

STATE OF NEW YORK

8186

IN SENATE

February 1, 2022

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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
26 the parties. The parents, through mutual and agreed upon considerations,
27 shall construct a parenting time schedule which maximizes the time each
28 parent has with the child and is consistent with ensuring the child's

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

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

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

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

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

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

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