

STATE OF NEW YORK

6608

2019-2020 Regular Sessions

IN ASSEMBLY

March 14, 2019

Introduced by M. of A. KOLB, CROUCH, FINCH, MONTESANO, LALOR -- Multi-Sponsored by -- M. of A. GIGLIO, HAWLEY -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings; to amend the domestic relations law, the social services law and the family court act, in relation to changing the denotation of visitation to parenting time; to amend the domestic relations law, in relation to matrimonial actions involving custody of children; and in relation to the obligations of child support; to amend the social services law, in relation to audits of support collection fiscal agents; to amend the family court act, in relation to the review of evidence; to amend the family court act, in relation to DNA evidence when question of paternity; to amend the domestic relations law, in relation to parental access to information; and to amend the family court act and the social services law, in relation to the payment of child support

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

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

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

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

5 § 240-d. Custody of children. 1. Where the court considers awarding
6 shared parenting pursuant to the provisions of this section "shared
7 parenting" shall mean an order awarding custody of the child to both
8 parties so that both parties share equally the legal responsibility and
9 control of such child and share equally the living experience in time
10 and physical care to assure frequent and continuing contact with both
11 parties, as the court deems to be in the best interests of the child,
12 taking into consideration the location and circumstances of each party.
13 The term "shared parenting" will be considered interchangeable with
14 "nearly equal shared parenting". An award of joint physical and legal
15 custody obligates the parties to exchange information concerning the
16 health, education and welfare of the minor child, and unless allocated,
17 apportioned, or decreed, the parents or parties shall confer with one
18 another in the exercise of decision-making rights, responsibilities and
19 authority.

20 2. (a) Upon the initial appearance in court in an action for divorce,
21 nullity or separate maintenance where custody, visitation or support of
22 a minor child is at issue, and where both parties agree to shared
23 parenting, the court shall appoint an independent evaluator with exper-
24 tise in the field, including but not limited to, child psychology,
25 domestic violence counseling, etc., to investigate the family dynamic
26 and interview the parents, children and other interested parties,
27 including but not limited to, family members, friends and co-workers.
28 The independent evaluator's goal is to determine whether shared parent-
29 ing is in the best interests of the child and to ensure that domestic
30 violence and/or any other type of abuse, reported or unreported by the
31 victim or by an appropriate federal, state or municipal agency, is not
32 present in the household setting. The court shall utilize the independ-
33 ent evaluator's analysis and report, along with other supporting docu-
34 ments provided by the parties, to determine the best interests of the
35 child and to award custody based on that determination.

36 (b) The court shall determine each party's ability to pay the cost
37 related to the evaluation. Any cost above and beyond the parents' abili-
38 ty to pay shall be incurred by the county.

39 (c) If either parent has been convicted of abuse, including but not
40 limited to, domestic violence and sexual abuse against either the other
41 parent and/or the child, shared parenting shall not be a custodial
42 option. If either parent accuses the other parent of domestic violence,
43 sexual abuse, etc., against him or herself, and/or the child, the court
44 shall suspend its determination as to whether or not shared parenting is
45 in the best interests of the child, until the accusation has been inves-
46 tigated and a determination has been made by law enforcement or appro-
47 priate federal, state or municipal agencies. If such agencies determine
48 that the abuse occurred, shared parenting shall not be a custodial
49 option. If such agency finds that abuse was not present, the court shall
50 resume its determination as to whether or not shared parenting is in the
51 best interests of the child. Should such allegations be proven false and
52 the court determined upon motion by the accused party that such allega-
53 tions were made maliciously and in bad faith, the court shall have the
54 authority to sanction the accusing party pursuant to the powers granted
55 to the court pursuant to section two hundred forty of this article.

3. For the purposes of this article a "parenting plan" shall be required to be submitted to the court if the court awards shared parenting.

Each parent must agree to a parenting plan during mediation. The parenting plan would provide for the minor children's physical care, maintain the minor children's emotional stability, and provide for the minor children's changing needs as he or she develops, in a manner which minimizes the need for future modifications to the plan. The parties would be encouraged to fulfill their parenting responsibilities through agreements in the parenting plan rather than by relying on judicial intervention.

The plan shall determine procedures for the day to day care of the minor child and procedures for transporting the minor child from one parent to the other parent at the start and conclusion of parenting time. The plan shall include time spent with each parent on a weekly basis, special occasions, including birthdays, religious and secular holidays and vacations. The plan shall also specify how major decisions regarding the minor child's health care, education, and religious upbringing will be made. Those items that remain unresolved will go before the judge for determination. The judge shall rely, in part, on the testimony of the mediation counselor in all unresolved issues. Other issues, including but not limited to property division, financial issues and child support shall not be addressed in this plan.

The court shall have final approval over such plan and may modify, suspend or nullify the plan at its discretion. The court shall have one year to review the parenting plan to determine whether such plan is being followed and continues to be in the best interests of the child. At such time, the court shall retain the power to modify, suspend or nullify the plan based on its findings.

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

§ 240-e. Parties in disagreement over shared parenting. 1. If the parties are seeking a custody arrangement other than shared parenting or where one parent objects to an award of shared parenting, the court must determine what custody arrangement is in the best interests of the child. If one party is seeking shared parenting and the other party is seeking sole custody, both parties shall bear the burden of proof that their requested arrangement is in the best interests of the child through the introduction of testimony and supporting documents, etc. to the court.

2. The court shall determine each party's ability to pay the cost related to the evaluation. Any cost above and beyond the parents' ability to pay shall be incurred by the county.

3. The court shall appoint an independent evaluator with expertise in, but not limited to, child psychology, domestic violence counseling, etc. to investigate the family dynamic and interview the parents, children and other interested parties, including but not limited to, family members, friends and co-workers. The independent evaluator's goal is to determine what custody arrangement is in the best interests of the child and to ensure that domestic violence and/or any other type of abuse, reported or unreported by the victim or by an appropriate federal, state or municipal agency, is not present in the household setting. The court shall utilize the independent evaluator's analysis and report, along with other supporting documents provided by the parties, to determine the best interests of the child and to award custody based on that determination. If one party sought shared parenting, and the court found

1 that such an award would not be in the best interests of the child, the
2 court must state its reasoning behind such determination in the order
3 setting out the custody award.

4 4. The court, in its discretion, may require the parent who was not
5 awarded shared parenting to fulfill certain conditions, including but
6 not limited to, parenting classes, general counseling, anger management
7 classes, and substance abuse counseling, and shall list such conditions
8 on the custody order.

9 5. Upon the non-custodial parent's motion, the court shall, one year
10 following the initial award of custody, revisit its findings and make a
11 subsequent determination whether or not shared parenting is in the best
12 interests of the child. Such review is contingent on the non-custodial
13 parent's completion of the conditions set forth in the custody order.

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

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

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

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

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

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

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

17 § 8. Subdivisions 1 and 1-a of section 240 of the domestic relations
18 law, subdivision 1 as amended by chapter 624 of the laws of 2002, para-
19 graph (a) of subdivision 1 as amended by chapter 567 of the laws of
20 2015, paragraph (a-1) of subdivision 1 as amended by chapter 295 of the
21 laws of 2009, paragraph (a-2) of subdivision 1 as added by chapter 473
22 of the laws of 2009, subparagraph 3 of paragraph (b) and paragraph (d)
23 of subdivision 1 as added and clause (iii) of subparagraph 2 of para-
24 graph (c) of subdivision 1 as amended by chapter 215 of the laws of
25 2009, and subdivision 1-a as amended by chapter 12 of the laws of 1996,
26 are amended to read as follows:

27 1. (a) In any action or proceeding brought (1) to annul a marriage or
28 to declare the nullity of a void marriage, or (2) for a separation, or
29 (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by
30 petition and order to show cause, the custody of or right to [~~visita-~~
31 ~~tion~~] parenting time with any child of a marriage, the court shall
32 require verification of the status of any child of the marriage with
33 respect to such child's custody and support, including any prior orders,
34 and shall enter orders for custody and support as, in the court's
35 discretion, justice requires, having regard to the circumstances of the
36 case and of the respective parties and to the best interests of the
37 child and subject to the provisions of subdivision one-c of this
38 section. Where either party to an action concerning custody of or a
39 right to [~~visitation~~] parenting time with a child alleges in a sworn
40 petition or complaint or sworn answer, cross-petition, counterclaim or
41 other sworn responsive pleading that the other party has committed an
42 act of domestic violence against the party making the allegation or a
43 family or household member of either party, as such family or household
44 member is defined in article eight of the family court act, and such
45 allegations are proven by a preponderance of the evidence, the court
46 must consider the effect of such domestic violence upon the best inter-
47 ests of the child, together with such other facts and circumstances as
48 the court deems relevant in making a direction pursuant to this section
49 and state on the record how such findings, facts and circumstances
50 factored into the direction. However, should such allegations be proven
51 false, the court shall have within its power the authority to sanction
52 the accusing party. The subject of an unfounded report of domestic abuse
53 who believes the report was made maliciously and in bad faith may pres-
54 ent a written request to the court for a determination that the reporter
55 acted maliciously or in bad faith and must be sanctioned. If a parent
56 makes a good faith allegation based on a reasonable belief supported by

1 facts that the child is the victim of child abuse, child neglect, or the
2 effects of domestic violence, and if that parent acts lawfully and in
3 good faith in response to that reasonable belief to protect the child or
4 seek treatment for the child, then that parent shall not be deprived of
5 custody, [~~visitation~~] parenting time or contact with the child, or
6 restricted in custody, [~~visitation~~] parenting time or contact, based
7 solely on that belief or the reasonable actions taken based on that
8 belief. If an allegation that a child is abused is supported by a
9 preponderance of the evidence, then the court shall consider such
10 evidence of abuse in determining the [~~visitation~~] parenting time
11 arrangement that is in the best interest of the child, and the court
12 shall not place a child in the custody of a parent who presents a
13 substantial risk of harm to that child, and shall state on the record
14 how such findings were factored into the determination. [~~Where a~~
15 ~~proceeding filed pursuant to article ten or ten-A of the family court~~
16 ~~act is pending at the same time as a proceeding brought in the supreme~~
17 ~~court involving the custody of, or right to visitation with, any child~~
18 ~~of a marriage, the court presiding over the proceeding under article ten~~
19 ~~or ten-A of the family court act may jointly hear the dispositional~~
20 ~~hearing on the petition under article ten or the permanency hearing~~
21 ~~under article ten-A of the family court act and, upon referral from the~~
22 ~~supreme court, the hearing to resolve the matter of custody or visita-~~
23 ~~tion in the proceeding pending in the supreme court; provided however,~~
24 ~~the court must determine custody or visitation in accordance with the~~
25 ~~terms of this section.~~]

26 An order directing the payment of child support shall contain the
27 social security numbers of the named parties. [~~In all cases there shall~~
28 ~~be no prima facie right to the custody of the child in either parent.~~
29 ~~Such direction~~] Before the court makes any order awarding custody to a
30 person or persons other than a parent without consent of the parents, it
31 shall make a finding that an award of custody to a parent would be
32 detrimental to the child and the award to the nonparent is required to
33 serve the best interests of the child. Allegations that parental custody
34 would be detrimental to the child, other than a statement of the ulti-
35 mate fact, shall not appear in the pleadings. The court may, in its
36 discretion, exclude the public for the hearing on this issue. The court
37 shall state in writing the reasons for its decision and why the award
38 made was found to be in the best interest of the child. Any direction
39 made pursuant to this subdivision shall make provision for child support
40 out of the property of [~~either or~~] both parents. The court shall make
41 its award for child support pursuant to subdivision one-b of this
42 section. Such direction may provide for reasonable visitation rights to
43 the maternal and/or paternal grandparents of any child of the parties.
44 Such direction as it applies to rights of visitation or parenting time
45 with a child remanded or placed in the care of a person, official, agen-
46 cy or institution pursuant to article ten of the family court act, or
47 pursuant to an instrument approved under section three hundred fifty-
48 eight-a of the social services law, shall be enforceable pursuant to
49 part eight of article ten of the family court act and sections three
50 hundred fifty-eight-a and three hundred eighty-four-a of the social
51 services law and other applicable provisions of law against any person
52 having care and custody, or temporary care and custody, of the child.
53 Notwithstanding any other provision of law, any written application or
54 motion to the court for the establishment, modification or enforcement
55 of a child support obligation for persons not in receipt of public
56 assistance and care must contain either a request for child support

1 enforcement services which would authorize the collection of the support
2 obligation by the immediate issuance of an income execution for support
3 enforcement as provided for by this chapter, completed in the manner
4 specified in section one hundred eleven-g of the social services law; or
5 a statement that the applicant has applied for or is in receipt of such
6 services; or a statement that the applicant knows of the availability of
7 such services, has declined them at this time and where support enforce-
8 ment services pursuant to section one hundred eleven-g of the social
9 services law have been declined that the applicant understands that an
10 income deduction order may be issued pursuant to subdivision (c) of
11 section fifty-two hundred forty-two of the civil practice law and rules
12 without other child support enforcement services and that payment of an
13 administrative fee may be required. The court shall provide a copy of
14 any such request for child support enforcement services to the support
15 collection unit of the appropriate social services district any time it
16 directs payments to be made to such support collection unit. Addi-
17 tionally, the copy of any such request shall be accompanied by the name,
18 address and social security number of the parties; the date and place of
19 the parties' marriage; the name and date of birth of the child or chil-
20 dren; and the name and address of the employers and income payors of the
21 party from whom child support is sought or from the party ordered to pay
22 child support to the other party. Such direction may require the payment
23 of a sum or sums of money either directly to the custodial parent or to
24 third persons for goods or services furnished for such child, or for
25 both payments to the custodial parent and to such third persons;
26 provided, however, that unless the party seeking or receiving child
27 support has applied for or is receiving such services, the court shall
28 not direct such payments to be made to the support collection unit, as
29 established in section one hundred eleven-h of the social services law.
30 Every order directing the payment of support shall require that if
31 either parent currently, or at any time in the future, has health insur-
32 ance benefits available that may be extended or obtained to cover the
33 child, such parent is required to exercise the option of additional
34 coverage in favor of such child and execute and deliver to such person
35 any forms, notices, documents or instruments necessary to assure timely
36 payment of any health insurance claims for such child.

37 (a-1)(1) Permanent and initial temporary orders of custody or [~~visita-~~
38 ~~tion~~] parenting time. Prior to the issuance of any permanent or initial
39 temporary order of custody or [~~visitation~~] parenting time, the court
40 shall conduct a review of the decisions and reports listed in subpara-
41 graph three of this paragraph.

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

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

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

53 (ii) reports of the statewide computerized registry of orders of
54 protection established and maintained pursuant to section two hundred
55 twenty-one-a of the executive law, and reports of the sex offender

1 registry established and maintained pursuant to section one hundred
2 sixty-eight-b of the correction law.

3 (4) Notifying counsel and issuing orders. Upon consideration of deci-
4 sions pursuant to article ten of the family court act, and registry
5 reports and notifying counsel involved in the proceeding, or in the
6 event of a self-represented party, notifying such party of the results
7 thereof, including any court appointed attorney for children, the court
8 may issue a temporary, successive temporary or final order of custody or
9 [~~visitation~~] parenting time.

10 (5) Temporary emergency order. Notwithstanding any other provision of
11 the law, upon emergency situations, including computer malfunctions, to
12 serve the best interest of the child, the court may issue a temporary
13 emergency order for custody or [~~visitation~~] parenting time in the event
14 that it is not possible to timely review decisions and reports on regis-
15 tries as required pursuant to subparagraph three of this paragraph.

16 (6) After issuing a temporary emergency order. After issuing a tempo-
17 rary emergency order of custody or [~~visitation~~] parenting time, the
18 court shall conduct reviews of the decisions and reports on registries
19 as required pursuant to subparagraph three of this paragraph within
20 twenty-four hours of the issuance of such temporary emergency order.
21 Should such twenty-four hour period fall on a day when court is not in
22 session, then the required reviews shall take place the next day the
23 court is in session. Upon reviewing decisions and reports the court
24 shall notify associated counsel, self-represented parties and attorneys
25 for children pursuant to subparagraph four of this paragraph and may
26 issue temporary or permanent custody or [~~visitation~~] parenting time
27 orders.

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

43 (a-2) Military service by parent; effect on child custody orders. (1)
44 During the period of time that a parent is activated, deployed or tempo-
45 rarily assigned to military service, such that the parent's ability to
46 continue as a joint caretaker or the primary caretaker of a minor child
47 is materially affected by such military service, any orders issued
48 pursuant to this section, based on the fact that the parent is acti-
49 vated, deployed or temporarily assigned to military service, which would
50 materially affect or change a previous judgment or order regarding
51 custody of that parent's child or children as such judgment or order
52 existed on the date the parent was activated, deployed, or temporarily
53 assigned to military service, shall be subject to review pursuant to
54 subparagraph three of this paragraph. Any relevant provisions of the
55 Service Member's Civil Relief Act shall apply to all proceedings
56 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 subparagraph three of this paragraph. 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~~ parenting time and other contact. For such purposes, a "leave from military service" shall be a period of not more than three months.

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

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

(b) As used in this section, the following terms shall have the following meanings:

(1) "Health insurance benefits" means any medical, dental, optical and prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans.

(2) "Available health insurance benefits" means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person, shall be considered unavailable.

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

1 residence to the services covered by the health insurance benefits or
2 through benefits provided under a reciprocal agreement; provided, howev-
3 er, this presumption may be rebutted for good cause shown including, but
4 not limited to, the special health needs of the child. The court shall
5 set forth such finding and the reasons therefor in the order of support.

6 (c) When the person on whose behalf the petition is brought is a
7 child, the court shall consider the availability of health insurance
8 benefits to all parties and shall take the following action to ensure
9 that health insurance benefits are provided for the benefit of the
10 child:

11 (1) Where the child is presently covered by health insurance benefits,
12 the court shall direct in the order of support that such coverage be
13 maintained, unless either parent requests the court to make a direction
14 for health insurance benefits coverage pursuant to paragraph two of this
15 subdivision.

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

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

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

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

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

47 (e) The court shall provide in the order of support that the legally
48 responsible relative immediately notify the other party, or the other
49 party and the support collection unit when the order is issued on behalf
50 of a child in receipt of public assistance and care or in receipt of
51 services pursuant to section one hundred eleven-g of the social services
52 law, of any change in health insurance benefits, including any termi-
53 nation of benefits, change in the health insurance benefit carrier,
54 premium, or extent and availability of existing or new benefits.

55 (f) Where the court determines that health insurance benefits are
56 available, the court shall provide in the order of support that the

1 legally responsible relative immediately enroll the eligible dependents
2 named in the order who are otherwise eligible for such benefits without
3 regard to any seasonal enrollment restrictions. Such order shall further
4 direct the legally responsible relative to maintain such benefits as
5 long as they remain available to such relative. Such order shall further
6 direct the legally responsible relative to assign all insurance
7 reimbursement payments for health care expenses incurred for his or her
8 eligible dependents to the provider of such services or the party actu-
9 ally having incurred and satisfied such expenses, as appropriate.

10 (g) When the court issues an order of child support or combined child
11 and spousal support on behalf of persons in receipt of public assistance
12 and care or in receipt of services pursuant to section one hundred
13 eleven-g of the social services law, such order shall further direct
14 that the provision of health care benefits shall be immediately enforced
15 pursuant to section fifty-two hundred forty-one of the civil practice
16 law and rules.

17 (h) When the court issues an order of child support or combined child
18 and spousal support on behalf of persons other than those in receipt of
19 public assistance and care or in receipt of services pursuant to section
20 one hundred eleven-g of the social services law, the court shall also
21 issue a separate order which shall include the necessary direction to
22 ensure the order's characterization as a qualified medical child support
23 order as defined by section six hundred nine of the employee retirement
24 income security act of 1974 (29 USC 1169). Such order shall: (i) clearly
25 state that it creates or recognizes the existence of the right of the
26 named dependent to be enrolled and to receive benefits for which the
27 legally responsible relative is eligible under the available group
28 health plans, and shall clearly specify the name, social security number
29 and mailing address of the legally responsible relative, and of each
30 dependent to be covered by the order; (ii) provide a clear description
31 of the type of coverage to be provided by the group health plan to each
32 such dependent or the manner in which the type of coverage is to be
33 determined; and (iii) specify the period of time to which the order
34 applies. The court shall not require the group health plan to provide
35 any type or form of benefit or option not otherwise provided under the
36 group health plan except to the extent necessary to meet the require-
37 ments of a law relating to medical child support described in section
38 one thousand three hundred and ninety-six g of title forty-two of the
39 United States code.

40 (i) Upon a finding that a legally responsible relative wilfully failed
41 to obtain health insurance benefits in violation of a court order, such
42 relative will be presumptively liable for all health care expenses
43 incurred on behalf of such dependents from the first date such depen-
44 dents were eligible to be enrolled to receive health insurance benefits
45 after the issuance of the order of support directing the acquisition of
46 such coverage.

47 (j) The order shall be effective as of the date of the application
48 therefor, and any retroactive amount of child support due shall be
49 support arrears/past due support and shall, except as provided for here-
50 in, be paid in one lump sum or periodic sums, as the court shall direct,
51 taking into account any amount of temporary support which has been paid.
52 In addition, such retroactive child support shall be enforceable in any
53 manner provided by law including, but not limited to, an execution for
54 support enforcement pursuant to subdivision (b) of section fifty-two
55 hundred forty-one of the civil practice law and rules. When a child
56 receiving support is a public assistance recipient, or the order of

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

51 1-a. In any proceeding brought pursuant to this section to determine
52 the custody or [~~visitation~~] parenting time of minors, a report made to
53 the statewide central register of child abuse and maltreatment, pursuant
54 to title six of article six of the social services law, or a portion
55 thereof, which is otherwise admissible as a business record pursuant to
56 rule forty-five hundred eighteen of the civil practice law and rules

1 shall not be admissible in evidence, notwithstanding such rule, unless
2 an investigation of such report conducted pursuant to title six of arti-
3 cle six of the social services law has determined that there is some
4 credible evidence of the alleged abuse or maltreatment and that the
5 subject of the report has been notified that the report is indicated. In
6 addition, if such report has been reviewed by the state commissioner of
7 ~~[social services]~~ children and family services or his or her designee
8 and has been determined to be unfounded, it shall not be admissible in
9 evidence. If such report has been so reviewed and has been amended to
10 delete any finding, each such deleted finding shall not be admissible.
11 If the state commissioner of ~~[social services]~~ children and family
12 services or his or her designee has amended the report to add any new
13 finding, each such new finding, together with any portion of the
14 original report not deleted by the commissioner or his designee, shall
15 be admissible if it meets the other requirements of this subdivision and
16 is otherwise admissible as a business record. If such a report, or
17 portion thereof, is admissible in evidence but is uncorroborated, it
18 shall not be sufficient to make a fact finding of abuse or maltreatment
19 in such proceeding. Any other evidence tending to support the reliabil-
20 ity of such report shall be sufficient corroboration.

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

24 c. An order of protection entered pursuant to this subdivision may be
25 made in the final judgment in any matrimonial action or in a proceeding
26 to obtain custody of or ~~[visitation]~~ parenting time with any child under
27 this section, or by one or more orders from time to time before or
28 subsequent to final judgment, or by both such order or orders and the
29 final judgment. The order of protection may remain in effect after entry
30 of a final matrimonial judgment and during the minority of any child
31 whose custody or ~~[visitation]~~ parenting time is the subject of a
32 provision of a final judgment or any order. An order of protection may
33 be entered notwithstanding that the court for any reason whatsoever,
34 other than lack of jurisdiction, refuses to grant the relief requested
35 in the action or proceeding.

36 § 10. Section 241 of the domestic relations law, as amended by chapter
37 892 of the laws of 1986, is amended to read as follows:

38 § 241. Interference with or withholding of ~~[visitation]~~ parenting time
39 rights; alimony or maintenance suspension. When it appears to the satis-
40 faction of the court that a custodial parent receiving alimony or main-
41 tenance pursuant to an order, judgment or decree of a court of competent
42 jurisdiction has wrongfully interfered with or withheld ~~[visitation]~~
43 parenting time rights provided by such order, judgment or decree, the
44 court, in its discretion, ~~[may]~~ shall suspend such payments or cancel
45 any arrears that may have accrued during the time that ~~[visitation]~~
46 parenting time rights have been or are being interfered with or with-
47 held. Nothing in this section shall constitute a defense in any court to
48 an application to enforce payment of child support or grounds for the
49 cancellation of arrears for child support.

50 § 11. Section 251 of the domestic relations law, as added by chapter
51 164 of the laws of 1973, is amended to read as follows:

52 § 251. Filing of order in family court. When, in a matrimonial action,
53 the supreme court refers the issues of support, custody or ~~[visitation]~~
54 parenting time to the family court, the order or judgment shall provide
55 that a copy thereof shall be filed by the plaintiff's attorney, within
56 ten days, with the clerk of the family court therein specified.

§ 12. Paragraph (b) of subdivision 1 of section 252 of the domestic relations law, as amended by chapter 526 of the laws of 2013, 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 the child at stated periods;

§ 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.

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

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

(b) Where a social services official or the attorney for the child opposes incorporation of an order, judgment or agreement conferring visitation rights or parenting time as provided for in paragraph (e) of subdivision two of section three hundred eighty-four-a of this chapter, the social services official or attorney for the child shall apply for an order determining that the provisions of such order, judgment or agreement should not be incorporated into the instrument executed pursuant to such section. Such order shall be granted upon a finding, based on competent, relevant and material evidence, that the child's life or health would be endangered by incorporation and enforcement of visitation rights or parenting time as described in such order, judgment or agreement. Otherwise, the court shall deny such application.

(c) Where visitation rights or parenting time pursuant to an order, judgment or agreement are incorporated in an instrument, the parties may agree to an alternative schedule of visitation or parenting time equivalent to and consistent with the original or modified visitation or parenting time order, judgment, or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child. In the absence of such an agreement between the parties, the court may, in its discretion, upon appli-

1 cation of any party or the child's attorney, order an alternative sched-
2 ule of visitation or parenting time, as described herein, where it
3 determines that such schedule is necessary to facilitate visitation or
4 parenting time and to protect the best interests of the child.

5 (d) The order providing an alternative schedule of visitation or
6 parenting time shall remain in effect for the length of the placement of
7 the child as provided for in such instrument unless such order is subse-
8 quently modified by the court for good cause shown. Whenever the court
9 makes an order denying or modifying visitation or parenting time rights
10 pursuant to this subdivision, the instrument described in section three
11 hundred eighty-four-a of this chapter shall be deemed amended according-
12 ly.

13 § 15. Paragraphs (b), (d) and (f) of subdivision 2 of section 384-a of
14 the social services law, paragraph (b) as added by chapter 669 of the
15 laws of 1976, paragraph (d) as added by chapter 457 of the laws of 1988
16 and paragraph (f) as amended by chapter 41 of the laws of 2010, are
17 amended to read as follows:

18 (b) No provisions set forth in any such instrument regarding the right
19 of the parent or guardian to visit the child or to have services
20 provided to the child and to the parent or guardian to strengthen the
21 parental relationship may be terminated or limited by the authorized
22 agency having the care and custody of the child unless: (i) the instru-
23 ment shall have been amended to so limit or terminate such right, pursu-
24 ant to subdivision three of this section; or (ii) the right of visita-
25 tion or parenting time or to such services would be contrary to or
26 inconsistent with a court order obtained in any proceeding in which the
27 parent or guardian was a party.

28 (d) In any case where a parent who has transferred care and custody of
29 a child to a social services official pursuant to this section informs
30 the social services official that an order or judgment conferring [~~visi-~~
31 ~~tation~~] parenting time rights relating to the child has been entered by
32 the family court or supreme court or that a written agreement as
33 described in section two hundred thirty-six of the domestic relations
34 law between the parents confers such rights, any instrument executed
35 pursuant to this section shall incorporate the provisions of such order,
36 judgment or agreement to the extent that [~~visitation~~] parenting time
37 rights are affected and shall provide for [~~visitation~~] parenting time or
38 other rights as required by such order, judgment or agreement. Such
39 incorporation shall not preclude a social services official from exer-
40 cising his authority pursuant to paragraph (e) or (f) of this subdivi-
41 sion.

42 (f) Nothing in this section shall be deemed to prohibit a social
43 services official or an attorney for the child, if any, from making an
44 application to modify the terms of a visitation or parenting time order,
45 incorporated pursuant to this section, for good cause shown, upon notice
46 to all interested parties, or to limit the right of a non-custodial
47 parent or grandparent to seek visitation or parenting time pursuant to
48 applicable provisions of law.

49 § 16. Subparagraph (iv) of paragraph (c) of subdivision 2 of section
50 384-a of the social services law, as amended by chapter 256 of the laws
51 of 1990, is amended to read as follows:

52 (iv) that the parent or guardian has a right to supportive services,
53 which shall include preventive and other supportive services authorized
54 to be provided pursuant to the state's consolidated services plan, to
55 visit the child, and to determine jointly with the agency the terms and
56 frequency of visitation or parenting time;

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

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to ~~[visit]~~ have parenting time with the child within the correctional facility, if such ~~[visiting]~~ parenting time is in the best interests of the child. When no ~~[visitation]~~ parenting time between child and incarcerated parent has been arranged for or permitted by the authorized agency because such ~~[visitation]~~ parenting time is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such ~~[visitation]~~ parenting time. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

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

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

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

1. The legislature finds that the centralized delivery of child protective services, preventive services, adoption services and foster care services in a social ~~[service]~~ services district with a population of more than two million hinders their effective delivery and adds unnecessary costs. Numerous studies have recommended that such services serve small areas, be located in such areas, and be integrated. Such relocation will: give caseworkers greater knowledge of their assigned community, the residents of that community and the availability of community-based services; increase the availability of caseworkers; reduce travel time for caseworkers; enable children in foster care to remain in their own communities and schools and maintain their friendships; enable children in foster care to have greater ~~[visitation]~~ parenting time with their parents; provide for more effective delivery of preventive services; and expedite adoptions and otherwise reduce the amount of time children spend in foster care.

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

§ 20. 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

§ 21. 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]~~ article, 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,

1 the judge may make a final determination of the issue of support, or
2 immediately refer the proceeding to a support magistrate for further
3 proceedings regarding child support or other matters within the authori-
4 ty of the support magistrate.

5 § 22. Subdivision (a) of section 439 of the family court act, as
6 amended by section 2 of chapter 468 of the laws of 2012, is amended to
7 read as follows:

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

44 § 23. Subdivision (b) of section 446 of the family court act, as
45 amended by chapter 526 of the laws of 2013, is amended to read as
46 follows:

47 (b) to permit a parent, or a person entitled to visitation or parent-
48 ing time by a court order or a separation agreement, to visit or have
49 time with the child at stated periods;

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

52 § 447. Order of [~~visitation~~] parenting time. (a) In the absence of an
53 order of custody or of [~~visitation~~] parenting time entered by the
54 supreme court, the court may make an order of custody or of [~~visitation~~]
55 parenting time, in accordance with subdivision one of section two
56 hundred forty of the domestic relations law, requiring one parent to

1 permit the other to visit the children at stated periods without an
2 order of protection, even where the parents are divorced and the support
3 order is for a child only.

4 (b) Any order of the family court under this section shall terminate
5 when the supreme court makes an order of custody or of [~~visitation~~]
6 parenting time concerning the children, unless the supreme court contin-
7 ues the order of the family court.

8 § 25. Subdivision (a) of section 456 of the family court act, as
9 amended by chapter 809 of the laws of 1963, is amended to read as
10 follows:

11 (a) No person may be placed on probation under this article unless the
12 court makes an order to that effect, either at the time of the making of
13 an order of support or under section four hundred fifty-four of this
14 part. The period of probation may continue so long as an order of
15 support, order of protection or order of [~~visitation~~] parenting time
16 applies to such person.

17 § 26. Subdivisions (a) and (b) of section 467 of the family court act,
18 as amended by chapter 40 of the laws of 1981, are amended to read as
19 follows:

20 (a) In an action for divorce, separation or annulment, the supreme
21 court may refer to the family court the determination of applications to
22 fix temporary or permanent custody or [~~visitation~~] parenting time,
23 applications to enforce judgments and orders of custody or [~~visitation~~]
24 parenting time, and applications to modify judgments and orders of
25 custody which modification may be granted only upon a showing to the
26 family court that there has been a subsequent change of circumstances,
27 such as loss of employment or change in income, and that modification is
28 required.

29 (b) In the event no such referral has been made and unless the supreme
30 court provides in the order or judgment awarding custody or [~~visitation~~]
31 parenting time in an action for divorce, separation or annulment, that
32 it may be enforced or modified only in the supreme court, the family
33 court may: (i) determine an application to enforce the order or judgment
34 awarding custody or [~~visitation~~] parenting time, or (ii) determine an
35 application to modify the order or judgment awarding custody or [~~visita-~~
36 ~~tion~~] parenting time upon a showing that there has been a subsequent
37 change of circumstances and modification is required.

38 § 27. Section 511 of the family court act, as amended by chapter 533
39 of the laws of 1999, is amended to read as follows:

40 § 511. Jurisdiction. Except as otherwise provided, the family court
41 has exclusive original jurisdiction in proceedings to establish paterni-
42 ty and, in any such proceedings in which it makes a finding of paterni-
43 ty, to order support and to make orders of custody or of [~~visitation~~]
44 parenting time, as set forth in this article. On its own motion, the
45 court may at any time in the proceedings also direct the filing of a
46 neglect petition in accord with the provisions of article ten of this
47 act. In accordance with the provisions of section one hundred eleven-b
48 of the domestic relations law, the surrogate's court has original juris-
49 diction concurrent with the family court to determine the issues relat-
50 ing to the establishment of paternity.

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

54 § 549. Order of [~~visitation~~] parenting time. (a) If an order of fili-
55 ation is made or if a paternity agreement or compromise is approved by
56 the court, in the absence of an order of custody or of [~~visitation~~]

1 parenting time entered by the supreme court the family court may make an
2 order of custody or of [~~visitation~~] parenting time, in accordance with
3 subdivision one of section two hundred forty of the domestic relations
4 law, requiring one parent to permit the other to visit the child or
5 children at stated periods.

6 (b) Any order of the family court under this section shall terminate
7 when the supreme court makes an order of custody or of [~~visitation~~]
8 parenting time concerning the child or children, unless the supreme
9 court continues the order of the family court.

10 § 29. Subdivision (b) of section 551 of the family court act, as
11 amended by chapter 526 of the laws of 2013, is amended to read as
12 follows:

13 (b) to permit a parent, or a person entitled to visitation or parent-
14 ing time by a court order or a separation agreement to visit the child
15 at stated periods;

16 § 30. Section 651 of the family court act, as amended by chapter 85 of
17 the laws of 1996, subdivision (b) as amended by chapter 657 of the laws
18 of 2003, subdivision (c-1) as added by chapter 567 of the laws of 2015,
19 subdivision (d) as amended by chapter 41 of the laws of 2010, subdivi-
20 sion (e) as amended by chapter 295 of the laws of 2009, and subdivision
21 (f) as added by chapter 473 of the laws of 2009, is amended to read as
22 follows:

23 § 651. Jurisdiction over habeas corpus proceedings and petitions for
24 custody [~~and~~] of, visitation of, or parenting time with minors. (a) When
25 referred from the supreme court or county court to the family court, the
26 family court has jurisdiction to determine, in accordance with subdivi-
27 sion one of section two hundred forty of the domestic relations law and
28 with the same powers possessed by the supreme court in addition to its
29 own powers, habeas corpus proceedings and proceedings brought by peti-
30 tion and order to show cause, for the determination of the custody [~~or~~]
31 of, visitation of or parenting time with minors.

32 (b) When initiated in the family court, the family court has jurisdic-
33 tion to determine, in accordance with subdivision one of section two
34 hundred forty of the domestic relations law and with the same powers
35 possessed by the supreme court in addition to its own powers, habeas
36 corpus proceedings and proceedings brought by petition and order to show
37 cause, for the determination of the custody of or visitation of or
38 parenting time with minors, including applications by a grandparent or
39 grandparents for visitation or custody rights pursuant to section seven-
40 ty-two or two hundred forty of the domestic relations law.

41 (c) When initiated in the family court pursuant to a petition under
42 part eight of article ten of this act or section three hundred fifty-
43 eight-a of the social services law, the family court has jurisdiction to
44 enforce or modify orders or judgments of the supreme court relating to
45 the visitation of or parenting time with minors in foster care, notwith-
46 standing any limitation contained in subdivision (b) of section four
47 hundred sixty-seven of this act.

48 (c-1) Where a proceeding filed pursuant to article ten or ten-A of
49 this act is pending at the same time as a proceeding brought in the
50 family court pursuant to this article, the court presiding over the
51 proceeding under article ten or ten-A of this act may jointly hear the
52 hearing on the custody [~~and~~], visitation and parenting time petition
53 under this article and the dispositional hearing on the petition under
54 article ten or the permanency hearing under article ten-A of this act;
55 provided, however, the court must determine the custody [~~and~~], visita-

tion and parenting time petition in accordance with the terms of this article.

(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 or parenting time. Prior to the issuance of any permanent or initial temporary order of custody or visitation, 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 or parenting time. Prior to the issuance of any successive temporary order of custody or visitation, or 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 or 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 or 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 or 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 or parenting time orders.

1 7. Feasibility study. The commissioner of the office of children and
2 family services, in conjunction with the office of court administration,
3 is hereby authorized and directed to examine, study, evaluate and make
4 recommendations concerning the feasibility of the utilization of comput-
5 ers in family courts which are connected to the statewide central regis-
6 ter of child abuse and maltreatment established and maintained pursuant
7 to section four hundred twenty-two of the social services law, as a
8 means of providing family courts with information regarding parties
9 requesting orders of custody or visitation. Such commissioner shall make
10 a preliminary report to the governor and the legislature of findings,
11 conclusions and recommendations not later than January thirty-first, two
12 thousand nine, and a final report of findings, conclusions and recommen-
13 dations not later than June first, two thousand nine, and shall submit
14 with the reports such legislative proposals as are deemed necessary to
15 implement the commissioner's recommendations.

16 (f) Military service by parent; effect on child custody orders. 1.
17 During the period of time that a parent is activated, deployed or tempo-
18 rarily assigned to military service, such that the parent's ability to
19 continue as a joint caretaker or the primary caretaker of a minor child
20 is materially affected by such military service, any orders issued
21 pursuant to this section, based on the fact that the parent is acti-
22 vated, deployed or temporarily assigned to military service, which would
23 materially affect or change a previous judgment or order regarding
24 custody of that parent's child or children as such judgment or order
25 existed on the date the parent was activated, deployed, or temporarily
26 assigned to military service, shall be subject to review pursuant to
27 paragraph three of this subdivision. Any relevant provisions of the
28 Service Member's Civil Relief Act shall apply to all proceedings
29 governed by this section.

30 2. During such period, the court may enter an order to modify custody
31 if there is clear and convincing evidence that the modification is in
32 the best interests of the child. An attorney for the child shall be
33 appointed in all cases where a modification is sought during such mili-
34 tary service. Such order shall be subject to review pursuant to para-
35 graph three of this subdivision. When entering an order pursuant to this
36 section, the court shall consider and provide for, if feasible and if in
37 the best interests of the child, contact between the military service
38 member and his or her child including, but not limited to, electronic
39 communication by e-mail, webcam, telephone, or other available means.
40 During the period of the parent's leave from military service, the court
41 shall consider the best interests of the child when establishing a
42 parenting schedule, including ~~visiting~~ parenting time and other
43 contact. For such purpose, a "leave from military service" shall be a
44 period of not more than three months.

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

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

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

§ 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 services]~~ the office of children and family services or his or her 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 services]~~ the office of children and family services or his or her 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 commissioner or his or her 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.

§ 32. 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.

§ 33. Subdivision (b) of section 656 of the family court act, as amended by chapter 526 of the laws of 2013, 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 the child at stated periods;

§ 34. 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, or a person entitled to visitation or parent-ing time by a court order or a separation agreement, to visit the child at stated periods;

§ 35. Subdivision (b) of section 842 of the family court act, as amended by chapter 526 of the laws of 2013, is amended to read as follows:

(b) to permit a parent, or a person entitled to visitation or parent-ing time by a court order or a separation agreement, to visit the child at stated periods;

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

§ 1030. Order of visitation or parenting time by a respondent. (a) A respondent shall have the right to reasonable and regularly scheduled visitation or parenting time with a child in the temporary custody of a social services official pursuant to this part or pursuant to subdivision (d) of section one thousand fifty-one of this article, unless limited by an order of the family court.

(b) A respondent who has not been afforded such visitation or parent-ing time may apply to the court for an order requiring the local social services official having temporary custody of the child pursuant to this part or pursuant to subdivision (d) of section one thousand fifty-one of this article, to permit the respondent to visit the child at stated periods. Such application shall be made upon notice to the local social services official and to any attorney appointed to represent the child, who shall be afforded an opportunity to be heard thereon.

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

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

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

(f) Interference with or withholding of parenting time without cause shall result in immediate sanctions. A judge who sanctions a party for failure to comply with an order of parenting time shall have available the following remedies:

(1) awarding of counsel fees of the aggrieved party against the party who violated the terms of the order;

(2) mediation education;

(3) community service;

(4) awarding of compensatory time with the child for which the party was deprived; and

(5) other economic sanctions which may be decided on a case to case basis.

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

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

§ 38. Paragraph (b) of subdivision 1 of section 1056 of the family court act, as amended by chapter 526 of the laws of 2013, 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 the child at stated periods;

§ 39. Part 8 of article 10 of the family court act, as added by chapter 457 of the laws of 1988, section 1081 as amended by chapter 242 of the laws of 2016, paragraph (b) of subdivision 2, paragraph (c) of subdivision 3, paragraph (b) of subdivision 4, paragraphs (a) and (b) of subdivision 5 as amended by chapter 359 of the laws of 2017, paragraph (b) of subdivision 1, subdivision 2 of section 1082 and subdivision 4 of section 1085 as amended by chapter 41 of the laws of 2010, and section 1085 as amended by chapter 378 of the laws of 1999, is amended to read as follows:

PART 8

VISITATION ~~OF~~ AND PARENTING TIME WITH
MINORS IN FOSTER CARE

Section 1081. Visitation or parenting time rights.

1082. Approval, modification or denial of visitation or parenting time rights.

1083. Duration of orders affecting visitation or parenting time rights.

1084. Out-of-wedlock children; paternity.

1085. Visitation, parenting time and custody rights unenforceable; murder of parent, custodian, guardian, or child.

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

2. (a) A non-custodial parent or any grandparent or grandparents who have not been afforded the visitation or parenting time rights described in subdivision one of this section shall have the right to petition the court for enforcement of visitation or parenting time rights with a child remanded or placed in the care of a social services official pursuant to this article, as such visitation or parenting time rights have been conferred by order of the family court or by any order or judgment of the supreme court, or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law.

(b) A child remanded or placed in the care of a social services official pursuant to this article or article ten-A or ten-C of this act shall have the right to move for visitation or parenting time and contact with his or her siblings. The siblings of a child remanded or placed in the care of a social services official pursuant to this article or article ten-A or ten-C of this act shall have a right to petition the court for visitation or parenting time and contact with such child. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent.

3. (a) The petition by a non-custodial parent shall allege that such parent has visitation or parenting time rights conferred by order of the family court or by any order or judgment of the supreme court or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law, shall have a copy of such order, judgment or agreement attached thereto, shall request enforcement of such rights pursuant to this part, and shall state, when known by the petitioner, that visitation or parenting time rights with the child by any grandparent or grandparents have been conferred by order of the supreme court or family court pursuant to section seventy-two or two hundred forty of the domestic relations law, and shall provide the name and address of such grandparent or grandparents.

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

(c) A motion by a child remanded or placed in the care of a social services official pursuant to this article or article ten-A or ten-C of this act or a petition by a sibling of such child shall allege that visitation or parenting time and contact would be in the best interests of both the child who has been remanded or placed and the child's sibling.

4. (a) A petition filed under paragraphs (a) or (b) of subdivision three of this section shall be served upon the respondent in a proceeding under this article, the local social services official having the care of the child, any grandparent or grandparents named in the petition as having visitation rights conferred by court order pursuant to section seventy-two or two hundred forty of the domestic relations law, and upon the child's attorney. The petition shall be served in such manner as the court may direct.

(b) A petition or motion filed under paragraph (b) of subdivision two of this section shall be served upon: (i) the respondent in the proceeding under this article or article ten-A or ten-C of this act; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the sibling to be visited or with whom contact is sought; (v) any non-respondent parent in the proceeding under this article or article ten-A or ten-C of this act; (vi) such sibling himself or herself if ten years of age or older; and (vii) such sibling's attorney, if any. The petition or motion shall be served in such manner as the court may direct.

5. (a) Upon receipt of a petition filed under paragraphs (a) or (b) of subdivision two of this section, the court shall, subject to the provisions of section one thousand eighty-two of this part, require that

1 any order of a family court or order or judgment of the supreme court,
2 or any agreement between the parents as described in subdivision one of
3 this section, granting visitation or parenting time rights to the non-
4 custodial parent, grandparent or grandparents, be incorporated in any
5 preliminary order or order of placement made under this article to the
6 extent that such order, judgment or agreement confers visitation or
7 parenting time rights. In any case where a dispositional hearing has not
8 been held or will not be held within thirty days of the filing of such
9 petition the court shall order the person, official, agency or institu-
10 tion caring for the child pursuant to this article to comply with such
11 part of the order, judgment or agreement granting visitation or parent-
12 ing time rights.

13 (b) Upon receipt of a petition or motion filed under paragraph (c) of
14 subdivision three of this section, the court shall determine, after
15 giving notice and an opportunity to be heard to persons served under
16 subdivision four of this section, whether visitation or parenting time
17 and contact would be in the best interests of the child and his or her
18 sibling. The court's determination may be included in the dispositional
19 order issued pursuant to section one thousand fifty-two or one thousand
20 ninety-five of this chapter or in a permanency hearing order issued
21 pursuant to section one thousand eighty-nine of this chapter.

22 (c) Violation of an order issued under this section shall be punisha-
23 ble pursuant to section seven hundred fifty-three of the judiciary law.

24 § 1082. Approval, modification or denial of visitation or parenting
25 time rights. 1. (a) Upon receipt of a petition pursuant to subdivision
26 four of section one thousand eighty-one of this part, the local depart-
27 ment of social services shall make inquiry of the state central register
28 of child abuse and maltreatment to determine whether or not the peti-
29 tioner is a subject of an indicated report of child abuse or maltreat-
30 ment, as such terms are defined in section four hundred twelve of the
31 social services law, and shall further ascertain whether or not the
32 petitioner is a respondent in a proceeding under this article whereby
33 the child with whom visitation or parenting time is sought has been
34 allegedly abused or neglected or has been adjudicated as an abused or
35 neglected child.

36 (b) The department, the child's attorney and the respondent in a
37 proceeding under this article, shall have the right to be heard with
38 respect to a petition for an order to enforce visitation or parenting
39 time rights under this part.

40 2. Where the local department of social services or the child's attor-
41 ney opposes a petition described in section one thousand eighty-one of
42 this part, the department or the child's attorney as appropriate shall
43 serve and file an answer to the petition. The court shall, upon the
44 filing of such answer, set a date for a hearing on such petition and
45 shall notify the parents, grandparent or grandparents, the department
46 and the child's attorney of such hearing date.

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

51 4. In any hearing under this section, the court shall approve such
52 petition unless the court finds upon competent, relevant and material
53 evidence that enforcement of visitation or parenting time rights as
54 described in the order, judgment or agreement would endanger the child's
55 life or health. Upon such a finding, the court shall make an order deny-
56 ing such petition or make such other order affecting enforcement of

1 visitation or parenting time rights as the court deems to be in the best
2 interests of the child.

3 5. (a) Where a petition is approved pursuant to this section the
4 parties may agree in writing to an alternative schedule of visitation or
5 parenting time equivalent to and consistent with the original or modi-
6 fied visitation or parenting time order or agreement where such alterna-
7 tive schedule reflects changed circumstances of the parties and is
8 consistent with the best interests of the child.

9 (b) In the absence of such an agreement between the parties, the court
10 may, in its discretion, order an alternative schedule of visitation or
11 parenting time as defined herein, where it determines that such schedule
12 is necessary to facilitate visitation or parenting time and to protect
13 the best interests of the child.

14 § 1083. Duration of orders affecting visitation or parenting time
15 rights. 1. Where an order of the court has been made incorporating an
16 order, judgment or agreement conferring visitation or parenting time
17 rights with a child on a non-custodial parent or grandparent into a
18 dispositional order under this article, or where the court otherwise
19 orders compliance by a person, official, agency or institution caring
20 for the child, with an order, judgment or agreement granting visitation
21 or parenting time rights, such order shall remain in effect for the
22 length of time the child remains in such care pursuant to this article,
23 unless such order is subsequently modified by the court for good cause
24 shown.

25 2. Where the court makes an order denying a petition seeking enforce-
26 ment of visitation or parenting time rights or makes an order modifying
27 visitation or parenting time rights, pursuant to the provisions of
28 section one thousand eighty-two of this part, such order shall remain in
29 effect for the length of time the child is placed with a person, offi-
30 cial, agency or institution caring for the child pursuant to this arti-
31 cle, unless such order is subsequently modified by the court for good
32 cause shown.

33 § 1084. Out-of-wedlock children; paternity. No [~~visitation~~] parenting
34 time right shall be enforceable under this part concerning any person
35 claiming to be a parent of an out-of-wedlock child without an adjudi-
36 cation of the paternity of such person by a court of competent jurisdic-
37 tion, or without an acknowledgement of the paternity of such person
38 executed pursuant to applicable provisions of law.

39 § 1085. Visitation, parenting time and custody rights unenforceable;
40 murder of parent, custodian, guardian, or child. 1. No visitation,
41 parenting time or custody order shall be enforceable under this part by
42 a person who has been convicted of murder in the first or second degree
43 in this state, or convicted of an offense in another jurisdiction which,
44 if committed in this state, would constitute either murder in the first
45 or second degree, of a parent, legal custodian, legal guardian, sibling,
46 half-sibling or step-sibling of the child unless:

47 (i) (A) such child is of suitable age to signify assent and such child
48 assents to such visitation, parenting time or custody; or

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

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

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

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

(ii) the court finds that such visitation, parenting time or custody is in the best interest of the child.

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

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

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

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

§ 242. Matrimonial actions involving custody of children; mediation and family counselling. In any matrimonial action involving the custody of children, the court shall direct the parties to attend mediation and family counselling sessions prior to the entry of any orders or judgments, except for temporary orders of protection or support, as provided for in the rules of the chief administrator of the courts, who shall promulgate rules and regulations therefor.

§ 41. Clause (i) of subparagraph 5 of paragraph (b) 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:

(i) gross (total) income less any federal, state, and local personal income taxes paid and contributions required pursuant to the federal insurance contributions act (social security and medicare), as should have been or should be reported in the most recent federal income tax return. If an individual files his/her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his/her gross income individually;

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

11. The department may provide for the performance of the collection and disbursement functions of the support collection units by contract with a fiscal agent. For purposes of any reference to support collection unit in this chapter or any other law, the fiscal agent under contract with the department shall be deemed to be part of all support collection units for which the fiscal agent performs collection and disbursement

1 functions. The department shall provide by rule for an annual audit and
2 performance appraisal of each fiscal agent.

3 § 43. The family court act is amended by adding a new section 385.3 to
4 read as follows:

5 § 385.3. Evidence. Notwithstanding any other provision of law, a fami-
6 ly court judge shall, in every proceeding and hearing under his or her
7 jurisdiction, review all evidence including law guardian reports, child
8 advocate reports, physician reports, psychologist reports and counseling
9 reports, as well as all third party communications related to the
10 proceeding or hearing.

11 § 44. Subdivision (a) of section 418 of the family court act, as
12 amended by chapter 214 of the laws of 1998, is amended to read as
13 follows:

14 (a) The court, on its own motion or motion of any party, when paterni-
15 ty is contested, shall order the mother, the child and the alleged
16 father to submit to one or more genetic marker or DNA marker tests of a
17 type generally acknowledged as reliable by an accreditation body desig-
18 nated by the secretary of the federal department of health and human
19 services and performed by a laboratory approved by such an accreditation
20 body and by the commissioner of health or by a duly qualified physician
21 to aid in the determination of whether the alleged father is or is not
22 the father of the child. No such test shall be ordered, however, upon a
23 written finding by the court that it is not in the best interests of the
24 child on the basis of res judicata, equitable estoppel or the presump-
25 tion of legitimacy of a child born to a married woman. The record or
26 report of the results of any such genetic marker or DNA test shall be
27 received in evidence, pursuant to subdivision (e) of rule forty-five
28 hundred eighteen of the civil practice law and rules where no timely
29 objection in writing has been made thereto. Any order pursuant to this
30 section shall state in plain language that the results of such test
31 shall be admitted into evidence, pursuant to rule forty-five hundred
32 eighteen of the civil practice law and rules absent timely objections
33 thereto and that if such timely objections are not made, they shall be
34 deemed waived and shall not be heard by the court. If the record or
35 report of results of any such genetic marker or DNA test or tests indi-
36 cate at least a ninety-five percent probability of paternity, the admis-
37 sion of such record or report shall create a rebuttable presumption of
38 paternity, and, if unrebutted, shall establish the paternity of and
39 liability for the support of a child pursuant to this article and arti-
40 cle five of this act. If child support is being paid and the record or
41 report of results of any genetic marker or DNA test or tests do not
42 indicate at least a ninety-five percent probability of paternity, if
43 unrebutted, the court shall order the immediate cessation of all child
44 support regardless of the length of time that child support has been
45 paid, except in a case where a sperm donor was used and the putative
46 father was aware of and consented to such use in which case there shall
47 not be a cessation of support.

48 § 45. The domestic relations law is amended by adding a new section
49 74-a to read as follows:

50 § 74-a. Parental access to information. Unless prohibited by federal
51 or state law, a parent shall have complete access to records and infor-
52 mation pertaining to the health, education and welfare of his or her
53 minor child, regardless of whether or not he or she is the custodial
54 parent, unless a court decrees that access to the information is not in
55 the best interest of the child.

§ 46. Subparagraph 3 of paragraph (b) 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:

(3) "Child support percentage" shall mean:

(i) seventeen percent of the combined parental income for one child, except in a case of shared parenting in which case ten percent of the combined parental income for one child;

(ii) twenty-five percent of the combined parental income for two children, except in a case of shared parenting in which case sixteen percent of the combined parental income for two children;

(iii) twenty-nine percent of the combined parental income for three children, except in a case of shared parenting in which case twenty-six percent of the combined parental income for three children;

(iv) thirty-one percent of the combined parental income for four children; and

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

In addition to the percentages established in this subparagraph for shared parenting, the court may include an additional seven percent upon the demonstration of necessity, based upon receipts, for clothing, care, medical attention, the expense of education, payment of funeral expenses, and other proper and reasonable expenses.

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

(8) Where the court determines that the custodial parent will receive tax savings because of being able to file as head of a household, take a child related tax deduction and/or take a child related earned income tax credit, the court shall add the amount saved to the custodial parent's income when determining combined parental income.

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

2-a. Nothing in this article shall impose any liability upon a person to support any minor child who has become emancipated, married, has ceased to attend school, or who, if it has been determined by the court, has become self-supporting. Such liability shall not be imposed for so long as the minor remains emancipated, married, has ceased to attend school or is self-supporting.

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

(e) Information maintained as part of the state case registry shall be made available to other state and federal agencies as provided for in federal statutes and regulations promulgated by the federal secretary of health and human services. Every January, May and September, a support payer's information shall be mailed to him or her by first class mail from the New York state child support collection unit to the support obligor's known home address or such other place where the support obligor is likely to receive first class mail. This shall include all payments, including arrearages, received by the child support collection unit.

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

(a) If the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to court order for a period of four months, the court may order the department of motor vehi-

cles to suspend the respondent's driving privileges, and if such order issues, the respondent may apply to the department of motor vehicles for a restricted use license pursuant to section five hundred thirty of the vehicle and traffic law. If the court finds that the respondent has in the past been timely in paying his or her support due then the respondent's driving privileges cannot be suspended without a hearing. The court may at any time upon payment of arrears or partial payment of arrears by the respondent order the department of motor vehicles to terminate the suspension of respondent's driving privileges. For purposes of determining whether a support obligor has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

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

1. If a respondent is brought before the court for failure to obey any lawful order of support [~~and if, after hearing,~~] the parties can choose to have a hearing before the court or to go through an arbitrator, in order to avoid a court appearance. An arbitrator shall be established through child support collection to arbitrate disputes when there are accusations of child support arrearage in order to avert a court appearance. If the court is satisfied by competent proof that the respondent has failed to obey any such order, the court may use any or all of the powers conferred upon it by this part. The court has the power to use any or all enforcement powers in every proceeding brought for violation of a court order under this part regardless of the relief requested in the petition.

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

(a) commit the respondent to jail for a term not to exceed six months. For purposes of this subdivision, failure to pay support, as ordered, shall constitute prima facie evidence of a willful violation. However, the court shall consider real circumstances when finding that a respondent has failed to comply with any lawful order of support, such as that a parent presently has voluntarily or involuntarily reduced resources or income. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. Such commitment does not prevent the court from subsequently committing the respondent for failure thereafter to comply with any such order; or

§ 53. Section 451 of the family court act, as amended by chapter 373 of the laws of 2014, is amended to read as follows:

§ 451. Continuing jurisdiction. 1. (a) Except as provided in article five-B of this act, the court has continuing jurisdiction over any support proceeding brought under this article until its judgment is completely satisfied and may modify, set aside or vacate any order issued in the course of the proceeding, provided, however, that the modification, set aside or vacatur shall not reduce or annul child support arrears accrued prior to the making of an application pursuant to this section. The court shall not reduce or annul any other arrears unless the defaulting party shows good cause for failure to make appli-

1 cation for relief from the judgment or order directing payment prior to
2 the accrual of the arrears, in which case the facts and circumstances
3 constituting such good cause shall be set forth in a written memorandum
4 of decision. A modification may increase support payments nunc pro tunc
5 as of the date of the initial application for support based on newly
6 discovered evidence. Any retroactive amount of support due shall be paid
7 and be enforceable as provided in section four hundred forty of this
8 article. Upon an application to set aside or vacate an order of support,
9 no hearing shall be required unless such application shall be supported
10 by affidavit and other evidentiary material sufficient to establish a
11 prima facie case for the relief requested.

12 (b) Once a year, a motion may be made by a child support obligor to
13 require an accounting by the parent receiving the child support on
14 behalf of the child or children. The accounting shall account for all
15 funds expended on the child or children and shall be used by the court
16 in determining whether the funds are being misused or not fulfilling the
17 child's or children's needs. The accounting shall include, but not be
18 limited to, the disposition of all funds paid by the child support obli-
19 gor and all funds expended on behalf of the child or children. Any
20 motion filed by a child support obligor pursuant to this subdivision
21 shall be accompanied by a sworn affidavit that the obligor has reason-
22 able grounds to question whether the child support funds are being used
23 appropriately and shall state the grounds in the affidavit.

24 2. A proceeding to modify an order of support shall be commenced by
25 the filing of a petition which shall allege facts sufficient to meet one
26 or more of the grounds enumerated in subdivision three of this section.

27 3. (a) The court may modify an order of child support, including an
28 order incorporating without merging an agreement or stipulation of the
29 parties, upon a showing of a substantial change in circumstances.
30 Incarceration shall not be a bar to finding a substantial change in
31 circumstances provided such incarceration is not the result of non-pay-
32 ment of a child support order, or an offense against the custodial
33 parent or child who is the subject of the order or judgment.

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

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

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

46 § 54. The closing paragraph of subdivision 1 of section 460 of the
47 family court act, as amended by chapter 815 of the laws of 1987, is
48 amended to read as follows:

49 and the party defaults in paying any sum of money due as required by the
50 order directing the payment thereof, the court, without regard to the
51 amount due, shall make an order directing the entry of judgment for the
52 amount of child support arrears, together with costs and disbursements.
53 This judgment shall be directed to be paid each month, at a rate not to
54 exceed ten percent of the defaulting party's regular monthly child
55 support payment, until the arrears are paid. The court shall make an
56 order directing the entry of judgment for the amount of arrears of any

1 other payments so directed, together with costs and disbursements,
2 unless the defaulting party shows good cause for failure to make appli-
3 cation for relief from the judgment or order directing such payment
4 prior to the accrual of such arrears. The court shall not make an order
5 reducing or [~~cancelling~~] ~~canceled~~ such arrears unless the facts and
6 circumstances constituting good cause are set forth in a written memo-
7 randum of decision. The application for such order shall be made upon
8 such notice to the party or other person as the court may direct. Such
9 judgment shall provide for the payment of interest on the amount of any
10 arrears if the default was willful, in that the defaulting party know-
11 ingly, consciously and voluntarily disregarded the obligation under a
12 lawful court order. Such interest shall be computed from the date on
13 which the payment was due, at the prevailing rate of interest on judg-
14 ments as provided in the civil practice law and rules.

15 § 55. This act shall take effect on the first of January next succeed-
16 ing the date on which it shall have become a law, provided that the
17 amendments to subdivision (a) of section 439 of the family court act
18 made by section twenty-one of this act shall be subject to the expira-
19 tion and reversion of such subdivision pursuant to subdivision 19 of
20 section 246 of chapter 81 of the laws of 1995, as amended, when upon
21 such date the provisions of section twenty-two of this act shall take
22 effect and provided further that any and all rules and regulations and
23 any other measures necessary to implement this act on its effective date
24 may be promulgated or taken on or before such date.