

STATE OF NEW YORK

4797

2023-2024 Regular Sessions

IN SENATE

February 14, 2023

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-4) to read as follows:

3 (a-4) 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 or a person acting as a parent, as defined
9 in section seventy-five-a of this chapter, present a temporary custody
10 agreement and mutually agreed plan for parenting time, and the court
11 confirms that the agreement adequately provides for the welfare of the
12 child, such agreement shall become the temporary custody order of the
13 court.

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.