STATE OF NEW YORK

9104

IN ASSEMBLY

January 31, 2022

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

AN ACT to amend the social services law and the family court act, in relation to administrative procedures for establishing support orders; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Paragraph g of subdivision 2 of section 111-c of the social services law, as amended by section 18 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

g. obtain from respondent, when appropriate and in accordance with the procedures established by section one hundred eleven-k **and section one hundred eleven-l** of this [~~chapter~~] **title**, an acknowledgement of parentage or an agreement to make support payments, or both;

§ 2. Paragraph (b) of subdivision 1 of section 111-k of the social services law, as amended by section 19 of part L of chapter 56 of the laws of 2020, is amended to read as follows:

(b) an agreement to make support payments as provided in **subdivision (a) of** section four hundred twenty-five of the family court act. Prior to the execution of such agreement, the respondent shall be advised, orally, which may be through the use of audio or video equipment, and in writing, of the consequences of such agreement, that the respondent can be held liable for support only if the family court, after a hearing, makes an order of support; that respondent has a right to consult with an attorney and that the agreement will be submitted to the family court for approval pursuant to **subdivision (a) of** section four hundred twenty-five of the family court act; and that by executing the agreement, the respondent waives any right to a hearing regarding any matter contained in such agreement.

§ 3. The social services law is amended by adding a new section 111-1 to read as follows:

§ 111-l. Child support order establishment conference pilot process. 1. Purpose. The department shall develop a one-year pilot project

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

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allowing social services districts to take expedited administrative actions to facilitate the establishment of child support orders consistent with the state's child support guidelines for parents who agree on child support and seek to voluntarily engage in an administrative conference.

2. Initiating administrative actions. (a) A child support order issued pursuant to this section and confirmed by a court pursuant to subdivision (b) of section four hundred twenty-five of the family court act shall constitute an order of the court and shall be enforceable by any means available for the enforcement of child support obligations pursuant to this title, articles four and five-B of the family court act or pursuant to article fifty-two of the civil practice law and rules and any other applicable provisions of law.

(b) An administrative action pursuant to this section may be initiated by a social services district serving a notice to establish a child support order by conference to each party entitled to notice or by referral from a family court, along with notice to each party entitled to notice.

(c) A case that involves a minor parent, requires a determination of paternity, or has verified family violence indicators shall be excluded from an administrative action pursuant to this section.

(d) A case where the combined parental income exceeds the amount set forth in paragraph (b) of subdivision two of section one hundred eleven-i of this title shall be excluded from an administrative action pursuant to this section.

(e) A case that involves spousal support in addition to child support will be excluded from an administrative action pursuant to this section.

3. Contents of notice to establish a child support order by conference. The notice to establish a child support order by conference issued by the social services official shall:

(a) describe the procedure for the conference;

(b) inform the party that the party may be represented by legal counsel during the conference or at a court hearing;

(c) inform the party that the party may refuse to participate or cease participation in the conference, but that the refusal by the party to participate will not prevent the filing of a request for a de novo hearing on child support in a family court along with a record of the administrative conference, in which a party may be assisted by the social services district;

(d) inform the party that an affidavit in support of the conference process promulgated by the commissioner and sent with the notice shall be executed by the party and returned to the social services official along with any documentation or information in support of the affidavit no later than fifteen days after the date the notice is served;

(e) inform the party that if the requested affidavit is not returned as required, the agency may:

(i) proceed with the conference process using the information provided by the parties or otherwise obtained or available to the agency; or

(ii) file a petition with the court for child support on behalf of a party; and

(f) direct the party to contact the social services district if the party believes that pursuing child support would expose the party or the child to physical or emotional harm.

4. Service of notice. Any notice or order required to be served pursuant to this section shall be delivered by personal service or first-

class mail on each party entitled to notice as provided under article four of the family court act, or by electronic means on consent.

5. Issuance of administrative subpoena. As part of the conference process pursuant to this section, the social services district may issue administrative subpoenas as authorized pursuant to section one hundred eleven-p of this title.

6. Notice of conference. (a) The social services district shall notify all parties entitled to notice of the conference of the date, time, and place of the conference, and such conference shall be scheduled no later than thirty days after the date of the notice.

(b) If a party fails to attend the scheduled conference the social services district may proceed with the conference and, at the conclusion of the conference, generate a conference report containing the affidavits submitted by each party and information shared with or obtained by the district, along with the child support guidelines worksheet setting forth the presumptive amount of support.

(c) The social services district may reschedule a conference on the reasonable request of any party. The social services district shall give all parties notice of a rescheduled conference no later than three days before the date of the rescheduled conference if notice was given by personal service or by electronic means on consent and no later than eight days before the date of the rescheduled conference if notice was given by first-class mail.

7. Exchange of financial affidavits and supporting documentation. As set forth in paragraph (d) of subdivision three of this section, no later than fifteen days after the date of the notice of the conference, each party shall execute and return to the social services district an affidavit in support of the conference process, along with any documentation or information in support of the affidavit. The social services district shall then provide copies of any affidavits along with documentation or information in support to the parties immediately upon receipt, but no later than the seven days prior to the conference, by personal delivery or by first class mail or by electronic means on consent.

8. Information required to be provided by the social services official at the conference. At the beginning of the conference, the social services district shall review with the parties participating in the conference the information provided in the notice to establish a child support order by conference and inform the parties that:

(a) the purpose of the conference is to provide an opportunity to reach an agreement on a child support order pursuant to the child support guidelines and that the basic child support obligation calculated pursuant to the guidelines would presumptively result in the correct amount of child support to be awarded. The parties shall be provided with a copy of the child support standards chart promulgated by the commissioner pursuant to section one hundred eleven-i of this title and a copy of the child support guidelines worksheet promulgated by the commissioner in consultation with the office of court administration;

(b) if the parties reach an agreement, the social services district will prepare an agreed proposed order to be filed with the court for confirmation pursuant to subdivision (b) of section four hundred twenty-five of the family court act;

(c) a party does not have to sign the order prepared by the social services district; however, the social services district may prepare a conference report containing the affidavit submitted by each party and information shared with or obtained by the district, along with the

child support guidelines worksheet setting forth the presumptive amount of support, and may assist a party in filing a request for a de novo hearing on child support with the family court together with the conference report. The parties shall only be liable for support if a party requests a hearing, such hearing is held and the court makes an order of support;

(d) the parties who reach an agreement shall sign a waiver of the right to service of process and to a hearing regarding any matter contained in an agreed proposed order; and

(e) where the parties do not reach agreement in the conference, a party may file a request for a de novo hearing no later than twenty days after the date on which a copy of the notice of determination that no order should be submitted to the court, along with a conference report, is provided to the party.

9. Conduct of the conference. (a) For the purposes of this section, the social services district shall review the affidavit submitted by each party and any other documentation or information provided by the parties or obtained pursuant to authority granted under this title and shall complete a child support guidelines worksheet to calculate the support obligation.

(b) The social services district shall review the child support guidelines worksheet with the parties and the support obligation resulting from the calculations.

(c) The social services district shall prepare the agreed proposed order or prepare a notice of determination that no order should be submitted to the court along with a conference report, and provide the party with a copy of the form to request a court hearing promulgated by the office of court administration in consultation with the office of temporary and disability assistance.

10. Record of proceedings. (a) For the purposes of this section, documentation or information relied on by the social services district, including an affidavit of a party, together with the child support order or notice of determination that no order should be submitted to the court along with a conference report, constitutes a sufficient record of the proceedings.

(b) The social services district is not required to make any other record or transcript of the conference.

11. Issuance of an agreed proposed child support order or determination that no order should be submitted; effect. (a) If a conference results in an agreement of the parties, each party shall sign the child support order no later than five days after the date of the conference and the order shall contain the information set forth in subdivision twelve of this section.

(b) If a conference does not result in agreement by all parties to the child support order, the social services district shall render a final decision no later than five days after the date of the conference in the form of a notice of determination that no order should be submitted to the court, along with a conference report.

(i) If the social services district determines that a child support order should not be filed with the court, the agency shall immediately provide each party with notice of the determination by personal delivery or by first class mail or by electronic means on consent. A determination that no order should be submitted to the court shall include a statement of the reasons that an order is not being submitted and a statement that the agency's determination does not affect the right of a

party to seek an order of support, or to request any other remedy provided by law.

(ii) Where the parties do not reach agreement in the conference, a party may, with the assistance of the social services district, file a request for a de novo hearing no later than twenty days after the date on which a copy of the notice of determination that no order should be submitted to the court, along with a conference report, is provided to the parties by personal delivery or by first class mail or by electronic means on consent.

12. Contents of an order. (a) An order issued pursuant to this section shall be reviewed and signed by a social services official or designee.

(b) If a conference results in an agreement of the parties, the order shall contain the following as to each party:

(i) a waiver by the party of the right to service of process and a court hearing;

(ii) the mailing address of the party; and

(iii) the following statement printed on the order in conspicuous type: "I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THIS CHILD SUPPORT ORDER. I UNDERSTAND THAT IF I SIGN THIS ORDER, IT WILL BE CONFIRMED BY THE COURT WITHOUT FURTHER NOTICE TO ME. I KNOW THAT IF I DO NOT OBEY THE TERMS OF THIS ORDER I MAY BE HELD IN CONTEMPT OF COURT."

13. Withdrawal of an order. (a) The social services district may withdraw an agreed proposed order, including at the request of a party, at any time before the order is filed with the court.

(b) A new conference, with notice to all parties, may be scheduled or the social services district may make a determination that a child support order should not be submitted to the court and give notice of that determination as provided for in this section.

14. Filing of an agreed proposed order. The social services district shall file an agreed proposed order that contains signed waivers of service of process and a right to a hearing with the court.

15. Contents of a notice of determination that a child support order should not be issued, along with a conference report. The notice of determination and conference report shall include the child support guidelines worksheet as an attachment, as well as the affidavit submitted by each party and any documentation or information relied on by the social services district in the conference process.

16. Evaluation. The office of temporary and disability assistance shall conduct an evaluation of the operation and impact of the child support order establishment conference pilot process and shall submit to the governor and the legislature an evaluation report containing the findings from the pilot, the feasibility of a statewide program, and recommendations, if any, for establishing a statewide program.

§ 4. The opening paragraph of section 425 of the family court act is designated subdivision (a) and a new subdivision (b) is added to read as follows:

(b) Where a child support order is issued pursuant to the conference process provided for in section one hundred eleven-l of the social services law, the child support order shall be filed with the court.

(i) Upon the filing of an agreed proposed order by a social services district on behalf of a party:

(A) the court shall endorse on the order the date the order is filed and the appropriate family court docket number;

(B) the court shall confirm and sign the agreed proposed order no later than three days after its filing provided the agreed proposed order, the waivers of service and a right to a hearing are signed by all

parties; provided, however, if the court finds that the agreed proposed order, the waivers of service and a right to a hearing are not signed by all parties, the court shall return the documents to the appropriate social services district to allow such official to remedy the deficiency no later than three days after the filing of the agreed proposed order; and

(C) the order signed and confirmed by the court shall immediately become a final order of the court and a copy thereof shall be mailed to the social services district and all the parties.

(ii) Upon the filing of a form to request a de novo hearing, as promulgated by the office of court administration in consultation with the office of temporary and disability assistance:

(A) the court shall immediately serve each party with a copy of the request for a de novo hearing, along with the social services district's notice of determination that no order shall be submitted to the court and the conference report, including the child support guidelines worksheet, the affidavit submitted by each party, and any documentation or information relied on by the social services district; or

(B)(1) When a timely request for a court hearing has been filed pursuant to the conference process provided in section one hundred eleven-l of the social services law, the court shall hold a de novo hearing no later than thirty days after the date the request was filed. At the de novo hearing, the court shall enter a temporary order of support pursuant to section four hundred thirty-four of this article; or

(2) If the court adjourns the hearing, the hearing shall be held no later than thirty days after the date set for the initial hearing.

§ 5. Upon the expiration and repeal of this act, the rights and responsibilities of any parties who were subject to the provisions of this act while it remained in effect shall not be diminished or impaired.

§ 6. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law and shall expire 3 years after such effective date when upon such date the provisions of this act shall be deemed repealed.