

# STATE OF NEW YORK

4977

2023-2024 Regular Sessions

## IN ASSEMBLY

February 27, 2023

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-4) to read as follows:

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

13  
14 (2) In making an order for temporary custody, there shall be a  
15 presumption, rebuttable by clear and convincing evidence, that the  
16 parents or a person acting as a parent shall have temporary joint legal  
17 and shared physical custody and shall share equal parenting time. As  
18 used in this paragraph, the term "parenting time" shall mean the period  
19 of time that a parent may spend with his or her child pursuant to a  
20 court order under this chapter, the family court act or an order  
21 enforced under article five-A of this chapter.

22 (3) If a deviation from equal parenting time is warranted, the parents  
23 or person acting as a parent, through mutual and agreed upon consider-  
24 ations or mediation, shall construct a parenting time schedule which  
25 maximizes the time each parent or person acting as a parent has with the

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

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

7 (4) Each temporary custody order shall include specific findings of  
8 fact and conclusions of law, except when the court confirms the agree-  
9 ment of the parties.

10 (5) Any temporary custody order shall address the circumstance in  
11 which the child will transfer from one parent or person acting as a  
12 parent to the other.

13 (6) Modification of a temporary custody order may be sought when there  
14 is a material and substantial change in the circumstance of the parents,  
15 person acting as a parent, or child.

16 (7) If a proceeding to annul a marriage, to declare the nullity of a  
17 void marriage, for a separation or for a divorce is dismissed, any  
18 temporary custody order shall be vacated unless a parent or person  
19 acting as a parent moves that the proceeding continue as a custody  
20 proceeding and the court finds, after a hearing, that the circumstances  
21 of the parents or person acting as a parent and the best interests of  
22 the child require that a custody decree be issued.

23 (8) If a custody proceeding commenced in the absence of a proceeding  
24 to annul a marriage, to declare the nullity of a void marriage, for a  
25 separation or for a divorce is dismissed, any temporary custody order  
26 shall be vacated.

27 (9) If a court determines by clear and convincing evidence that a  
28 person is a person who is acting as a parent, the court shall join such  
29 person in any action pursuant to the provisions of this paragraph as a  
30 party needed for just adjudication.

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