

# STATE OF NEW YORK

6085

2021-2022 Regular Sessions

## IN ASSEMBLY

March 10, 2021

Introduced by M. of A. TAGUE -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to procedures for certain temporary custody orders

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

1 Section 1. Subdivision 1 of section 240 of the domestic relations law  
2 is amended by adding a new paragraph (a-3) to read as follows:

3 (a-3) Parenting time; presumptions and procedures for temporary custo-  
4 dy orders. (1) A party to a custody proceeding may move for a temporary  
5 custody order. The motion must be supported by a petition. The court may  
6 award temporary custody pursuant to the provisions of this paragraph  
7 after a hearing, or, if there is no objection, solely on the basis of  
8 the petitions. If the parents present a temporary custody agreement and  
9 mutually agreed plan for parenting time, and the court confirms that the  
10 agreement adequately provides for the welfare of the child, such agree-  
11 ment shall become the temporary custody order of the court.

12 (2) In making an order for temporary custody, there shall be a fifty-  
13 fifty rebuttable presumption that the parents shall have temporary joint  
14 legal and shared physical custody and shall share equal parenting time.  
15 If an allegation of family violence is entered prior to the temporary  
16 custody order, the family violence hearing shall take place within thir-  
17 ty days to determine for a quick and expedient resolution not to impair  
18 the parent-child relationship. As used in this paragraph, the term  
19 "parenting time" shall mean the period of time that a parent may spend  
20 with his or her child pursuant to a court order under this chapter, the  
21 family court act or an order enforced under article five-A of this chap-  
22 ter.

23 (3) If a deviation from equal parenting time is warranted, the tempo-  
24 rary custody order shall include a statement of the court's reasons for  
25 such a determination, except when the court confirms the agreement of

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

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1 the parties. The parents, through mutual and agreed upon considerations,  
2 shall construct a parenting time schedule which maximizes the time each  
3 parent has with the child and is consistent with ensuring the child's  
4 welfare. In the event that the parents cannot agree on a parenting sche-  
5 dule deviating from equal parenting time, the court shall construct a  
6 parenting time schedule which maximizes the time each parent has with  
7 the child and is consistent with ensuring such child's welfare.

8 (4) Any temporary custody order shall address the circumstance in  
9 which the child will transfer from one parent to the other.

10 (5) If a proceeding to annul a marriage, to declare the nullity of a  
11 void marriage, for a separation or for a divorce is dismissed, any  
12 temporary custody order shall be vacated unless a parent moves that the  
13 proceeding continue as a custody proceeding and the court finds, after a  
14 hearing, that the circumstances of the parents and the best interests of  
15 the child require that a custody decree be issued.

16 (6) If a custody proceeding commenced in the absence of a proceeding  
17 to annul a marriage, to declare the nullity of a void marriage, for a  
18 separation or for a divorce is dismissed, any temporary custody order  
19 shall be vacated.

20 (7) If a court determines by a preponderance of the evidence that a  
21 person is a person who is acting as a parent, the court shall join such  
22 person in any action pursuant to the provisions of this paragraph as a  
23 party needed for just adjudication.

24 § 2. This act shall take effect on the ninetieth day after it shall  
25 have become a law.