBPARAGRAPH.

17 (D) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY
18 CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

19 (E) THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE
20 AMOUNT DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH EXCEPT THAT, IF THE
21 AMOUNT DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH IS LESS THAN OR
22 EQUAL TO ZERO, THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE
23 ZERO DOLLARS.

24 (F) IF CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE
25 PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO
26 THE CHILD SUPPORT STANDARDS ACT, POST-DIVORCE MAINTENANCE SHALL BE
27 CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF POST-DIVORCE
28 MAINTENANCE SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME PURSUANT TO THIS
29 SUBDIVISION AND ADDED TO THE PAYEE'S INCOME PURSUANT TO THIS SUBDIVISION
30 AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

31 (G) NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE THE
32 GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE WOULD REDUCE THE PAYOR'S
33 INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE
34 AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE DIFFERENCE BETWEEN THE
35 PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS
36 BELOW THE SELF-SUPPORT RESERVE, THERE SHALL BE A REBUTTABLE PRESUMPTION
37 THAT NO POST-DIVORCE MAINTENANCE IS AWARDED.

38 d. [In any decision made pursuant to this subdivision the court shall,
39 where appropriate, consider the effect of a barrier to remarriage, as
40 defined in subdivision six of section two hundred fifty-three of this
41 article, on the factors enumerated in paragraph a of this subdivision]
42 WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL DETER-
43 MINE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AS FOLLOWS:

44 (1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN PARAGRAPH C
45 OF THIS SUBDIVISION FOR THE INCOME OF PAYOR UP TO AND INCLUDING THE
46 INCOME CAP; AND

47 (2) FOR INCOME EXCEEDING THE CAP, THE AMOUNT OF ADDITIONAL MAINTENANCE
48 AWARDED, IF ANY, SHALL BE WITHIN THE DISCRETION OF THE COURT WHICH SHALL
49 TAKE INTO CONSIDERATION ANY ONE OR MORE OF THE FACTORS SET FORTH IN
50 SUBPARAGRAPH ONE OF PARAGRAPH E OF THIS SUBDIVISION; AND

51 (3) THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE
52 REASONS FOR ITS DECISION IN WRITING OR ON THE RECORD. SUCH DECISION,
53 WHETHER IN WRITING OR ON THE RECORD, MAY NOT BE WAIVED BY EITHER PARTY
54 OR COUNSEL.

55 E. (1) THE COURT SHALL ORDER THE POST-DIVORCE MAINTENANCE GUIDELINE
56 OBLIGATION UP TO THE INCOME CAP IN ACCORDANCE WITH PARAGRAPH C OF THIS

1 SUBDIVISION, UNLESS THE COURT FINDS THAT THE POST-DIVORCE MAINTENANCE
 2 GUIDELINE OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE
 3 BASED UPON CONSIDERATION OF ANY ONE OR MORE OF THE FOLLOWING FACTORS,
 4 AND ADJUSTS THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION ACCORDING-
 5 LY BASED UPON SUCH CONSIDERATION:

6 (A) THE AGE AND HEALTH OF THE PARTIES;

7 (B) THE PRESENT OR FUTURE EARNING CAPACITY OF THE PARTIES, INCLUDING A
 8 HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

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

10 (D) THE TERMINATION OF A CHILD SUPPORT AWARD BEFORE THE TERMINATION OF
 11 THE MAINTENANCE AWARD WHEN THE CALCULATION OF MAINTENANCE WAS BASED UPON
 12 CHILD SUPPORT BEING AWARDED WHICH RESULTED IN A MAINTENANCE AWARD LOWER
 13 THAN IT WOULD HAVE BEEN HAD CHILD SUPPORT NOT BEEN AWARDED;

14 (E) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS
 15 OR ENCUMBRANCES MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT
 16 FAIR CONSIDERATION;

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

19 (G) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE
 20 TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL
 21 EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC
 22 VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
 23 SERVICES LAW;

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

25 (I) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR
 26 STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS PROVIDED DURING THE MARRIAGE
 27 THAT INHIBITS A PARTY'S EARNING CAPACITY;

28 (J) THE TAX CONSEQUENCES TO EACH PARTY;

29 (K) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE
 30 MARRIAGE;

31 (L) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF
 32 HAVING FORGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER
 33 OPPORTUNITIES DURING THE MARRIAGE;

34 (M) THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY AND THE INCOME OR
 35 IMPUTED INCOME ON THE ASSETS SO DISTRIBUTED;

36 (N) THE CONTRIBUTIONS AND SERVICES OF THE PAYEE AS A SPOUSE, PARENT,
 37 WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE
 38 OTHER PARTY; AND

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

41 (2) WHERE THE COURT FINDS THAT THE POST-DIVORCE MAINTENANCE GUIDELINE
 42 OBLIGATION IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE POST-DI-
 43 VORCE MAINTENANCE GUIDELINE OBLIGATION PURSUANT TO THIS PARAGRAPH, THE
 44 COURT SHALL SET FORTH, IN A WRITTEN DECISION OR ON THE RECORD, THE UNAD-
 45 JUSTED POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION, THE FACTORS IT
 46 CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE POST-DIVORCE
 47 MAINTENANCE OBLIGATION. SUCH DECISION SHALL NOT BE WAIVED BY EITHER
 48 PARTY OR COUNSEL.

49 F. THE DURATION OF POST-DIVORCE MAINTENANCE MAY BE DETERMINED AS
 50 FOLLOWS:

51 (1) THE COURT MAY DETERMINE THE DURATION OF POST-DIVORCE MAINTENANCE
 52 IN ACCORDANCE WITH THE FOLLOWING ADVISORY SCHEDULE:

53 LENGTH OF THE MARRIAGE	PERCENT OF THE LENGTH OF THE
54	MARRIAGE FOR WHICH
55	MAINTENANCE WILL BE PAYABLE

56 0 UP TO AND INCLUDING 15 YEARS	15% - 30%
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1 MORE THAN 15 UP TO AND INCLUDING 30% - 40%
2 20 YEARS

3 MORE THAN 20 YEARS 35% - 50%

4 (2) IN DETERMINING THE DURATION OF POST-DIVORCE MAINTENANCE, WHETHER
5 OR NOT THE COURT UTILIZES THE ADVISORY SCHEDULE, IT SHALL CONSIDER THE
6 FACTORS LISTED IN SUBPARAGRAPH ONE OF PARAGRAPH E OF THIS SUBDIVISION
7 AND SHALL SET FORTH, IN A WRITTEN DECISION OR ON THE RECORD, THE FACTORS
8 IT CONSIDERED. SUCH DECISION SHALL NOT BE WAIVED BY EITHER PARTY OR
9 COUNSEL. NOTHING HEREIN SHALL PREVENT THE COURT FROM AWARDING NON-DURA-
10 TIONAL MAINTENANCE IN AN APPROPRIATE CASE.

11 (3) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARA-
12 GRAPH, POST-DIVORCE MAINTENANCE SHALL TERMINATE UPON THE DEATH OF EITHER
13 PARTY OR UPON THE PAYEE'S VALID OR INVALID MARRIAGE, OR UPON MODIFICA-
14 TION PURSUANT TO PARAGRAPH B OF SUBDIVISION NINE OF THIS PART OR SECTION
15 TWO HUNDRED FORTY-EIGHT OF THIS ARTICLE.

16 (4) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARA-
17 GRAPH, WHEN DETERMINING DURATION OF POST-DIVORCE MAINTENANCE, THE COURT
18 SHALL TAKE INTO CONSIDERATION ANTICIPATED RETIREMENT ASSETS, BENEFITS,
19 AND RETIREMENT ELIGIBILITY AGE OF BOTH PARTIES IF ASCERTAINABLE AT THE
20 TIME OF DECISION. IF NOT ASCERTAINABLE AT THE TIME OF DECISION, THE
21 ACTUAL FULL OR PARTIAL RETIREMENT OF THE PAYOR WITH SUBSTANTIAL DIMINU-
22 TION OF INCOME SHALL BE A BASIS FOR A MODIFICATION OF THE AWARD.

23 G. WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT
24 ENTER A MAINTENANCE ORDER OR JUDGMENT UNLESS THE COURT INFORMS THE
25 UNREPRESENTED PARTY OR PARTIES OF THE POST-DIVORCE MAINTENANCE GUIDELINE
26 OBLIGATION.

27 H. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO ALTER
28 THE RIGHTS OF THE PARTIES TO VOLUNTARILY ENTER INTO VALIDLY EXECUTED
29 AGREEMENTS OR STIPULATIONS WHICH DEVIATE FROM THE POST-DIVORCE MAINTEN-
30 NANCE GUIDELINE OBLIGATION.

31 I. WHEN A PAYOR HAS DEFAULTED AND/OR THE COURT MAKES A FINDING AT THE
32 TIME OF TRIAL THAT IT WAS PRESENTED WITH INSUFFICIENT EVIDENCE TO DETER-
33 MINE INCOME, THE COURT SHALL ORDER THE POST-DIVORCE MAINTENANCE BASED
34 UPON THE NEEDS OF THE PAYEE OR THE STANDARD OF LIVING OF THE PARTIES
35 PRIOR TO COMMENCEMENT OF THE DIVORCE ACTION, WHICHEVER IS GREATER. SUCH
36 ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE
37 IN CIRCUMSTANCES UPON A SHOWING OF SUBSTANTIAL NEWLY DISCOVERED
38 EVIDENCE.

39 J. POST-DIVORCE MAINTENANCE MAY BE MODIFIED PURSUANT TO PARAGRAPH B OF
40 SUBDIVISION NINE OF THIS PART.

41 K. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTEN-
42 NANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF
43 THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, BROUGHT
44 PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE
45 SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUM-
46 STANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

47 L. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE THE PARTIES HAVE
48 ENTERED INTO AN AGREEMENT PROVIDING FOR MAINTENANCE PURSUANT TO SUBDIVI-
49 SION THREE OF THIS PART ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THE
50 CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVI-
51 SION, BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE
52 MAINTENANCE SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE
53 OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH AGREEMENT.

54 M. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTEN-
55 NANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF
56 THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, BROUGHT

1 PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE
2 SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL NOT APPLY.

3 N. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE THE PARTIES HAVE
4 ENTERED INTO AN AGREEMENT PROVIDING FOR MAINTENANCE PURSUANT TO SUBDIVI-
5 SION THREE OF THIS PART ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THE
6 CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVI-
7 SION, BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE
8 MAINTENANCE SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL
9 NOT APPLY.

10 O. IN ANY DECISION MADE PURSUANT TO THIS SUBDIVISION THE COURT SHALL,
11 WHERE APPROPRIATE, CONSIDER THE EFFECT OF A BARRIER TO REMARRIAGE, AS
12 DEFINED IN SUBDIVISION SIX OF SECTION TWO HUNDRED FIFTY-THREE OF THIS
13 ARTICLE, ON THE FACTORS ENUMERATED IN PARAGRAPH E OF THIS SUBDIVISION.

14 S 5. Subparagraph 1 of paragraph b of subdivision 9 of part B of
15 section 236 of the domestic relations law, as amended by chapter 182 of
16 the laws of 2010, is amended to read as follows:

17 (1) Upon application by either party, the court may annul or modify
18 any prior order or judgment MADE AFTER TRIAL as to maintenance, upon a
19 showing of the [recipient's] PAYEE'S inability to be self-supporting or
20 UPON A SHOWING OF a substantial change in circumstance [or termination
21 of child support awarded pursuant to section two hundred forty of this
22 article], including financial hardship OR UPON ACTUAL FULL OR PARTIAL
23 RETIREMENT OF THE PAYOR IF THE RETIREMENT RESULTS IN A SUBSTANTIAL
24 CHANGE IN FINANCIAL CIRCUMSTANCES. Where, after the effective date of
25 this part, [a separation] AN agreement remains in force, no modification
26 of [a prior] AN order or judgment incorporating the terms of said agree-
27 ment shall be made as to maintenance without a showing of extreme hard-
28 ship on either party, in which event the judgment or order as modified
29 shall supersede the terms of the prior agreement and judgment for such
30 period of time and under such circumstances as the court determines. The
31 court shall not reduce or annul any arrears of maintenance which have
32 been reduced to final judgment pursuant to section two hundred forty-
33 four of this article. No other arrears of maintenance which have accrued
34 prior to the making of such application shall be subject to modification
35 or annulment unless the defaulting party shows good cause for failure to
36 make application for relief from the judgment or order directing such
37 payment prior to the accrual of such arrears and the facts and circum-
38 stances constituting good cause are set forth in a written memorandum of
39 decision. Such modification may increase maintenance nunc pro tunc as of
40 the date of application based on newly discovered evidence. Any retroac-
41 tive amount of maintenance due shall, except as provided for herein, be
42 paid in one sum or periodic sums, as the court directs, taking into
43 account any temporary or partial payments which have been made. The
44 provisions of this subdivision shall not apply to a separation agreement
45 made prior to the effective date of this part.

46 S 6. Section 248 of the domestic relations law, as amended by chapter
47 604 of the laws of 1975, is amended to read as follows:

48 S 248. Modification of judgment or order in action for divorce or
49 annulment. Where an action for divorce or for annulment or for a decla-
50 ration of the nullity of a void marriage is brought by a [husband or
51 wife] SPOUSE, and a final judgment of divorce or a final judgment
52 annulling the marriage or declaring its nullity has been rendered, the
53 court, by order upon the application of the [husband] PAYOR on notice,
54 and on proof of the marriage of the [wife] PAYEE after such final judg-
55 ment, must modify such final judgment and any orders made with respect
56 thereto by annulling the provisions of such final judgment or orders, or

1 of both, directing payments of money for the support of the [wife]
2 PAYEE. The court in its discretion upon application of the [husband]
3 PAYOR on notice, upon proof that the [wife] PAYEE is habitually living
4 with another [man] PERSON and holding HIMSELF OR herself out as [his
5 wife] THE SPOUSE OF SUCH OTHER PERSON, although not married to such
6 [man] OTHER PERSON, may modify such final judgment and any orders made
7 with respect thereto by annulling the provisions of such final judgment
8 or orders or of both, directing payment of money for the support of such
9 [wife] PAYEE.

10 S 7. Section 412 of the family court act, as amended by chapter 281 of
11 the laws of 1980, is amended to read as follows:

12 S 412. Married person's duty to support spouse. 1. A married person is
13 chargeable with the support of his or her spouse and, [if possessed of
14 sufficient means or able to earn such means, may be required to pay for
15 his or her support a fair and reasonable sum, as] EXCEPT WHERE THE
16 PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO SECTION FOUR HUNDRED
17 TWENTY-FIVE OF THIS ARTICLE PROVIDING FOR SUPPORT, the court [may deter-
18 mine, having due regard to the circumstances of the respective parties],
19 UPON APPLICATION BY A PARTY, SHALL MAKE ITS AWARD FOR SPOUSAL SUPPORT
20 PURSUANT TO THE PROVISIONS OF THIS PART.

21 2. FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL BE
22 USED:

23 (A) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.

24 (B) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.

25 (C) "INCOME" SHALL MEAN INCOME AS DEFINED IN THE CHILD SUPPORT STAND-
26 ARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THE DOMESTIC
27 RELATIONS LAW AND SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE WITHOUT
28 SUBTRACTING SPOUSAL SUPPORT ACTUALLY PAID OR TO BE PAID TO A SPOUSE THAT
29 IS A PARTY TO THE INSTANT ACTION PURSUANT TO SUBCLAUSE (C) OF CLAUSE
30 (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE-B OF
31 SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW AND SUBCLAUSE
32 (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION
33 ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE.

34 (D) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING ONE HUNDRED
35 SEVENTY-FIVE THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED,
36 HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND SIXTEEN AND EVERY
37 TWO YEARS THEREAFTER, THE INCOME CAP AMOUNT SHALL INCREASE BY THE SUM OF
38 THE AVERAGE ANNUAL PERCENTAGE CHANGES IN THE CONSUMER PRICE INDEX FOR
39 ALL URBAN CONSUMERS (CPI-U) AS PUBLISHED BY THE UNITED STATES DEPARTMENT
40 OF LABOR BUREAU OF LABOR STATISTICS FOR THE PRIOR TWO YEARS MULTIPLIED
41 BY THE THEN INCOME CAP AND THEN ROUNDED TO THE NEAREST ONE THOUSAND
42 DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL DETERMINE AND PUBLISH
43 THE INCOME CAP.

44 (E) "GUIDELINE AMOUNT OF SPOUSAL SUPPORT" SHALL MEAN THE SUM DERIVED
45 BY THE APPLICATION OF SUBDIVISION THREE OR FOUR OF THIS SECTION.

46 (F) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS
47 DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO
48 HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR HUNDRED
49 THIRTEEN OF THIS ARTICLE.

50 (G) "AGREEMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION
51 THREE OF PART B OF SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC
52 RELATIONS LAW.

53 3. WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP,
54 THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT AS
55 FOLLOWS:

1 (A) WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE AND
2 WHERE THE PAYOR AS DEFINED IN THIS SECTION IS ALSO THE NON-CUSTODIAL
3 PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

4 (1) THE COURT SHALL SUBTRACT TWENTY-FIVE PERCENT OF THE PAYEE'S INCOME
5 FROM TWENTY PERCENT OF THE PAYOR'S INCOME.

6 (2) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
7 THE PAYEE'S INCOME BY FORTY PERCENT.

8 (3) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
9 DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH.

10 (4) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY
11 SUBPARAGRAPHS ONE AND THREE OF THIS PARAGRAPH.

12 (5) THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE THE AMOUNT DETER-
13 MINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH EXCEPT THAT, IF THE AMOUNT
14 DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS LESS THAN OR EQUAL
15 TO ZERO, THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE ZERO DOLLARS.

16 (6) SPOUSAL SUPPORT SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE
17 THE AMOUNT OF SPOUSAL SUPPORT SHALL BE SUBTRACTED FROM THE PAYOR'S
18 INCOME AND ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCULATION OF THE
19 CHILD SUPPORT OBLIGATION.

20 (B) WHERE CHILD SUPPORT WILL NOT BE PAID FOR CHILDREN OF THE MARRIAGE,
21 OR WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE
22 PAYOR AS DEFINED IN THIS SECTION IS THE CUSTODIAL PARENT PURSUANT TO THE
23 CHILD SUPPORT STANDARDS ACT:

24 (1) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM
25 THIRTY PERCENT OF THE PAYOR'S INCOME.

26 (2) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
27 THE PAYEE'S INCOME BY FORTY PERCENT.

28 (3) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
29 DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH.

30 (4) THE COURT SHALL DETERMINE THE LOWER OF AMOUNTS DERIVED BY SUBPARA-
31 GRAPHS ONE AND THREE OF THIS PARAGRAPH.

32 (5) THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE THE AMOUNT DETER-
33 MINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH EXCEPT THAT, IF THE AMOUNT
34 DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS LESS THAN OR EQUAL
35 TO ZERO, THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE ZERO DOLLARS.

36 (6) IF CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE
37 PAYOR AS DEFINED IN THIS SECTION IS THE CUSTODIAL PARENT PURSUANT TO THE
38 CHILD SUPPORT STANDARDS ACT, SPOUSAL SUPPORT SHALL BE CALCULATED PRIOR
39 TO CHILD SUPPORT BECAUSE THE AMOUNT OF SPOUSAL SUPPORT SHALL BE
40 SUBTRACTED FROM THE PAYOR'S INCOME AND ADDED TO THE PAYEE'S INCOME AS
41 PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

42 4. WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL
43 DETERMINE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT AS FOLLOWS:

44 (A) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBDIVISION
45 THREE OF THIS SECTION FOR THE INCOME OF THE PAYOR UP TO AND INCLUDING
46 THE INCOME CAP; AND

47 (B) FOR INCOME EXCEEDING THE CAP, THE AMOUNT OF ADDITIONAL SPOUSAL
48 SUPPORT AWARDED, IF ANY, SHALL BE WITHIN THE DISCRETION OF THE COURT
49 WHICH SHALL TAKE INTO CONSIDERATION ANY ONE OR MORE OF THE FACTORS SET
50 FORTH IN PARAGRAPH (A) OF SUBDIVISION SIX OF THIS SECTION; AND

51 (C) THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE
52 REASONS FOR ITS DECISION IN WRITING OR ON THE RECORD. SUCH DECISION,
53 WHETHER IN WRITING OR ON THE RECORD, MAY NOT BE WAIVED BY EITHER PARTY
54 OR COUNSEL.

55 5. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, WHERE THE GUIDELINE
56 AMOUNT OF SPOUSAL SUPPORT WOULD REDUCE THE PAYOR'S INCOME BELOW THE

1 SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE AMOUNT OF SPOUS-
2 AL SUPPORT SHALL BE THE DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE
3 SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS BELOW THE SELF-SUPPORT
4 RESERVE, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT NO SPOUSAL SUPPORT
5 IS AWARDED.

6 6. (A) THE COURT SHALL ORDER THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT
7 UP TO THE CAP IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION,
8 UNLESS THE COURT FINDS THAT THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT IS
9 UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATION
10 OF ANY ONE OR MORE OF THE FOLLOWING FACTORS, AND ADJUSTS THE GUIDELINE
11 AMOUNT OF SPOUSAL SUPPORT ACCORDINGLY BASED UPON CONSIDERATION OF THE
12 FOLLOWING FACTORS:

13 (1) THE AGE AND HEALTH OF THE PARTIES;

14 (2) THE PRESENT OR FUTURE EARNING CAPACITY OF THE PARTIES, INCLUDING A
15 HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

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

17 (4) THE TERMINATION OF A CHILD SUPPORT AWARD DURING THE PENDENCY OF
18 THE SPOUSAL SUPPORT AWARD WHEN THE CALCULATION OF SPOUSAL SUPPORT WAS
19 BASED UPON CHILD SUPPORT BEING AWARDED WHICH RESULTED IN A SPOUSAL
20 SUPPORT AWARD LOWER THAN IT WOULD HAVE BEEN HAD CHILD SUPPORT NOT BEEN
21 AWARDED;

22 (5) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS
23 OR ENCUMBRANCES MADE IN CONTEMPLATION OF A SUPPORT PROCEEDING WITHOUT
24 FAIR CONSIDERATION;

25 (6) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A
26 PRE-SUPPORT PROCEEDINGS SEPARATE HOUSEHOLD;

27 (7) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE
28 TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL
29 EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC
30 VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
31 SERVICES LAW;

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

33 (9) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR
34 STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS PROVIDED DURING THE MARRIAGE
35 THAT INHIBITS A PARTY'S EARNING CAPACITY;

36 (10) THE TAX CONSEQUENCES TO EACH PARTY;

37 (11) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE
38 MARRIAGE;

39 (12) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF
40 HAVING FORGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER
41 OPPORTUNITIES DURING THE MARRIAGE;

42 (13) THE CONTRIBUTIONS AND SERVICES OF THE PAYEE AS A SPOUSE, PARENT,
43 WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE
44 OTHER PARTY;

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

47 (B) WHERE THE COURT FINDS THAT THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT
48 IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE GUIDELINE AMOUNT OF
49 SPOUSAL SUPPORT PURSUANT TO THIS SUBDIVISION, THE COURT SHALL SET FORTH,
50 IN A WRITTEN DECISION OR ON THE RECORD, THE GUIDELINE AMOUNT OF SPOUSAL
51 SUPPORT, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT
52 ADJUSTED THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT. SUCH DECISION, WHETHER
53 IN WRITING OR ON THE RECORD, SHALL NOT BE WAIVED BY EITHER PARTY OR
54 COUNSEL.

1 (C) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL
2 NOT ENTER A SPOUSAL SUPPORT ORDER UNLESS THE COURT INFORMS THE UNREPRE-
3 SENTED PARTY OR PARTIES OF THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT.

4 7. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT MAKES A FINDING AT THE
5 TIME OF TRIAL THAT IT WAS PRESENTED WITH INSUFFICIENT EVIDENCE TO DETER-
6 MINE INCOME, THE COURT SHALL ORDER THE SPOUSAL SUPPORT AWARD BASED UPON
7 THE NEEDS OF THE PAYEE OR THE STANDARD OF LIVING OF THE PARTIES PRIOR TO
8 COMMENCEMENT OF THE SPOUSAL SUPPORT PROCEEDING, WHICHEVER IS GREATER.
9 SUCH ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF
10 CHANGE IN CIRCUMSTANCES UPON A SHOWING OF SUBSTANTIAL NEWLY DISCOVERED
11 EVIDENCE.

12 8. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF SPOUSAL
13 SUPPORT EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS
14 OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SECTION, BROUGHT PURSUANT TO
15 THIS ARTICLE, THE SPOUSAL SUPPORT GUIDELINES SET FORTH IN THIS SECTION
16 SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION
17 OF SUCH SPOUSAL SUPPORT ORDER.

18 9. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE SPOUSAL SUPPORT
19 OR MAINTENANCE WAS ESTABLISHED IN A WRITTEN AGREEMENT PROVIDING FOR
20 SPOUSAL SUPPORT MADE PURSUANT TO SECTION FOUR HUNDRED TWENTY-FIVE OF
21 THIS ARTICLE OR MADE PURSUANT TO SUBDIVISION THREE OF PART B OF SECTION
22 TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW ENTERED INTO PRIOR
23 TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN
24 WHICH AMENDED THIS SECTION, BROUGHT PURSUANT TO THIS ARTICLE, THE SPOUS-
25 AL SUPPORT GUIDELINES SET FORTH IN THIS SECTION SHALL NOT CONSTITUTE A
26 CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SPOUSAL SUPPORT
27 ORDER.

28 10. THE COURT MAY MODIFY AN ORDER OF SPOUSAL SUPPORT UPON A SHOWING OF
29 A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. UNLESS SO MODIFIED, ANY ORDER FOR
30 SPOUSAL SUPPORT ISSUED PURSUANT TO THIS SECTION SHALL CONTINUE UNTIL THE
31 EARLIEST TO OCCUR OF THE FOLLOWING:

32 (A) A WRITTEN STIPULATION OR AGREEMENT BETWEEN THE PARTIES;

33 (B) AN ORAL STIPULATION OR AGREEMENT BETWEEN THE PARTIES ENTERED INTO
34 ON THE RECORD IN OPEN COURT;

35 (C) ISSUANCE OF A JUDGMENT OF DIVORCE OR OTHER ORDER IN A MATRIMONIAL
36 PROCEEDING;

37 (D) THE DEATH OF EITHER PARTY.

38 S 8. This act shall take effect on the one hundred twentieth day after
39 it shall have become a law and shall apply to matrimonial actions and
40 family court actions for spousal support commenced on or after such
41 effective date; provided however that section three of this act shall
42 take effect on the thirtieth day after it shall have become a law and
43 shall apply to matrimonial actions commenced on or after such effective
44 date. Nothing in this act shall be deemed to affect the validity of any
45 agreement made pursuant to subdivision 3 of part B of section 236 of the
46 domestic relations law or section 425 of the family court act prior to
47 the effective date of this act.