

DOMESTIC RELATIONS LAW

Laws 1909, Chap. 19.

AN ACT relating to the domestic relations, constituting chapter fourteen of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

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

CHAPTER 14 OF THE CONSOLIDATED LAWS

DOMESTIC RELATIONS LAW

- Article 1. Short title; definitions (§§ 1,2).
2. Marriages (§§ 5-8).
3. Solemnization, proof and effect of marriage (§§ 10-25).
4. Certain rights and liabilities of husband and wife (§§ 50-61).
5. The custody and wages of children (§§ 70-74).
- 5-A. Uniform child custody jurisdiction and enforcement act (§§ 75--78-a).
6. Guardians (§§ 80-85).
- VII. Adoption (§§ 109-117).
8. Surrogate parenting contracts (§§ 121-124).
9. Action to annul a marriage or declare it void (§§ 140-146).
10. Action for divorce (§§ 170-175).
11. Action for separation (§§ 200-203).
- 11-A. Special provisions relating to divorce and separation (§§ 210-211).
12. Dissolution of marriage on ground of absence (§§ 220-221).
13. Provisions applicable to more than one type of matrimonial action (§§ 230-255).
15. Laws repealed; when to take effect (§§ 270-272).

ARTICLE 1

Short Title; Definitions

Section 1. Short title.

2. Definitions.

§ 1. Short title. This chapter shall be known as the "Domestic Relations Law."

§ 2. Definitions. A "minor" or "infant", as used in this chapter, is a person under the age of eighteen years.

ARTICLE 2

Marriages

Section 5. Incestuous and void marriages.

6. Void marriages.
7. Voidable marriages.
8. Marriage after divorce.

§ 5. Incestuous and void marriages. A marriage is incestuous and void whether the relatives are legitimate or illegitimate between either:

1. An ancestor and a descendant;
2. A brother and sister of either the whole or the half blood;
3. An uncle and niece or an aunt and nephew.

If a marriage prohibited by the foregoing provisions of this section be solemnized it shall be void, and the parties thereto shall each be fined not less than fifty nor more than one hundred dollars and may, in the discretion of the court in addition to said fine, be imprisoned for a term not exceeding six months. Any person who shall knowingly and wilfully solemnize such marriage, or procure or aid in the solemnization of the same, shall be deemed guilty of a misdemeanor and shall be fined or imprisoned in like manner.

§ 6. Void marriages. A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

1. Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person; provided, that if such former marriage has been dissolved for the cause of the adultery of such person, he or she may marry again in the cases provided for in section eight of this chapter and such subsequent marriage shall be valid;

3. Such former marriage has been dissolved pursuant to section seven-a of this chapter.

§ 7. Voidable marriages. A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

1. Is under the age of legal consent, which is eighteen years;
2. Is incapable of consenting to a marriage for want of understanding;
3. Is incapable of entering into the married state from physical cause;
4. Consent to such marriage by reason of force, duress or fraud;
5. Has been incurably mentally ill for a period of five years or more.

§ 8. Marriage after divorce. Whenever, and whether prior or subsequent to September first, nineteen hundred sixty-seven, a marriage has been dissolved by divorce, either party may marry again.

ARTICLE 3

Solemnization, Proof and Effect of Marriage

- Section 10. Marriage a civil contract.
- 10-a. Parties to a marriage.
 - 10-b. Religious exception.
 - 11. By whom a marriage must be solemnized.
 - 11-a. Duty of city clerk in certain cities of the first class; facsimile signature of said clerk authorized.
 - 11-b. Registration of persons performing marriage ceremonies in the city of New York.
 - 11-c. Marriage officers.
 - 11-d. One-day marriage officiant license.
 - 12. Marriage, how solemnized.
 - 13. Marriage licenses.
 - 13-aa. Test to determine the presence of sickle cell anemia.
 - 13-b. Time within which marriage may be solemnized.
 - 13-c. Twenty-four hour provision waived in certain cases.
 - 13-d. Duty of clerk issuing marriage license.
 - 14. Town and city clerks to issue marriage licenses; form.
 - 14-a. Town and city clerks to issue certificates of marriage registration; form.
 - 15. Duty of town and city clerks.
 - 15-a. Marriages of minors under eighteen years of age.
 - 15-b. Temporary provisions authorizing issuance of marriage license, upon court order, without consent of a parent in armed forces of United States, merchant marine and allied forces, and absent from the United States.
 - 16. False statements and affidavits.
 - 17. Clergyman or officer violating article; penalty.
 - 18. Clergyman or officer, when protected.
 - 19. Records to be kept by town and city clerks.
 - 19-a. Marriages on vessels; reports and records.
 - 20. Records to be kept by the state department of health and the city clerk of the city of New York.
 - 20-a. Certified transcripts of records; state commissioner of health may furnish.
 - 20-b. Certification of marriage; state commissioner of health may furnish.

- 20-c. Certification of marriage; new certificate in case of subsequent change of name or gender.
- 21. Forms and books to be furnished.
- 22. Penalty for violation.
- 23. Supervision of and inspection of town and city clerks' records by state commissioner of health.
- 24. Effect of marriage on legitimacy of children.
- 25. License, when to be obtained.

§ 10. Marriage a civil contract. Marriage, so far as its validity in law is concerned, continues to be a civil contract, to which the consent of parties capable in law of making a contract is essential.

§ 10-a. Parties to a marriage. 1. A marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or different sex.

2. No government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex. When necessary to implement the rights and responsibilities of spouses under the law, all gender-specific language or terms shall be construed in a gender-neutral manner in all such sources of law.

§ 10-b. Religious exception. 1. Notwithstanding any state, local or municipal law, rule, regulation, ordinance, or other provision of law to the contrary, a religious entity as defined under the education law or section two of the religious corporations law, or a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a not-for-profit corporation operated, supervised, or controlled by a

religious corporation, or any employee thereof, being managed, directed, or supervised by or in conjunction with a religious corporation, benevolent order, or a not-for-profit corporation as described in this subdivision, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of a marriage. Any such refusal to provide services, accommodations, advantages, facilities, goods, or privileges shall not create any civil claim or cause of action or result in any state or local government action to penalize, withhold benefits, or discriminate against such religious corporation, benevolent order, a not-for-profit corporation operated, supervised, or controlled by a religious corporation, or any employee thereof being managed, directed, or supervised by or in conjunction with a religious corporation, benevolent order, or a not-for-profit corporation.

2. Notwithstanding any state, local or municipal law or rule, regulation, ordinance, or other provision of law to the contrary, nothing in this article shall limit or diminish the right, pursuant to subdivision eleven of section two hundred ninety-six of the executive law, of any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, to limit employment or sales or rental of housing accommodations or admission to or give preference to persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained.

3. Nothing in this section shall be deemed or construed to limit the protections and exemptions otherwise provided to religious organizations under section three of article one of the constitution of the state of New York.

§ 11. By whom a marriage must be solemnized. No marriage shall be valid unless solemnized by either:

1. A clergyman or minister of any religion, or by the senior leader, or any of the other leaders, of The Society for Ethical Culture in the city of New York, having its principal office in the borough of Manhattan, or by the leader of The Brooklyn Society for Ethical Culture, having its principal office in the borough of Brooklyn of the city of New York, or of the Westchester Ethical Society, having its principal office in Westchester county, or of the Ethical Culture Society of Long Island, having its principal office in Nassau county, or of the Riverdale-Yonkers Ethical Society having its principal office in Bronx county, or by the leader of any other Ethical Culture Society affiliated with the American Ethical Union; provided that no clergyman or minister as defined in section two of the religious corporations law, or Society for Ethical Culture leader shall be required to solemnize any marriage when acting in his or her capacity under this subdivision.

1-a. A refusal by a clergyman or minister as defined in section two of the religious corporations law, or Society for Ethical Culture leader to solemnize any marriage under this subdivision shall not create a civil claim or cause of action or result in any state or local government action to penalize, withhold benefits or discriminate against such clergyman or minister.

2. The current or a former governor, a mayor of a village, a county executive of a county, or a mayor, recorder, city magistrate, police justice or police magistrate of a city, a former mayor or the city clerk of a city of the first class of over one million inhabitants or any of his or her deputies or not more than four regular clerks, designated by him or her for such purpose as provided in section eleven-a of this article, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section.

2-a. A member of the New York state legislature, provided that such person shall not charge or receive a fee.

3. A judge of the federal circuit court of appeals for the second circuit, a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, a federal administrative law judge presiding in this state, a justice or judge of a court of the unified court system, a housing judge of the civil court of the city of New York, a retired justice or judge of the unified court system or a retired housing judge of the civil court of the city of New York certified pursuant to paragraph (k) of subdivision two of section two hundred twelve of the judiciary law, the clerk of the appellate division of the supreme court in each judicial department, a retired city clerk who served for more than ten years in such capacity in a city having a population of one million or more or a county clerk of a county wholly within cities having a population of one million or more; or,

3-a. A judge or peacemaker judge of any Indian tribal court, a chief, a headman, or any member of any tribal council or other governing body of any nation, tribe or band of Indians in this state duly designated by such body for the purpose of officiating at marriages, or any other persons duly designated by such body, in keeping with the culture and traditions of any such nation, tribe or band of Indians in this state, to officiate at marriages.

3-b. A one-day marriage officiant, as designated by a town or city clerk pursuant to section eleven-d of this article; or,

4. A written contract of marriage signed by both parties and at least two witnesses, all of whom shall subscribe the same within this state, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged before a judge of a court of record of this state by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded.

5. Notwithstanding any other provision of this article, where either or both of the parties is under the age of eighteen years a marriage shall be solemnized only by those authorized in subdivision one of this

section or by (1) the mayor of a city or village, or county executive of a county, or by (2) a judge of the federal circuit court of appeals for the second circuit, a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, or a justice or a judge of a court of the unified court system, or by (3) a housing judge of the civil court of the city of New York, or by (4) a former mayor or the clerk of a city of the first class of over one million inhabitants or any of his or her deputies designated by him or her for such purposes as provided in section eleven-a of this chapter.

6. Notwithstanding any other provisions of this article to the contrary no marriage shall be solemnized by a public officer specified in this section, other than a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, a federal administrative law judge presiding in this state, a judge or justice of the unified court system of this state, a housing judge of the civil court of the city of New York, or a retired judge or justice of the unified court system or a retired housing judge of the civil court certified pursuant to paragraph (k) of subdivision two of section two hundred twelve of the judiciary law, nor by any of the persons specified in subdivision three-a of this section, outside the territorial jurisdiction in which he or she was elected, appointed or duly designated. Such a public officer, however, elected or appointed within the city of New York may solemnize a marriage anywhere within such city.

7. The term "clergyman" or "minister" when used in this article, shall include those defined in section two of the religious corporations law. The word "magistrate," when so used, includes any person referred to in the second or third subdivision.

§ 11-a. Duty of city clerk in certain cities of the first class; facsimile signature of said clerk authorized. 1. a. The city clerk of a city of the first class of over one million inhabitants may designate in writing any or all of the deputy city clerks and from among the

permanent members of the city clerk's staff as many staff members as the city clerk deems necessary to perform marriage ceremonies, which designation shall be in writing and be filed in the office of such city clerk. The day of such filing shall be endorsed on the designation. Any such designation shall be and remain in effect for six months from the filing thereof.

b. Whenever persons to whom the city clerk of any such city of the first class shall have issued a marriage license shall request him to solemnize the rites of matrimony between them and present to him such license it shall be the duty of such clerk, either in person or by one of his deputies or the permanent members of his staff so designated by him to solemnize such marriage; provided, however, that nothing contained either in this section or in subdivision two of section eleven of this chapter shall be construed as empowering or requiring either the said city clerk or any of his designated deputies or the permanent members of his staff so designated to solemnize marriages at any place other than at the office of such city clerk.

d. In all cases in which the city clerk of such city or one of his deputies or the permanent members of his staff so designated shall perform a marriage ceremony such official shall demand and be entitled to collect therefor a fee to be fixed by the council of the city of New York not exceeding twenty-five dollars, which sum shall be paid by the contracting parties before or immediately upon the solemnization of the marriage; and all such fees so received shall be paid over to the commissioner of finance of the city.

2. The signature and seal of said clerk of cities of the first class of over one million inhabitants upon the marriage license, certificate of marriage, registration, and marriage search provided by this article may be a facsimile imprinted, stamped, or engraved thereon.

3. The said clerk of cities of the first class of one million inhabitants or more may designate among the permanent members of his staff one or more individuals who shall be permitted to sign his name and affix his official seal upon the marriage license, certificate of

marriage registration, and marriage search provided by this article requiring the signature and seal of the city clerk.

§ 11-b. Registration of persons performing marriage ceremonies in the city of New York. Every person authorized by law to perform the marriage ceremony, before performing any such ceremonies in the city of New York, shall register his or her name and address in the office of the city clerk of the city of New York. Every such person, before performing any marriage ceremonies subsequent to a change in his or her address, shall likewise register such change of address. Such city clerk is hereby empowered to cancel the registration of any person so registered upon satisfactory proof that the registration was fraudulent, or upon satisfactory proof that such person is no longer entitled to perform such ceremony.

§ 11-c. Marriage officers. 1. Notwithstanding the provisions of section eleven of this article or any other law, the governing body of any village, town, or city may appoint one or more marriage officers who shall have the authority to solemnize a marriage which marriage shall be valid if performed in accordance with other provisions of law. Nothing herein contained shall nullify the authority of other persons authorized to solemnize marriages.

2. The number of such marriage officers appointed for a municipality shall be determined by the governing body of the municipality. Such marriage officers shall be eighteen years of age or over, and they shall reside in the municipality by which they are appointed. A marriage officer shall have the authority to solemnize a marriage within the territory of the municipality which makes the appointment.

3. A marriage officer may receive a salary or wage in an amount to be determined by the governing body of the municipality which appoints him or her. In the event that a marriage officer receives a salary or wage, he or she shall not receive any remuneration or consideration from any other source for performing his or her duties. In the event that a

marriage officer does not receive a salary or wage, he or she may accept and keep up to seventy-five dollars for each marriage at which he or she officiates, paid by or on behalf of the persons married.

4. The term of office of a marriage officer shall be as determined by the governing body which makes the appointment but shall not exceed four years. A marriage officer shall serve at the pleasure of the appointing authority and may be removed from office with or without cause on ten days written notice filed with the clerk of the municipality and sent by registered mail return receipt requested to the marriage officer.

§ 11-d. One-day marriage officiant license. 1. A town or city clerk shall issue a one-day marriage officiant license upon request. Such one-day marriage officiant shall have the authority to solemnize a marriage which marriage shall be valid if performed in accordance with other provisions of law. Nothing herein contained shall nullify the authority of other persons authorized to solemnize marriages.

2. Such one-day marriage officiant shall be eighteen years of age or over and need not be a resident of the town or city to which they apply or a resident of the state. A one-day marriage officiant shall have the authority to solemnize a marriage anywhere in the state.

3. An applicant for a one-day marriage officiant license must apply for such license in the same town or city clerk's office as the couple to be married. Such applicant shall not be required to personally appear.

4. A town or city clerk shall be entitled to a fee of twenty-five dollars for issuing a one-day marriage officiant license. Such license shall be issued only after payment of such fee and submission of a completed application form.

5. The application form shall require the following information of the applicant: name, date of birth, address, email address and telephone number. The application form shall also require the following

information of the parties to be married: names, dates of birth, and addresses as they appear on the application for a marriage license.

6. Such license shall only be valid for the parties to be married as stated on the application and shall expire upon the earlier of either completion of such solemnization or the expiration of the marriage license.

7. One-day marriage officiants shall be exempt from registration as required pursuant to section eleven-b of this article.

§ 12. Marriage, how solemnized. No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, or one-day marriage officiant as designated by a town or city clerk pursuant to section eleven-d of this article, but the parties must solemnly declare in the presence of a clergyman, magistrate, or such one-day marriage officiant and the attending witness or witnesses that they take each other as spouses. In every case, at least one witness beside the clergyman, magistrate, or such one-day marriage officiant must be present at the ceremony.

The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted.

§ 13. Marriage licenses. It shall be necessary for all persons intended to be married in New York state to obtain a marriage license from a town or city clerk in New York state and to deliver said license, within sixty days, to the clergyman, magistrate, or one-day marriage officiant as designated by a town or city clerk pursuant to section

eleven-d of this article who is to officiate before the marriage ceremony may be performed. In case of a marriage contracted pursuant to subdivision four of section eleven of this chapter, such license shall be delivered to the judge of the court of record before whom the acknowledgment is to be taken. If either party to the marriage resides upon an island located not less than twenty-five miles from the office or residence of the town clerk of the town of which such island is a part, and if such office or residence is not on such island such license may be obtained from any justice of the peace residing on such island, and such justice, in respect to powers and duties relating to marriage licenses, shall be subject to the provisions of this article governing town clerks and shall file all statements or affidavits received by him while acting under the provisions of this section with the town clerk of such town. No application for a marriage license shall be denied on the ground that the parties are of the same, or a different, sex.

§ 13-aa. Test to determine the presence of sickle cell anemia. 1. On and after the effective date of this act, such test as may be necessary shall be given to each applicant for a marriage license who is not of the Caucasian, Indian or Oriental race for the purposes of discovering the existence of sickle cell anemia and notifying the applicant of the results of such test.

2. No application for a marriage license shall be denied solely on the ground that such test proves positive, nor shall the absence of such test invalidate a marriage.

3. The provisions of this section shall not apply to any person who refuses to take such test because of his religious beliefs.

§ 13-b. Time within which marriage may be solemnized. A marriage shall not be solemnized within twenty-four hours after the issuance of the marriage license, unless authorized by an order of a court of record as hereinafter provided, nor shall it be solemnized after sixty days from the date of the issuance of the marriage license unless authorized

pursuant to section ten of the veterans' services law. Every license to marry hereafter issued by a town or city clerk, in addition to other requirements specified by this chapter, must contain a statement of the day and the hour the license is issued and the period during which the marriage may be solemnized. It shall be the duty of the clergyman, magistrate, or one-day marriage officiant, as designated by a town or city clerk pursuant to section eleven-d of this article, performing the marriage ceremony, or if the marriage is solemnized by written contract, of the judge before whom the contract is acknowledged, to annex to or endorse upon the marriage license the date and hour the marriage is solemnized. A judge or justice of the supreme court of this state or the county judge of the county in which either party to be married resides, or the judge of the family court of such county, if it shall appear from an examination of the license and any other proofs submitted by the parties that one of the parties is in danger of imminent death, or by reason of other emergency public interest will be promoted thereby, or that such delay will work irreparable injury or great hardship upon the contracting parties, or one of them, may, make an order authorizing the immediate solemnization of the marriage and upon filing such order with the clergyman, magistrate, or one-day marriage officiant performing the marriage ceremony, or if the marriage is to be solemnized by written contract, with the judge before whom the contract is acknowledged, such clergyman, magistrate or such one-day marriage officiant may solemnize such marriage, or such judge may take such acknowledgment as the case may be, without waiting for such three day period and twenty-four hour period to elapse. The clergyman, magistrate, judge, or such one-day marriage officiant, as designated by a town or city clerk pursuant to section eleven-d of this article, must file such order with the town or city clerk who issued the license within five days after the marriage is solemnized. Such town or city clerk must record and index the order in the book required to be kept by him or her for recording affidavits, statements, consents and licenses, and when so recorded the order shall become a public record and available in any prosecution under this section. A person who shall solemnize a marriage in violation of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of fifty dollars for each offense, and in addition thereto, his or her right to solemnize a marriage shall be

suspended for ninety days.

*** § 13-c. Twenty-four hour provision waived in certain cases. 1.**

Notwithstanding the provisions of section thirteen-b of this chapter or any other provision of law, where either of the parties making application for a marriage license pursuant to section thirteen of this chapter, is a member of the armed forces of the United States the marriage of the parties may be solemnized without waiting for the lapse of the twenty-four hour period required by section thirteen-b of this chapter. Proof that the applicant is a member of the armed forces of the United States shall be furnished to the satisfaction of the official issuing the marriage license. Every license to marry issued pursuant to the provisions of this section must state the day and hour the license is issued and shall contain a recital that it is issued pursuant to the provisions of this section and that the parties named therein may be married at any time after such day and hour and within sixty days thereafter.

2. The provisions of this section shall remain in force and effect only until July first, nineteen hundred seventy-three.

* NB Expired July 1, 1973

§ 13-d. Duty of clerk issuing marriage license. 1. It shall be the duty of each town and each city clerk or duly authorized deputy acting in the clerk's stead, upon the issuance of a marriage license to display to the parties a typed or printed statement containing substantially the same following information:

"Rubella, also known as 'German measles', is a common childhood disease. It is usually not serious to children who contract it themselves, but can be a tragiccrippler of unborn babies if transmitted to pregnant women.

Rubella infection poses a grave threat to the unborn child, especially during the first four months of pregnancy. It can lead to miscarriage, stillbirth, or one or all of the tragic defects such as deafness,

blindness, crippling congenital heart disease, developmental disability and muscular and bone defects.

In order to be immune to rubella, one must either receive the rubella vaccine or actually have had the disease. To see whether you are susceptible to rubella, you can get a blood test from your doctor. Even more important is the availability of a rubella vaccine which will prevent you from ever contracting the disease.

In order to protect yourself, your family, and your friends, please take steps to prevent the tragic effects of rubella. Please contact your family doctor, health care provider, public health facility or clinic for further information."

2. It shall also be the duty of each town and city clerk or duly authorized deputy acting in the clerk's stead to provide to each applicant for a marriage license information regarding the Thalassemia Trait. The department of health shall prepare information, including but not limited to, the blood disorder Thalassemia Trait and other inherited conditions affecting the population of New York state.

3. No cause of action for damages shall arise in favor of any person or person yet to be born by reason of any failure to comply with the provisions of this section.

§ 14. Town and city clerks to issue marriage licenses; form. The town or city clerk of each and every town or city in this state is hereby empowered to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to apply therefor and to contract matrimony, authorizing the marriage of such parties, which license shall be substantially in the following form:

State of New York

County of

City or town of

Know all men by this certificate that any person authorized by law to

perform marriage ceremonies within the state of New York to whom this may come, he not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between of in the county of and state of New York and of in the county of and state of New York and to certify the same to the said parties or either of them under his hand and seal in his ministerial or official capacity and thereupon he is required to return his certificate in the form hereto annexed. The statements endorsed hereon or annexed hereto, by me subscribed, contain a full and true abstract of all of the facts concerning such parties disclosed by their affidavits or verified statements presented to me upon the application for this license. This certificate is to be returned addressed to the undersigned at , ,
(Street) (City, Town, Village) (State)

In testimony whereof, I have hereunto set my hand and affixed the seal of said town or city at this day of nineteen, at.....m. Seal.

The form of the certificate annexed to said license and therein referred to shall be as follows:

I, a, residing at in the county of and state of New York do hereby certify that I did on this day of in the year, nineteen atm, at in the county of and the state of New York, solemnize the rites of matrimony between of in the county of and state of New York, and of in the county of and state of New York in the presence of and as witness, and the license therefor is hereto annexed.

Witness my hand in the county of this day of, nineteen

In the presence of
.....

.....

.....

There shall be endorsed upon the license or annexed thereto at the end thereof, subscribed by the clerk, an abstract of the facts concerning the parties as disclosed in their affidavits or verified statements at the time of the application for the license made in conformity to the provisions of section fifteen of this chapter.

There shall also be stated upon the license the exact period during which the marriage may be solemnized.

The license issued, including the abstract of facts, and the certificate duly signed by the person who shall have solemnized the marriage therein authorized, shall be returned by him, and where the marriage is solemnized by a written contract, the judge before whom acknowledgment is made shall forward such contract and marriage license to the office of the town or city clerk who issued the license within five days succeeding the date of the solemnizing of the marriage therein authorized and any person or persons who shall wilfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars for each and every offense.

When a marriage is solemnized by a city, town or village justice outside of the territorial jurisdiction in which such justice was elected or appointed, as provided in subdivision six of section eleven of this chapter, there shall be affixed to such license prior to filing, the official or common seal of the court or of the municipality in which such justice was elected or appointed.

§ 14-a. Town and city clerks to issue certificates of marriage registration; form. 1. Upon receipt of the return of the marriage license, properly endorsed and completed by the person who shall have solemnized a marriage as provided in this article, the town and city clerks of each and every town or city in the state shall, after

abstracting, recording and indexing the statement of performance of solemnization, issue to the couple within fifteen days after such receipt or return of the completed marriage license a certificate of marriage, which certificate shall be substantially in the following form and contain the following facts:

Record No.....of Year.....

THIS IS TO CERTIFY

that ,

first name, premarriage middle and surname,

new middle and/or surname (if applicable)

residing at ,

who was born on , at ,

date

and ,

first name, premarriage middle and

surname, new middle and/or

surname (if applicable)

residing at ,

who was born , at ,

date

were married on.....at ,

date

as shown by the duly registered license and certificate of marriage of said persons on file in this office.

(SEAL)

Town or City Clerk

Dated at....., N. Y.

.....

No other facts contained in the affidavits, statements, consents or licenses shall be certified by such town and city clerks, unless expressly requested in writing by the man or woman named in such affidavit, license, statement or record.

2. a. Such town and city clerks shall be entitled to a fee for such certificate, payable at the time of issuance of the marriage license, in a sum not exceeding ten dollars, to be fixed in the case of town clerks

by the town board, and in the case of city clerks by the common council or governing body of such cities. The town and city clerks shall, upon request of any applicant whose name appears thereon, issue a similar certificate of marriage, as set forth above, and similarly expanded with additional facts upon the express additional request, for all marriages heretofore indexed and recorded in the office of the town or city clerks. For such certificate of marriage, the town and city clerks shall be entitled to a fee not exceeding ten dollars, to be fixed in the case of town clerks by the town board, and in the case of city clerks by the common council or governing body of such city.

b. In addition to the foregoing, upon request of any applicant whose name appears thereon for a certificate of marriage, the town or city clerk may issue a photograph, micro-photograph or photocopy of the marriage record on file in the office of such clerk. Such photograph, micro-photograph or photocopy, when certified by the town or city clerk, shall be deemed an original record for all purposes, including introduction in evidence in all courts or administrative agencies. For such certificate of marriage and the certification thereof, the town or city clerk shall be entitled to a fee not exceeding ten dollars, to be fixed in the case of town clerks by the town board, and in the case of city clerks by the common council or governing body of such city.

3. a. No fee shall be charged for any certificate when required by the United States department of veterans affairs or by the department of veterans' services of the state of New York to be used in determining the eligibility of any person to participate in the benefits made available by the United States department of veterans affairs or by the state of New York.

b. A town or city may elect to waive the fee for a certificate when either of the parties making application for such certificate is a member of the armed forces of the United States on active duty.

4. A copy of the record of marriage registration when properly certified by the city and town clerks or their duly authorized deputies, as herein provided, shall be prima facie evidence of the facts therein

stated and in all actions, proceedings or applications, judicial, administrative or otherwise, and any such certificate of registration of marriage shall be accepted with the same force and effect with respect to the facts therein stated as the original certificate of marriage or certified copy thereof.

5. Upon request of any applicant whose name appears thereon for a certificate of marriage, the town or city clerk shall be authorized to correct any errors on such marriage certificate where:

a. such error was not the result of any intended fraud, deception or attempt to avoid the effect of any valid law, regulation or statute; and

b. either party to the marriage provides proof, satisfactory to the clerk, of the accuracy of the facts presented in support of correcting the error.

To effectuate such correction and provide certified copies of the amended certificate, the town or city clerk shall be entitled to a fee not exceeding ten dollars to be fixed in the case of town clerks by the town board, and in the case of city clerks by the common council or governing body of such city. The clerk shall forward a copy of such amended certificate to the commissioner of health.

§ 15. Duty of town and city clerks. 1. (a) It shall be the duty of the town or city clerk when an application for a marriage license is made to him or her to require each of the contracting parties to sign and verify a statement or affidavit before such clerk or one of his or her deputies, containing the following information. From party one: Full name, place of residence, social security number, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. From party two: Full name, place of residence, social security number, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. Both parties shall also be required to present to the clerk documentary proof of age in the form of an original

or certified copy of a birth record, a certification of birth issued by the state department of health, a local registrar of vital statistics or other public officer charged with similar duties by the laws of any other state, territory or country, a baptismal record, a passport, an automobile driver's license, any government or school issued identification card that contains a photograph of the applicant, a life insurance policy, an employment certificate, a school record, an immigration record, a naturalization record, a court record or any other document or record issued by a governmental entity, showing the date of birth of such parties. The said clerk shall also embody in the statement if either or both of the applicants have been previously married, a statement as to whether the former spouse or spouses of the respective applicants are living or dead and as to whether either or both of said applicants are divorced persons, if so, when and where and against whom the divorce or divorces were granted and shall also embody therein a statement that no legal impediment exists as to the right of each of the applicants to enter into the marriage state. The town or city clerk is hereby given full power and authority to administer oaths and may require the applicants to produce witnesses to identify them or either of them and may examine under oath or otherwise other witnesses as to any material inquiry pertaining to the issuing of the license, and if the applicant is a divorced person the clerk may also require the production of a certified copy of the decree of the divorce, or proof of an existing marriage of parties who apply for a license to be used for a second or subsequent ceremony; provided, however, that in cities or towns the verified statements and affidavits may be made before any regular clerk or designee of the clerk's office.

(b) Every application for a marriage license shall contain a statement to the following effect:

NOTICE TO APPLICANTS

(1) Every person has the right to adopt any name by which he or she wishes to be known simply by using that name consistently and without intent to defraud.

(2) A person's last name (surname) does not automatically change upon marriage, and neither party to the marriage must change his or her last name. Parties to a marriage need not have the same last name.

(3) One or both parties to a marriage may elect to change the surname

by which he or she wishes to be known after the solemnization of the marriage by entering the new name in the space below. Such entry shall consist of one of the following surnames:

- (i) the surname of the other spouse; or
- (ii) any former surname of either spouse; or
- (iii) a name combining into a single surname all or a segment of the premarriage surname or any former surname of each spouse; or
- (iv) a combination name separated by a hyphen or space, provided that each part of such combination surname is the premarriage surname, or any former surname, of each of the spouses.

(4) One or both parties to a marriage may elect to change the middle name by which he or she wishes to be known after the solemnization of the marriage by entering the new name in the space below. Such entry shall consist of one of the following options:

- (i) the current surname of the spouse electing to change his or her name; or
- (ii) any former surname of the spouse electing to change his or her name; or
- (iii) the surname of the other spouse.

(5) The use of this option will have the effect of providing a record of the change of name. The marriage certificate, containing the new name, if any, constitutes proof that the use of the new name, or the retention of the former name, is lawful.

(6) Neither the use of, nor the failure to use, this option of selecting a new surname or middle name by means of this application abrogates the right of each person to adopt a different name through usage at some future date.

.....
(Optional -- Enter new surname above)

2. If it appears from the affidavits and statements so taken, and from the documentary proof of age presented, that the persons for whose marriage the license in question is demanded are legally competent to marry, the said clerk shall issue such license.

4. Before issuing any licenses herein provided for, the town or city clerk shall be entitled to a fee of thirty dollars, which sum shall be

paid by the applicants before or at the time the license is issued; provided, however, that when either of the parties applying for such license is a member of the armed forces of the United States on active duty (i) a town or city may not collect that portion of the fee which would otherwise be transmitted to the state commissioner of health pursuant to this subdivision and (ii) such town or city may elect to waive the portion of the fee which the town or city is entitled to. Any town or city clerk who shall issue a license to marry any persons one or both of whom shall not be at the time of the marriage under such license legally competent to marry without first requiring the parties to such marriage to make such affidavits and statements or who shall not require the production of documentary proof of age or the procuring of the approval and consents provided for by this article, which shall show that the parties authorized by said license to be married are legally competent to marry, shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars for each and every offense. On or before the fifteenth day of each month, each town and city clerk, except in the city of New York, shall transmit to the state commissioner of health twenty-two dollars and fifty cents of the amount received for each fee collected, which shall be paid into the vital records management account as provided by section ninety-seven-cccc of the state finance law; provided, however, that no fee shall be collected on behalf of or paid to the commissioner of health when either of the parties applying for such license is a member of the armed forces of the United States on active duty. In any city the balance of all fees collected for the issuing of a marriage license, or for solemnizing a marriage, so far as collected for services rendered by any officer or employee of such city, shall be paid monthly into the city treasury and may by ordinance be credited to any fund therein designated, and said ordinance, when duly enacted, shall have the force of law in such city. Notwithstanding any other provisions of this article, the clerk of any city with the approval of the governing body of such city is hereby authorized to designate, in writing filed in the city clerk's office, a deputy clerk, if any, and/or other city employees in such office to receive applications for, examine applications, investigate and issue marriage licenses in the absence or inability of the clerk of said city to act, and said deputy and/or employees so

designated are hereby vested with all the powers and duties of said city clerk relative thereto. Such deputy and/or employees shall perform said duties without additional compensation.

5. Notwithstanding any other provision of this section, the city clerk of the city of New York, before issuing any licenses herein provided for, shall be entitled to a fee of twenty-five dollars, which sum shall be paid by the applicants before or at the time the license is issued and all such fees so received shall be paid monthly into the city treasury.

§ 15-a. Marriages of minors under eighteen years of age. Any marriage in which either party is under the age of eighteen years is hereby prohibited. Any town or city clerk who shall knowingly issue a marriage license to any persons, one or both of whom shall be at the time of their contemplated marriage actually under the age of eighteen years, shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars.

*** § 15-b. Temporary provisions authorizing issuance of marriage license, upon court order, without consent of a parent in armed forces of United States,** merchant marine and allied forces, and absent from the United States. Notwithstanding the provisions of section fifteen of this chapter or any other provision of law, the written consent of a parent of a minor to the marriage of such minor may be dispensed with by order of a judge or justice of the supreme court of this state or the county judge of the county in which the minor resides or, in case the minor be a woman between fourteen and sixteen years of age, of such a justice of the supreme court or the county judge or judge of the children's court of the county in which such woman resides, upon proof satisfactory to such judge or justice that it is impracticable to require such consent because such parent is a member of the armed forces of the United States, merchant marine and allied forces, and is absent from the United States, and any such judge or justice is hereby authorized to make such an order if satisfied of the existence of such circumstances and that

the public interest will not be injuriously affected by dispensing with such consent; provided, however, that no such order shall be granted except upon application therefor both by the minor whose parent is so absent and by the other parent, or if the other parent be dead or his or her consent to such marriage be unnecessary for any reason, then by the person under whose care or government the minor may be. Upon the filing of such an order with the town or city clerk, he shall issue the license without the written consent of the parent whose consent is ordered dispensed with therein, provided all the other provisions of this chapter in connection with the issuance of the license are complied with. The provisions of this section shall remain in force and effect only until July first, nineteen hundred forty-seven.

* NB Expired July 1, 1947

§ 16. False statements and affidavits. Any person who shall in any affidavit or statement required or provided for in this article wilfully and falsely swear in regard to any material fact as to the competency of any person for whose marriage the license in question or concerning the procuring or issuing of which such affidavit or statement may be made shall be deemed guilty of perjury and on conviction thereof shall be punished as provided by the statutes of this state.

§ 17. Clergyman or officer violating article; penalty. If any clergyman or other person authorized by the laws of this state to perform marriage ceremonies shall solemnize or presume to solemnize any marriage between any parties without a license being presented to him or them as herein provided or with knowledge that either party is legally incompetent to contract matrimony as is provided for in this article he shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding one year.

§ 18. Clergymen or officer, when protected. Any such clergymen or officer as aforesaid to whom any such license duly issued may come and

not having personal knowledge of the incompetency of either party therein named to contract matrimony, may lawfully solemnize matrimony between them.

§ 19. Records to be kept by town and city clerks. 1. Each town and city clerk hereby empowered to issue marriage licenses shall keep a book supplied by the state department of health in which such clerk shall record and index such information as is required therein, which book shall be kept and preserved as a part of the public records of his or her office. Whenever an application is made for a search of such records the city or town clerk, excepting the city clerk of the city of New York, may make such search and furnish a certificate of the result to the applicant upon the payment of a fee of five dollars for a search of one year and a further fee of one dollar for the second year for which such search is requested and fifty cents for each additional year thereafter, which fees shall be paid in advance of such search. Whenever an application is made for a search of such records in the city of New York, the city clerk of the city of New York may make such search and furnish a certificate of the result to the applicant upon the payment of a fee of five dollars for a search of one year and a further fee of one dollar for the second year for which search is requested and fifty cents each additional year thereafter. Notwithstanding any other provision of this article, no fee shall be charged for any search or certificate when required by the United States department of veterans affairs or by the department of veterans' services of the state of New York to be used in determining the eligibility of any person to participate in the benefits made available by the United States department of veterans affairs or by the state of New York. All such affidavits, statements and consents, immediately upon the taking or receiving of the same by the town or city clerk, shall be recorded and indexed as provided herein and shall be public records and open to public inspection whenever the same may be necessary or required for judicial or other proper purposes. At such times as the commissioner shall direct, the said town or city clerk, excepting the city clerk of the city of New York, shall file in the office of the state department of health the original of each affidavit, statement, consent, order of a justice or judge authorizing immediate

solemnization of marriage, license and certificate, filed with or made before such clerk during the preceding month. Such clerk shall not be required to file any of said documents with the state department of health until the license is returned with the certificate showing that the marriage to which they refer has been actually performed.

The county clerks of the counties comprising the city of New York shall cause all original applications and original licenses with the marriage solemnization statements thereon heretofore filed with each, and all papers and records and binders relating to such original documents pertaining to marriage licenses issued by said city clerk, in their custody and possession to be removed, transferred, and delivered to the borough offices of the city clerk in each of said counties.

2. (a) In lieu of the requirement of maintaining a book supplied by the state department of health pursuant to subdivision one hereof, each town or city clerk may cause all information as is required by law or rule or regulation of the department to be kept in such books to be photocopied, photographed, microphotographed or reproduced on film which shall be kept and preserved as part of the public records of his office together with an index thereto. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original record in all details.

(b) Such photocopy or photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes, be deemed to be a transcript, exemplification or certified copy of the original.

§ 19-a. Marriages on vessels; reports and records. The master, chief officer, ship's surgeon, or the company, corporation, charterer, or person having the management and control of any vessel which shall arrive at the port of New York, shall report, in writing, to the city clerk of the city of New York within three days after the arrival of such vessel the marriage of any resident of such city occurring thereon

at sea, and shall file with such clerk a transcript of the entry made in the log book of such vessel in respect to any such marriage.

§ 20. Records to be kept by the state department of health and the city clerk of the city of New York. All original affidavits, statements, consents and licenses with certificates attached, and also all written contracts of marriages outside of the city of New York shall be kept on file and properly indexed by the state department of health, and such similar evidences of marriage in the city of New York shall be kept on file and properly indexed by the city clerk of the city of New York. They shall be carefully examined, and if any such are incomplete or unsatisfactory the state commissioner of health and in the city of New York the city clerk shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. Whenever it is claimed that a mistake has been made through inadvertence in any of the statements, affidavits or other papers required by this section to be filed with the state department of health, and in the city of New York with the city clerk's office, the state commissioner of health and in the city of New York the city clerk may file with the same, affidavits upon the part of the person claiming to be aggrieved by such mistake, showing the true facts and the reason for the mistake and may make a note upon such original paper, statement or affidavit showing that a mistake is claimed to have been made and the nature thereof.

§ 20-a. Certified transcripts of records; state commissioner of health may furnish. The state commissioner of health or person authorized by him shall, upon request, supply to any applicant a certified transcript of any marriage registered under the provisions of this article, unless he is satisfied that the same does not appear to be necessary or required for judicial or other proper purposes. Any transcript of the record of a marriage, when properly certified by the state commissioner of health or person authorized to act for him, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records conducted for authorized research

purposes, the state commissioner of health shall be entitled to a fee of twenty dollars for each hour or fractional part of an hour of time of search, together with a fee of two dollars for each uncertified copy or abstract of such marriage record requested by the applicant, said fees to be paid by the applicant. Each applicant for a certified transcript of a marriage record shall remit to the state commissioner of health a fee of thirty dollars in payment for the search of the files and records and the furnishing of a certified copy if such record is found or for a certification that a search discloses no record of a marriage.

§ 20-b. Certification of marriage; state commissioner of health may furnish. 1. The state commissioner of health or person authorized by him shall, upon request, issue to any applicant a certification of any marriage registered under the provisions of this article, unless he is satisfied that the same does not appear to be necessary or required for judicial or other proper purposes. Any such certification of marriage made by such commissioner or person authorized to act for him shall be prima facie evidence in all courts and places of the facts therein stated.

2. Such certification shall contain a statement of the respective names, dates and places of birth and places of the then residence of each of the parties to such marriage and the date and place thereof.

3. Each applicant for a certification of marriage shall remit to the commissioner with such application a fee of thirty dollars in payment for the search of the files and records and the furnishing of such certification if a record thereof is found or for a certification that a search discloses no record of a marriage.

4. The federal agency in charge of vital statistics may obtain, at a fee acceptable to the commissioner, information from marriage records for use solely as statistical data.

§ 20-c. Certification of marriage; new certificate in case of

subsequent change of name or gender. 1. A new marriage certificate shall be issued by the town or city clerk where the marriage license and certificate was issued, upon receipt of proper proof of a change of name or gender designation. Proper proof shall consist of: (a) a judgment, order or decree affirming a change of name or gender designation of either party to a marriage; (b) an amended birth certificate demonstrating a change of name or gender designation; (c) in the case of a change of gender designation, a notarized affidavit from the individual attesting to their change of gender designation; or (d) such other proof as may be established by the commissioner of health.

2. When a new marriage certificate is made pursuant to this section, the town or city clerk shall substitute such new certificate for the marriage certificate then on file, if any, and shall send the state commissioner of health a digital copy of the new marriage certificate in a format prescribed by the commissioner, with the exception of the city clerk of New York who shall retain their copy. The town or city clerk shall make a copy of the new marriage certificate for the local record and hold the contents of the original marriage certificate confidential along with all supporting documentation, papers and copies pertaining thereto. It shall not be released or otherwise divulged except by order of a court of competent jurisdiction.

3. The town or city clerk shall be entitled to a fee of ten dollars for the amendment and certified copy of any marriage certificate in accordance with the provisions of this section.

4. The state commissioner of health may, in their discretion, report to the attorney general any town or city clerk that, without cause, fails to issue a new marriage certificate upon receipt of proper proof of a change of name or gender designation in accordance with this section. The attorney general shall thereupon, in the name of the state commissioner of health or the people of the state, institute such action or proceeding as may be necessary to compel the issuance of such new marriage certificate.

§ 21. Forms and books to be furnished. The proper books for registration, blank forms for marriage licenses, certificates, statements and affidavits and such other blanks as shall be necessary to comply with the provisions of this article, shall be prepared by the state department of health and shall be furnished by said department at the expense of the state to the town and city clerks filing records with the state department of health in such quantities as their necessities shall require.

§ 22. Penalty for violation. Any town or city clerk who shall violate any of the provisions of this article or shall fail to comply therewith shall be deemed guilty of a misdemeanor and shall pay a fine not exceeding the sum of one hundred dollars on conviction thereof.

§ 23. Supervision of and inspection of town and city clerks' records by state commissioner of health. The registration and recording of all marriages outside the city of New York shall be under the supervision of the state commissioner of health. The commissioner, either personally or by an accredited representative, may at any time inspect the record and index of marriage licenses issued by any town or city clerk and promulgate rules and regulations for insuring complete registration. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the district attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the state commissioner of health, the prosecuting attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or persons responsible for the alleged violation of law. Upon request of the state commissioner of health, the attorney-general shall assist in the enforcement of the provisions of this article.

§ 24. Effect of marriage on legitimacy of children. 1. A child heretofore or hereafter born of parents who prior or subsequent to the birth of such child shall have entered into a civil or religious

marriage, or shall have consummated a common-law marriage where such marriage is recognized as valid, in the manner authorized by the law of the place where such marriage takes place, is the legitimate child of both birth parents notwithstanding that such marriage is void or voidable or has been or shall hereafter be annulled or judicially declared void.

2. Nothing herein contained shall be deemed to affect the construction of any will or other instrument executed before the time this act shall take effect or any right or interest in property or right of action vested or accrued before the time this act shall take effect, or to limit the operation of any judicial determination heretofore made containing express provision with respect to the legitimacy, maintenance or custody of any child, or to affect any adoption proceeding heretofore commenced, or limit the effect of any order or orders entered in such adoption proceeding.

§ 25. License, when to be obtained. The provisions of this article pertaining to the granting of the licenses before a marriage can be lawfully celebrated apply to all persons who assume the marriage relation in accordance with subdivision four of section eleven of this chapter. Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age.

ARTICLE 4

Certain Rights and Liabilities of Husband and Wife

Section 50. Property of married woman.

52. Insurance of married person's life.

58. Pardon not to restore marital rights.

61. Married person's domicile.

§ 50. Property of married woman. Property, real or personal, now owned

by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this chapter, and the rents, issues, proceeds and profits thereof, shall continue to be her sole and separate property as if she were unmarried, and shall not be subject to her husband's control or disposal nor liable for his debts.

§ 52. Insurance of married person's life. The right of a married person to cause the life of his or her spouse or any other person to be insured and to dispose of any interest such married person may have in a policy of insurance on the life of the other spouse or of any other person shall be governed by the insurance law and by statutes and rules of law governing rights of a married person in respect to property and the acquisition, use, enjoyment and disposition thereof.

§ 58. Pardon not to restore marital rights. A pardon granted to a person sentenced to imprisonment for life within this state does not restore that person to the rights of a previous marriage or to the guardianship of a child, the issue of such a marriage.

§ 61. Married person's domicile. The domicile of a married man or woman shall be established for all purposes without regard to sex.

ARTICLE 5

The Custody and Wages of Children

Section 70. Habeas corpus for child detained by parent.

71. Special proceeding or habeas corpus to obtain visitation rights in respect to certain infant siblings.

72. Special proceeding or habeas corpus to obtain visitation rights or custody in respect to certain infant grandchildren.

74. Certain provisions relating to the custody of children by persons who are not the parents of such children.

§ 70. Habeas corpus for child detained by parent. (a) Where a minor child is residing within this state, either parent may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the natural guardianship, charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order. In all cases there shall be no prima facie right to the custody of the child in either parent, but the court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly.

(b) Any order under this section which applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to the provisions of part eight of article ten of such act, sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person or official having care and custody, or temporary care and custody, of such child.

§ 71. Special proceeding or habeas corpus to obtain visitation rights in respect to certain infant siblings. Where circumstances show that conditions exist which equity would see fit to intervene, a brother or sister or, if he or she be a minor, a proper person on his or her behalf of a child, whether by half or whole blood, may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to the family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interest

of the child may require, for visitation rights for such brother or sister in respect to such child.

§ 72. Special proceeding or habeas corpus to obtain visitation rights or custody in respect to certain infant grandchildren. 1. Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions exist which equity would see fit to intervene, a grandparent or the grandparents of such child may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to the family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interest of the child may require, for visitation rights for such grandparent or grandparents in respect to such child.

2. (a) Where a grandparent or the grandparents of a minor child, residing within this state, can demonstrate to the satisfaction of the court the existence of extraordinary circumstances, such grandparent or grandparents of such child may apply to the supreme court by commencing a special proceeding or for a writ of habeas corpus to have such child brought before such court, or may apply to family court pursuant to subdivision (b) of section six hundred fifty-one of the family court act; and on the return thereof, the court, by order, after due notice to the parent or any other person or party having the care, custody, and control of such child, to be given in such manner as the court shall prescribe, may make such directions as the best interests of the child may require, for custody rights for such grandparent or grandparents in respect to such child. An extended disruption of custody, as such term is defined in this section, shall constitute an extraordinary circumstance.

(b) For the purposes of this section "extended disruption of custody" shall include, but not be limited to, a prolonged separation of the

respondent parent and the child for at least twenty-four continuous months during which the parent voluntarily relinquished care and control of the child and the child resided in the household of the petitioner grandparent or grandparents, provided, however, that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for less than twenty-four months.

(c) Nothing in this section shall limit the ability of parties to enter into consensual custody agreements absent the existence of extraordinary circumstances.

§ 74. Certain provisions relating to the custody of children by persons who are not the parents of such children. 1. Notwithstanding any provision of law to the contrary, a person possessing a lawful order of guardianship or custody of a minor child, who is not the parent of such child, may enroll such child in public school in the applicable school district where he or she and such child reside. Upon application for enrollment of a minor child by a guardian or custodian who is not the parent of such child, a public school shall enroll such child for such time as the child resides with the guardian or custodian in the applicable school district, upon verification that the guardian or custodian possess a lawful order of custody for such child and that the guardian or custodian and the child properly reside in the same household within the school district.

2. Notwithstanding any provision of law to the contrary, persons possessing a lawful order of custody of a child who are not a parent of such child shall have the right to enroll and receive coverage for such child in their employer based health insurance plan and to assert the same legal rights under such employer based health insurance plans as persons who possess lawful orders of guardianship of the person for a child pursuant to rule twelve hundred ten of the civil practice laws and rules, article seventeen of the surrogate's court procedure act, or part four of article six of the family court act.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- Title I. General provisions.
- II. Jurisdiction.
- III. Enforcement.
- IV. Miscellaneous provisions.

TITLE I

GENERAL PROVISIONS

- Section 75. Short title and statement of legislative intent.
 - 75-a. Definitions.
 - 75-b. Proceedings governed by other laws.
 - 75-c. Application to Indian tribes.
 - 75-d. International application of article.
 - 75-e. Effect of child custody determination.
 - 75-f. Priority.
 - 75-g. Notice to persons outside state.
 - 75-h. Appearance and limited immunity.
 - 75-i. Communication between courts.
 - 75-j. Taking testimony in another state.
 - 75-k. Cooperation between courts; preservation of records.
 - 75-l. Military service by parent; effect on child custody orders pursuant to this article.
 - 75-m. Consideration of blindness during guardianship, custody or visitation proceedings.

§ 75. Short title and statement of legislative intent. 1. This article may be cited as the "uniform child custody jurisdiction and enforcement act".

2. It is the intent of the legislature in enacting this article to provide an effective mechanism to obtain and enforce orders of custody and visitation across state lines and to do so in a manner that ensures that the safety of the children is paramount and that victims of domestic violence and child abuse are protected. It is further the intent of the legislature that this article be construed so as to ensure

that custody and visitation by perpetrators of domestic violence or homicide of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of a child is restricted pursuant to subdivision one-c of section two hundred forty of this chapter and section one thousand eighty-five of the family court act.

§ 75-a. Definitions. In this article:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision.

2. "Child" means an individual who has not attained eighteen years of age.

3. "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

4. "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, person in need of supervision, contractual emancipation, or enforcement under title three of this article.

5. "Commencement" means the filing of the first pleading in a proceeding.

6. "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

7. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

8. "Initial determination" means the first child custody determination concerning a particular child.

9. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this article.

10. "Issuing state" means the state in which a child custody determination is made.

11. "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

13. "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

14. "Physical custody" means the physical care and supervision of a child.

15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

16. "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

17. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

18. "Law enforcement officer" means a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law.

§ 75-b. Proceedings governed by other laws. This article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§ 75-c. Application to Indian tribes. 1. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this article to the extent that it is governed by the Indian Child Welfare Act.

2. A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this title and title two of this article.

3. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under title three of this article.

§ 75-d. International application of article. 1. A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this title and title two of this article.

2. Except as otherwise provided in subdivision three of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under title three of this article.

3. A court of this state need not apply this article if the child custody law of a foreign country as written or as applied violates fundamental principles of human rights.

§ 75-e. Effect of child custody determination. A child custody determination made by a court of this state that had jurisdiction under this article binds all persons who have been served in accordance with the laws of this state or notified in accordance with section seventy-five-g of this title or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified or except to the extent that enforcement of an order would violate subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act.

§ 75-f. Priority. If a question of existence or exercise of jurisdiction under this article is raised in a child custody proceeding, the question, upon request of a party, child or child's attorney must be given priority on the calendar and handled expeditiously.

§ 75-g. Notice to persons outside state. 1. Notice required for the exercise of jurisdiction when a person is outside this state shall be

given in a manner prescribed by the law of this state for service of process, as provided in paragraph (a), (b) or (c) of this subdivision, or by the law of the state in which the service is made, as provided in paragraph (d) of this subdivision. Notice must be given in a manner reasonably calculated to give actual notice. If a person cannot be served with notice within the state, the court shall require that such person be served in a manner reasonably calculated to give actual notice, as follows:

(a) by personal delivery outside the state in the manner prescribed by section three hundred thirteen of the civil practice law and rules; or

(b) by any form of mail requesting a receipt; or

(c) in such manner as the court, upon motion, directs, including publication, if service is impracticable under paragraph (a) or (b) of this subdivision; or

(d) in such manner as prescribed by the law of the state in which service is made.

2. Proof of service outside the state shall be by affidavit of the individual who made the service, or in the manner prescribed by the order pursuant to which service is made. If service is made by mail, proof may be by a receipt signed by the addressee or other evidence of delivery to the addressee. Proof of service may also be in the manner prescribed by the law of the state in which the service is made.

3. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§ 75-h. Appearance and limited immunity. 1. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

2. A person who is subject to personal jurisdiction in this state on a

basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

3. The immunity granted by subdivision one of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this article committed by an individual while present in this state.

§ 75-i. Communication between courts. 1. A court of this state may communicate and, pursuant to subdivision four of section seventy-six-c, subdivision two of section seventy-six-e and section seventy-seven-f of this article, must communicate, with a court in another state concerning a proceeding arising under this article.

2. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

3. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

4. Except as otherwise provided in subdivision three of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

5. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 75-j. Taking testimony in another state. 1. In addition to other

procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

2. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony and the procedures to be followed by the persons taking such deposition or testimony. Any such testimony or deposition shall be recorded and preserved for transcription.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§ 75-k. Cooperation between courts; preservation of records. 1. A court of this state may request the appropriate court of another state to:

- (a) hold an evidentiary hearing;
- (b) order a person to produce or give evidence pursuant to procedures of that state;
- (c) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (d) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (e) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or

without the child.

2. Upon the request of a court of another state, a court of this state may hold a hearing or enter an order described in subdivision one of this section.

3. Travel and other necessary and reasonable expenses incurred under subdivisions one and two of this section may be assessed against the parties according to the law of this state.

4. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding at least until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

§ 75-1. Military service by parent; effect on child custody orders pursuant to this article. 1. During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, any orders issued pursuant to this article, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would materially affect or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order existed on the date the parent was activated, deployed, or temporarily assigned to military service shall be subject to review pursuant to subdivision three of this section. Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.

2. During such period the court may enter an order to modify custody if there is clear and convincing evidence that the modification is in the best interests of the child. An attorney for the child shall be appointed in all cases where a modification is sought during such

military service. Such order shall be subject to review pursuant to subdivision three of this section. When entering an order under this section, the court shall consider and provide for, if feasible and if in the best interests of the child, contact between the military service member and his or her child including, but not limited to, electronic communication by e-mail, webcam, telephone, or other available means. During the period of the parent's leave from military service, the court shall consider the best interests of the child when establishing a parenting schedule, including visiting and other contact. For such purpose, a "leave from service" shall be a period of not more than three months.

3. Unless the parties have otherwise stipulated or agreed, if an order is issued under this section, the return of the parent from active military service, deployment or temporary assignment shall be considered a substantial change in circumstances. Upon the request of either parent, the court shall determine on the basis of the child's best interests whether the custody judgment or order previously in effect should be modified.

4. This section shall not apply to assignments to permanent duty stations or permanent changes of station.

§ 75-m. Consideration of blindness during guardianship, custody or visitation proceedings. 1. The court may not deny or decide a petition for guardianship, custody or visitation solely on the basis that the petitioner is blind. The blindness of the petitioner shall be considered relevant only to the extent that the court finds, based on evidence in the record, that the blindness affects the best interests of the child whose guardianship, custody or visitation is the subject of the petition.

2. As used in this section, "blind" or "blindness" means:

a. vision that is 20/200 or less in the best corrected eye; or

b. vision that subtends an angle of not greater than twenty degrees in the best corrected eye.

TITLE II

JURISDICTION

Section 76. Initial child custody jurisdiction.

76-a. Exclusive, continuing jurisdiction.

76-b. Jurisdiction to modify determination.

76-c. Temporary emergency jurisdiction.

76-d. Notice; opportunity to be heard; joinder.

76-e. Simultaneous proceedings.

76-f. Inconvenient forum.

76-g. Jurisdiction declined by reason of conduct.

76-h. Information to be submitted to court.

76-i. Appearance of parties and child.

§ 76. Initial child custody jurisdiction. 1. Except as otherwise provided in section seventy-six-c of this title, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under paragraph (a) of this subdivision, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section seventy-six-f or seventy-six-g of this title, and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under paragraph (a) or (b) of this

subdivision have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section seventy-six-f or seventy-six-g of this title; or

(d) no court of any other state would have jurisdiction under the criteria specified in paragraph (a), (b) or (c) of this subdivision.

2. Subdivision one of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

§ 76-a. Exclusive, continuing jurisdiction. 1. Except as otherwise provided in section seventy-six-c of this title, a court of this state which has made a child custody determination consistent with section seventy-six or seventy-six-b of this title has exclusive, continuing jurisdiction over the determination until:

(a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

2. A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section seventy-six of this title.

§ 76-b. Jurisdiction to modify determination. Except as otherwise provided in section seventy-six-c of this title, a court of this state

may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph (a) or (b) of subdivision one of section seventy-six of this title and:

1. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section seventy-six-a of this title or that a court of this state would be a more convenient forum under section seventy-six-f of this title; or

2. A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

§ 76-c. Temporary emergency jurisdiction. 1. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child, a sibling or parent of the child.

2. If there is no previous child custody determination that is entitled to be enforced under this article and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title. Where the child who is the subject of a child custody determination under this section is in imminent risk of harm, any order issued under this section shall remain in effect until a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title has taken steps to assure the protection of the child. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

3. If there is a previous child custody determination that is entitled to be enforced under this article, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections seventy-six through seventy-six-b of this title. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires, provided, however, that where the child who is the subject of a child custody determination under this section is in imminent risk of harm, any order issued under this section shall remain in effect until a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title has taken steps to assure the protection of the child.

4. A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections seventy-six through seventy-six-b of this title, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections seventy-six through seventy-six-b of this title, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

§ 76-d. Notice; opportunity to be heard; joinder. 1. Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of section

seventy-five-g of this article must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

2. This article does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this article are governed by the laws of this state as in child custody proceedings between residents of this state.

§ 76-e. Simultaneous proceedings. 1. Except as otherwise provided in section seventy-six-c of this title, a court of this state may not exercise its jurisdiction under this title if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section seventy-six-f of this title.

2. Except as otherwise provided in section seventy-six-c of this title, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section seventy-six-h of this title. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this article, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this article does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

3. In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement:

(b) enjoin the parties from continuing with the proceeding for enforcement; or

(c) proceed with the modification under conditions it considers appropriate.

§ 76-f. Inconvenient forum. 1. A court of this state which has jurisdiction under this article to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the child or the child's attorney, or upon the court's own motion, or request of another court.

2. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) whether domestic violence or mistreatment or abuse of a child or sibling has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) the length of time the child has resided outside this state;

(c) the distance between the court in this state and the court in the state that would assume jurisdiction;

(d) the relative financial circumstances of the parties;

(e) any agreement of the parties as to which state should assume jurisdiction;

(f) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) the familiarity of the court of each state with the facts and issues in the pending litigation.

3. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

4. A court of this state may decline to exercise its jurisdiction under this article if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§ 76-g. Jurisdiction declined by reason of conduct. 1. Except as otherwise provided in section seventy-six-c of this title or by other law of this state, if a court of this state has jurisdiction under this article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) a court of the state otherwise having jurisdiction under sections seventy-six through seventy-six-b of this title determines that this state is a more appropriate forum under section seventy-six-f of this title; or

(c) no court of any other state would have jurisdiction under the criteria specified in sections seventy-six through seventy-six-b of this title.

2. If a court of this state declines to exercise its jurisdiction pursuant to subdivision one of this section, it may fashion an

appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections seventy-six through seventy-six-b of this title.

3. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subdivision one of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be inappropriate. No fees, costs or expenses shall be assessed against a party who is fleeing an incident or pattern of domestic violence or mistreatment or abuse of a child or sibling, unless the court is convinced by a preponderance of evidence that such assessment would be clearly appropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this article.

4. In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was to protect the petitioner from domestic violence or the child or sibling from mistreatment or abuse.

§ 76-h. Information to be submitted to court. 1. Subject to subdivision five of this section, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading

or affidavit must state whether the party:

(a) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(b) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(c) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

2. If the information required by subdivision one of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

3. If the declaration as to any of the items described in paragraphs (a) through (c) of subdivision one of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

4. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

5. Upon a finding, which may be made ex parte, that the health or safety of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this article. Notwithstanding any other provision of law, if the party seeking custody of the child has

resided or resides in a residential program for victims of domestic violence as defined in section four hundred fifty-nine-a of the social services law, the present address of the child and the present address of the party seeking custody and the address of the residential program for victims of domestic violence shall not be revealed. Upon making an order that the address of the child or party or other identifying information not be disclosed, the court shall designate the clerk of the court or such other disinterested person as the agent for service of process for the party whose address is to remain confidential and shall notify the adverse party of such designation in writing. The clerk or disinterested person designated by the court shall, when served with process on behalf of the party whose address is to remain confidential, promptly notify such party whose address is to remain confidential and forward such process to him or her. The party whose address is to remain confidential shall inform the clerk of the court or disinterested person designated by the court of any change in address for purposes of receipt of service of process.

§ 76-i. Appearance of parties and child. 1. In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

2. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section seventy-five-g of this article include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

3. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

4. If a party to a child custody proceeding who is outside this state

is directed to appear under subdivision two of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

TITLE III ENFORCEMENT

Section 77. Definitions.

- 77-a. Enforcement under Hague Convention.
- 77-b. Duty to enforce.
- 77-c. Temporary visitation.
- 77-d. Registration of child custody determination.
- 77-e. Enforcement of registered determination.
- 77-f. Simultaneous proceedings.
- 77-g. Expedited enforcement of child custody determination.
- 77-h. Service of petition and order.
- 77-i. Hearing and order.
- 77-j. Warrant to take physical custody of child.
- 77-k. Costs, fees and expenses.
- 77-l. Recognition and enforcement.
- 77-m. Appeals.
- 77-n. Role of prosecutor or public official.
- 77-o. Role of law enforcement.
- 77-p. Costs and expenses.

§ 77. Definitions. As used in this title:

1. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

2. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction

or enforcement of a child custody determination.

§ 77-a. Enforcement under Hague Convention. Under this act, a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

§ 77-b. Duty to enforce. 1. A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this article or the determination was made under factual circumstances meeting the jurisdictional standards of this article and the determination has not been modified in accordance with this article; provided, however, that recognition and enforcement of the determination would not violate subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act.

2. A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this title are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§ 77-c. Temporary visitation. 1. A court of this state which does not have jurisdiction to modify a child custody determination, may, if consistent with subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act, issue a temporary order enforcing:

- (a) a visitation schedule made by a court of another state; or
- (b) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

2. If a court of this state makes an order under paragraph (b) of subdivision one of this section, it shall specify in the order a period

that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in title two of this article. The order remains in effect until an order is obtained from the other court or the period expires.

§ 77-d. Registration of child custody determination. 1. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state;

(a) a letter or other document requesting registration;

(b) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) except as otherwise provided in section seventy-six-h of this article, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

2. On receipt of the documents required by subdivision one of this section, the registering court shall:

(a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) serve notice upon the persons named pursuant to subdivision one of this section and provide them with an opportunity to contest the registration in accordance with this section.

3. The notice required by paragraph (b) of subdivision two of this section must state that:

(a) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and

(c) failure to contest the registration will result in confirmation of

the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

4. A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) the issuing court did not have jurisdiction under title two of this article;

(b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under title two of this article; or

(c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section seventy-five-g of this article, in the proceedings before the court that issued the order for which registration is sought.

5. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

6. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§ 77-e. Enforcement of registered determination. 1. A court of this state may grant any relief normally available under the laws of this state to enforce a registered child custody determination made by a court of another state.

2. A court of this state shall recognize and enforce, but may not modify, except in accordance with title two of this article, a registered child custody determination of a court of another state; provided, however, that recognition and enforcement of the determination

would not violate subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act.

§ 77-f. Simultaneous proceedings. If a proceeding for enforcement under this title is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under title two of this article, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§ 77-g. Expedited enforcement of child custody determination. 1. A petition under this title must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

2. A petition for enforcement of a child custody determination must state:

(a) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this article and, if so, identify the court, the case number, and the nature of the proceeding;

(c) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, child abuse or neglect, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(d) the present physical address of the child and the respondent, if known;

(e) whether relief in addition to the immediate physical custody of

the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) if the child custody determination has been registered and confirmed under section seventy-seven-d of this title, the date and place of registration.

3. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing within three court days and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held not more than three court days after the filing of the petition, provided that the petition has been served not less than twenty-four hours prior to the hearing. Service may be by any means directed by the court pursuant to section three hundred eight of the civil practice law and rules. The court may extend the date of the hearing briefly for good cause shown or upon the request of the petitioner.

4. An order issued under subdivision three of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section seventy-seven-k of this title, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) the child custody determination has not been registered and confirmed under section seventy-seven-d of this title and that:

(1) the issuing court did not have jurisdiction under title two of this article;

(2) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under title two of this article or that enforcement would violate subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act;

(3) the respondent was entitled to notice, but notice was not given in accordance with the standards of section seventy-five-g of this article, in the proceedings before the court that issued the order for which

enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under section seventy-seven-c of this title, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under title two of this article.

§ 77-h. Service of petition and order. Except as otherwise provided in section seventy-seven-j of this title, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child. Service may be made outside the state in the manner prescribed by section seventy-five-g of this article.

§ 77-i. Hearing and order. 1. Unless the court issues a temporary emergency order pursuant to section seventy-six-c of this article, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a) the child custody determination has not been registered and confirmed under section seventy-seven-d of this title and that:

(i) the issuing court did not have jurisdiction under title two of this article;

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under title two of this article or enforcement of the determination would violate subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of section seventy-five-g of this article, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under section seventy-seven-d of this title but has been vacated, stayed, or modified by a court of a state having

jurisdiction to do so under title two of this article.

2. The court shall award the fees, costs, and expenses authorized under section seventy-seven-k of this title and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

3. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

4. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this act.

§ 77-j. Warrant to take physical custody of child. 1. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is at imminent risk of suffering serious physical harm or of removal from this state.

2. If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer imminent serious physical harm or to be removed from this state, it may issue a warrant to take physical custody of the child. Except in extraordinary circumstances, the petition must be heard on the next court day after the warrant is executed. Any adjournment for extraordinary circumstances shall be for not more than three court days. The application for the warrant must include the statements required by subdivision two of section seventy-seven-g of this title.

3. A warrant to take physical custody of a child must:

(a) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(b) direct law enforcement officers to take physical custody of the

child immediately and deliver the child to the petitioner or, where necessary, to act jointly with the local child protective service to take immediate steps to protect the child; and

(c) provide for the placement of the child pending final relief.

4. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

5. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property in order to execute the warrant and take physical custody of the child. If required by exigent circumstances of the case and necessary to the protection of the child, the court may authorize law enforcement officers to make a forcible entry at any hour.

6. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

§ 77-k. Costs, fees and expenses. 1. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be inappropriate. No fees, costs or expenses shall be assessed against a party who is fleeing an incident of domestic violence or mistreatment or abuse of a child or sibling, unless the court is convinced by a preponderance of evidence that such assessment would be clearly appropriate.

2. The court may not assess fees, costs, or expenses against a state unless authorized by law other than this article.

§ 77-1. Recognition and enforcement. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this article which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under title two of this article, unless recognition and enforcement would violate subdivision one-c of section two hundred forty of this chapter or section one thousand eighty-five of the family court act.

§ 77-m. Appeals. An appeal may be taken from a final order in a proceeding under this title in accordance with article fifty-five of the civil practice law and rules and article eleven of the family court act and may be granted a preference in the discretion of the court to which the appeal is taken. Unless the court enters a temporary emergency order under section seventy-six-c of this article, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§ 77-n. Role of prosecutor or public official. 1. In a case arising under this article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this title or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (a) an existing child custody determination;
- (b) a request to do so from a court in a pending child custody proceeding;
- (c) a reasonable belief that a criminal statute has been violated; or
- (d) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

2. A prosecutor or appropriate public official acting under this section acts on behalf of the state or local government entity and may not represent any private party.

§ 77-o. Role of law enforcement. At the request of a prosecutor or other appropriate public official acting under section seventy-seven-n of this title, a law enforcement officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under section seventy-seven-n of this title.

§ 77-p. Costs and expenses. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under section seventy-seven-n or seventy-seven-o of this title.

TITLE IV

MISCELLANEOUS PROVISIONS

Section 78. Application and construction.

78-a. Severability clause.

§ 78. Application and construction. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 78-a. Severability clause. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

ARTICLE 6

Guardians

Section 80. Guardians in socage.

81. Appointment of guardians by parent.

82. Powers and duties of such guardians.

83. Duties and liabilities of all general guardians.

85. Investment of trust funds by guardian.

§ 80. Guardians in socage. Where a minor for whom a general guardian of the property has not been appointed shall acquire real property, the guardianship of his property with the rights, powers and duties of a guardian in socage belongs: (1) to the parents jointly, or, if they be separated, or divorced, to the parent who has been given the custody of the minor by a decree of court, or in the absence of such a decree, to the parent having the actual custody of the minor; (2) if one of the parents be dead, to the sole surviving parent; (3) if there be no father or mother, to the nearest and eldest relative of full age, not under any legal incapacity.

The rights and authority of every such guardian shall be superseded by a testamentary or other guardian appointed in pursuance of this article or in pursuance of article ten of the surrogates court act.

§ 81. Appointment of guardians by parent. A married woman is a joint guardian of her children with her husband, with equal powers, rights and duties in regard to them. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born, or of any living child under the age of eighteen years and unmarried, may, by deed or last will, duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons. Such surviving parent may appoint a guardian or guardians of the person and of the property of the infant and in making such appointment shall not be limited to the appointment of the same person or persons in both capacities. Either the father or

mother may in the life-time of them both, by last will duly executed, appoint the other the guardian of the person and property of such child, during its minority. Either the father or mother may in the life-time of them both by last will duly executed, and with the written consent of the other duly acknowledged, appoint the other and a third person to be the guardians of the person and property of such child during its minority, and in making such appointment shall not be limited to the appointment of the same person or persons in both capacities. Such consent must have as part thereof a sworn statement that the consenting parent in so consenting, is motivated solely by the welfare of the child or children, the guardianship of whom is the subject of such consent, and that such consenting parent has not received and will not receive any consideration for such consent, and such consent may be revoked by such consenting parent at any time prior to the death of the other, by filing in the office of the county clerk of the county in which said other then resides, a written revocation of such consent, subscribed and acknowledged by the person so revoking, with proof of service of a copy thereof on such other parent in the manner provided for service of a summons. An appointment of a guardian of the person and property of an infant made by duly executed last will of his father or mother shall be valid and effective if at the time the will is admitted to probate the other parent shall have died or the surviving parent be an adjudicated incompetent. If both parents die under circumstances which render it difficult or impossible to determine which of them died first and both of them left last wills appointing the same person as guardian, the appointment shall be valid and effective. If both parents die under circumstances which render it difficult or impossible to determine which of them died first, leaving last wills appointing different persons as guardians, the surrogate's court shall determine which of the appointments will best serve the welfare of the child and issue letters of guardianship accordingly. If at any time during the minority of the infant the surviving parent becomes competent to serve as guardian, he may apply to the court which issued letters of guardianship to the guardian appointed by will for a decree revoking such letters and the court shall on such application make such order or decree as justice requires. A person appointed guardian in pursuance of this section shall not exercise the power of authority thereof unless such will is

admitted to probate, or such deed executed and recorded as provided by SCPA 1710.

§ 82. Powers and duties of such guardians. Every such disposition, from the time it takes effect, shall vest in the person to whom made, if he accepts the appointment, all the rights and powers, and subject him to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor, as guardian in socage or otherwise. He may take the custody and charge of the tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor, and shall recover damages in such actions for the benefit of his ward. He shall also take the custody and management of the personal estate of such minor and the profits of his real estate, during the time for which such disposition shall have been made, and may bring such actions in relation thereto as a guardian in socage might by law.

§ 83. Duties and liabilities of all general guardians. A general guardian or guardian in socage shall safely keep the property of his ward that shall come into his custody, and shall not make or suffer any waste, sale or destruction of such property or inheritance, but shall keep in repair and maintain the houses, gardens and other appurtenances to the lands of his ward, by and with the issues and profits thereof, or with such other moneys belonging to his ward as shall be in his possession; and shall deliver the same to his ward, when he comes to full age, in at least as good condition as such guardian received the same, inevitable decay and injury only excepted; and shall answer to his ward for the issues and profits of the real estate, received by him, by a lawful account, to be settled before any court, judge or surrogate having authority to settle the accounts of general and testamentary guardians; and any order, judgment or decree in any action or proceeding to settle such accounts may be enforced to the same extent, and in like manner as in the case of general and testamentary guardians. If any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the custody of the same, and of

such ward, and shall be liable to the ward for any damage caused thereby.

§ 85. Investment of trust funds by guardian. A guardian holding funds for investment has the powers provided by section twenty-one of the personal property law and must not invest the funds in any other securities or manner.

ARTICLE VII

ADOPTION

Title 1. Adoptions generally.

2. Adoption from an authorized agency.
3. Private-placement adoption.
4. Effect of adoption from an authorized agency, of private-placement adoption, and abrogations thereof.

TITLE 1

ADOPTIONS GENERALLY

Section 109. Definitions.

110. Who may adopt; effect of article.
111. Whose consent required.
 - 111-a. Notice in certain proceedings to fathers of children born out-of-wedlock.
 - 111-b. Determination of issue of paternity by surrogate; limitations.
 - 111-c. Adoption order from foreign country or foreign jurisdiction.
 - 111-d. Consideration of blindness during adoption proceedings.

§ 109. Definitions. When used in this article, unless the context or subject matter manifestly requires a different interpretation:

1. "Adoptive parent" or "adopter" shall mean a person adopting and

"adoptive child" or "adoptee" shall mean a person adopted.

2. "Judge" shall mean a judge of the family court of any county in the state.

3. "Surrogate" shall mean the surrogate of any county in the state and any other judicial officer while acting in the capacity of surrogate.

4. "Authorized agency" shall mean an authorized agency as defined in the social services law and, for the purpose of this article, shall include such corporations incorporated or organized under the laws of this state as may be specifically authorized by their certificates of incorporation to receive children for purposes of adoption.

5. "Private-placement adoption" shall mean any adoption other than that of a minor who has been placed for adoption by an authorized agency.

6. "Lawful custody" shall mean a custody (a) specifically authorized by statute or (b) pursuant to judgment, decree or order of a court or (c) otherwise authorized by law.

7. "A child who has been surrendered to an authorized agency for the purpose of adoption" shall mean a child who has been surrendered to such an agency pursuant to the provisions of section three hundred eighty-three-c or three hundred eighty-four of the social services law.

§ 110. Who may adopt; effect of article. An adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person. An adult married person who is living separate and apart from his or her spouse pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded or an adult married person who has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption

proceeding may adopt another person; provided, however, that the person so adopted shall not be deemed the child or step-child of the non-adopting spouse for the purposes of inheritance or support rights or obligations or for any other purposes. An adult or minor married couple together may adopt a child of either of them born in or out of wedlock and an adult or minor spouse may adopt such a child of the other spouse. No person shall hereafter be adopted except in pursuance of this article, and in conformity with section three hundred seventy-three of the social services law.

An adult married person who has executed a legally enforceable separation agreement or is a party to a marriage in which a valid decree of separation has been entered or has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption proceeding and who becomes or has been the custodian of a child placed in their care as a result of court ordered foster care may apply to such authorized agency for placement of said child with them for the purpose of adoption. Final determination of the propriety of said adoption of such foster child, however, shall be within the sole discretion of the court, as otherwise provided herein.

Adoption is the legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person.

A proceeding conducted in pursuance of this article shall constitute a judicial proceeding. An order of adoption or abrogation made therein by a surrogate or by a judge shall have the force and effect of and shall be entitled to all the presumptions attaching to a judgment rendered by a court of general jurisdiction in a common law action.

No adoption heretofore lawfully made shall be abrogated by the enactment of this article. All such adoptions shall have the effect of lawful adoptions hereunder.

Nothing in this article in regard to a minor adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust

made or created before June twenty-fifth, eighteen hundred seventy-three, nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust a minor adopted before that date is not an heir so as to alter estates or trusts or devises in wills so made or created. Nothing in this article in regard to an adult adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust made or created before April twenty-second, nineteen hundred fifteen, nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust an adult so adopted is not an heir so as to alter estates or trusts or devises in wills so made or created.

It shall be unlawful to preclude a prospective adoptive parent or parents solely on the basis that the adoptor or adopters has had, or has cancer, or any other disease. Nothing herein shall prevent the rejection of a prospective applicant based upon his or her poor health or limited life expectancy.

A petition to adopt, pursuant to the terms of this article, where the petitioner's parentage is legally-recognized under New York State law shall not be denied solely on the basis that the petitioner's parentage is already legally-recognized.

§ 111. Whose consent required. 1. Subject to the limitations hereinafter set forth consent to adoption shall be required as follows:

(a) Of the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent;

(b) Of the parents or surviving parent, whether adult or infant, of a child conceived or born in wedlock;

(c) Of the mother, whether adult or infant, of a child born out of wedlock;

(d) Of any person or authorized agency having lawful custody or guardianship of the adoptive child;

(e) In the case of the adoption of a child transferred to the custody and guardianship of an authorized agency, foster parent, or relative pursuant to section three hundred eighty-four-b of the social services

law or a child transferred to the custody and guardianship of an authorized agency pursuant to section three hundred eighty-three-c of the social services law:

(i) Of any person adjudicated by a court of this state or a court of any other state or territory of the United States to be the father of the child prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law;

(ii) Of any person who filed a petition in a court in this state seeking to be adjudicated the father of the child prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law, provided that the parentage petition has been resolved in the petitioner's favor or remains pending at the conclusion of the proceedings pursuant to section three hundred eighty-four-b, three hundred eighty-three-c, or three hundred eighty-four of the social services law;

(iii) Of any person who has executed an acknowledgment of parentage pursuant to section one hundred eleven-k of the social services law, section five hundred sixteen-a of the family court act, or section forty-one hundred thirty-five-b of the public health law prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law, provided that such acknowledgement has not been vacated;

(iv) Of any person who filed an unrevoked notice of intent to claim parentage of the child pursuant to section three hundred seventy-two-c of the social services law prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law;

(f) In any other adoption proceeding:

(i) Of the father, whether adult or infant, of a child born out-of-wedlock and placed with the adoptive parents more than six months after birth, but only if such father shall have maintained substantial and continuous or repeated contact with the child as manifested by: (A) the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either (B) the father's visiting the child at least monthly when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or (C) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. The subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this paragraph. A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision;

(ii) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time he is placed for adoption, but only if: (A) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (B) such father openly held himself out to be the father of such child during such period; and (C) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

2. The consent shall not be required of a parent or of any other person having custody of the child:

(a) who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or

(b) who has surrendered the child to an authorized agency under the provisions of section three hundred eighty-three-c or three hundred eighty-four of the social services law; or

(c) for whose child a guardian has been appointed under the provisions of section three hundred eighty-four-b of the social services law; or

(d) who, by reason of mental illness or intellectual disability, as defined in subdivision six of section three hundred eighty-four-b of the social services law, is presently and for the foreseeable future unable to provide proper care for the child. The determination as to whether a parent is mentally ill or intellectually disabled shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law; or

(e) who has executed an instrument, which shall be irrevocable, denying the paternity of the child, such instrument having been executed after conception and acknowledged or proved in the manner required to permit the recording of a deed.

3. (a) Notice of the proposed adoption shall be given to a person whose consent to adoption is required pursuant to subdivision one and who has not already provided such consent.

(b) Notice and an opportunity to be heard upon the proposed adoption may be afforded to a parent whose consent to adoption may not be required pursuant to subdivision two, if the judge or surrogate so orders.

(c) Notice under this subdivision shall be given in such manner as the judge or surrogate may direct.

(d) Notwithstanding any other provision of law, neither the notice of a proposed adoption nor any process in such proceeding shall be required to contain the name of the person or persons seeking to adopt the child.

4. Where the adoptive child is over the age of eighteen years the consents specified in paragraphs (b), (c) and (d) of subdivision one of this section shall not be required, and the judge or surrogate in his discretion may direct that the consent specified in paragraph (f) of subdivision one of this section shall not be required if in his opinion the best interests of the adoptive child will be promoted by the adoption and such consent cannot for any reason be obtained.

5. An adoptive child who has once been lawfully adopted may be readopted directly from such child's adoptive parents in the same manner as from its birth parents. In such case the consent of such birth parents shall not be required but the judge or surrogate in his discretion may require that notice be given to the birth parents in such manner as he may prescribe.

6. For the purposes of paragraph (a) of subdivision two:

(a) In the absence of evidence to the contrary, the ability to visit and communicate with a child or person having custody of the child shall be presumed.

(b) Evidence of insubstantial or infrequent visits or communication by the parent or other person having custody of the child shall not, of itself, be sufficient as a matter of law to preclude a finding that the consent of such parent or person to the child's adoption shall not be required.

(c) The subjective intent of the parent or other person having custody of the child, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph (a) of subdivision two manifesting such

intent, shall not preclude a determination that the consent of such parent or other person to the child's adoption shall not be required.

(d) Payment by a parent toward the support of the child of a fair and reasonable sum, according to the parent's means, shall be deemed a substantial communication by such parent with the child or person having legal custody of the child.

§ 111-a. Notice in certain proceedings to fathers of children born out-of-wedlock. 1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b of this article relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given: (a) in the case of the adoption of a child transferred to the custody and guardianship of an authorized agency, foster parent, or relative pursuant to section three hundred eighty-four-b of the social services law or a child transferred to the custody and guardianship of an authorized agency pursuant to section three hundred eighty-three-c of the social services law; or (b) to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b of this article. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one

or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of the social services law;

(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of the social services law;

(d) any person who is recorded on the child's birth certificate as the child's father;

(e) any person who is openly living with the child and the child's mother at the time the proceeding is initiated and who is holding himself out to be the child's father;

(f) any person who has been identified as the child's father by the mother in written, sworn statement;

(g) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b of the social services law; and

(h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law.

3. The provisions of this section shall not apply to persons entitled to notice pursuant to section one hundred eleven.

The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two to present evidence to the court relevant to the best interests of the child.

4. Notice under this section shall be given at least twenty days prior to the proceeding by delivery of a copy of the petition and notice to the person. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the person's last known address with reasonable effort, notice may be given, without prior court order therefor, at least twenty days prior to the proceeding by registered or certified mail directed to the person's last known address or, where the person has filed a notice of intent to claim paternity pursuant to section three hundred seventy-two-c of the social services law, to the address last entered therein. Notice by publication shall not be required to be given to a person entitled to notice pursuant to the provisions of this section.

5. A person may waive his right to notice under this section by written instrument subscribed by him and acknowledged or proved in the manner required for the execution of a surrender instrument pursuant to section three hundred eighty-four of the social services law.

6. The notice given to persons pursuant to this section shall inform them of the time, date, place and purpose of the proceeding and shall also apprise such persons that their failure to appear shall constitute a denial of their interest in the child which denial may result, without further notice, in the adoption or other disposition of the custody of the child.

7. No order of adoption and no order of the court pursuant to section one hundred fifteen-b shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five. Nor shall any order of adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any

previous proceeding pursuant to section one hundred fifteen-b in which the court determined that the best interests of the child would be served by adoption of the child by the adoptive parents.

§ 111-b. Determination of issue of paternity by surrogate; limitations. 1. In the course of an adoption proceeding conducted pursuant to this article the surrogate shall have jurisdiction to determine any issue of paternity arising in the course of the same proceeding and to make findings and issue an order thereon.

2. Such determination shall be made substantially in accordance with the relevant and otherwise consistent provisions of the family court act except that the surrogate shall have no power to grant any relief relating to support of the child as an incident thereto.

3. A judge of the family court shall continue to exercise all of the powers relating to adoption and declaration of paternity conferred upon the family court by law.

§ 111-c. Adoption order from foreign country or foreign jurisdiction. 1. A final judgment of adoption granted by a judicial, administrative or executive body of a jurisdiction or country other than the United States shall have the same force and effect in this state as that given to a judgment of adoption entered by a court of competent jurisdiction of New York state, without additional proceedings or documentation provided:

- (a) either adopting parent is a resident of this state; and
- (b) the validity of the foreign adoption has been verified by the granting of an IR-3, IH-3, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.

2. Notwithstanding any other provision of law or rule or regulation to the contrary, an adoptive parent referred to in subdivision one of this section shall not be required to petition a court in this state for adoption of the child provided the conditions of paragraphs (a) and (b) of subdivision one of this section are met. The foreign adoption shall

be considered "final" under the laws of New York state upon the satisfaction of paragraphs (a) and (b) of subdivision one of this section.

3. Either adoptive parent or a guardian or a guardian ad litem may register the order in this state with the judge or surrogate of the county in which the adoptive parent or parents reside. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of subdivision one of this section, the court shall issue a finding as to aspects of the foreign adoption, to wit, the names of the adoptive parents, the name or names and reported birth date of the adoptive child, the country of the adoptive child's birth, the country and the date of the foreign adoption, the state residency of the adoptive parent or parents and adoptive child, and a finding as to the date and issuance of an IR-3, IH-3, or a successor immigrant visa; and, the court shall issue an order of adoption to the party who has petitioned for such an order.

4. The judge or surrogate is hereby directed to expedite the issuance of an order of adoption pursuant to the provisions of subdivision three of this section in order to ensure minimal expense of time and money to the petitioning parties in attaining such order of adoption.

§ 111-d. Consideration of blindness during adoption proceedings. 1. The court may not deny or decide a petition for adoption solely on the basis that the petitioner is blind. The blindness of the petitioner shall be considered relevant only to the extent that the court finds, based on evidence in the record, that the blindness affects the best interests of the child whose adoption is the subject of the petition.

2. As used in this section, "blind" or "blindness" means:

a. vision that is 20/200 or less in the best corrected eye; or

b. vision that subtends an angle of not greater than twenty degrees in

the best corrected eye.

TITLE II

ADOPTION FROM AN AUTHORIZED AGENCY

Section 112. General provisions relating to adoption from authorized agencies.

112-a. Expedited calendaring of adoption proceedings.

112-b. Post-adoption contact agreements; judicial approval; enforcement.

113. Special provisions relating to adoption from authorized agencies.

113-a. Effect of death of potential adoptive parent.

114. Order of adoption.

§ 112. General provisions relating to adoption from authorized agencies. In an adoption from an authorized agency the following requirements shall be observed:

1. The adoptive parents or parent and the adoptive child must appear for examination before a judge or surrogate of the county specified in section one hundred thirteen of this title. The judge or surrogate, however, may in his discretion dispense with the personal appearance of the adoptive child or of an adoptive parent who is on active duty in the armed forces of the United States.

2. The adoptive parents or parent and the adoptive child if over eighteen years of age must present to such judge or surrogate (a) a petition stating the names and place of residence of the petitioners; whether they are of full age; whether they are married or unmarried and, if married, whether they are living together as husband and wife; the first name, date and place of birth of the adoptive child as nearly as the same can be ascertained; a statement on information and belief that there will be annexed to the petition a schedule verified by a duly constituted official of the authorized agency as required by this section; the religious faith of the petitioners; the religious faith of

the adoptive child and his or her parents as nearly as the same can be ascertained; the manner in which the adoptive parents obtained the adoptive child; whether the child was placed or brought into the state of New York from out of state for the purpose of adoption, whether the placement was subject to the provisions of section three hundred seventy-four-a of the social services law and if the placement was subject to the provisions of such section, whether the provisions of such section were complied with; the period of time during which the adoptive child has resided with the adoptive parents; the occupation and approximate income of the petitioners, including support and maintenance, if any, to be received on behalf of the adoptive child from a commissioner of social services, pursuant to the social services law, and the new name, if any, by which the adoptive child is to be known; whether the adoptive parent or parents has or have knowledge that an adoptive parent is the subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment pursuant to title six of article six of the social services law, or has been the subject of or the respondent in a child protective proceeding commenced under article ten of the family court act, which proceeding resulted in an order finding that the child is an abused or neglected child; that no previous application has been made to any court or judge for the relief sought or if so made, the disposition of it and a statement as to whether the adoptive child had been previously adopted, all of which statements shall be taken prima facie as true; (b) an agreement on the part of the adoptive parents or parent to adopt and treat the adoptive child as their or his or her own lawful child; (c) the consents required by section one hundred eleven of this article.

2-a. In the petition provided for in subdivision two of this section, the adoptive parents or parent and the adoptive child if over eighteen years of age shall present to the judge or surrogate as nearly as can be ascertained the heritage of the parents, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the parents at the time of the birth of the adoptive child; general physical appearance of the parents at the time of the birth of the adoptive child, which shall include

height, weight, color of hair, eyes, skin; occupation of the parents at the time of the birth of the adoptive child; health and medical history of the parents at the time of the birth of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, talents, hobbies and special interests of parents. The petition shall also include the names and current addresses of the biological parents, if known.

3. The authorized agency must present to such judge or surrogate a schedule to be annexed to the petition which shall be verified by a duly constituted official of the authorized agency having custody of the adoptive child or actually placing the child for adoption and shall contain (1) the full name of the child, (2) the manner in which the authorized agency obtained custody of the adoptive child, (3) the facts, if any, which render unnecessary the consent of either or both of the parents of the adoptive child, (4) a statement whether either parent had ever requested the agency to return the child to the parent, within thirty days of the execution and delivery of an instrument of surrender to an authorized agency and, if so, all facts relating thereto. If a request for return of the child to a parent be made after the presentation to the court of the petition and schedule, the authorized agency shall promptly report to the court in writing the facts relating thereto and (5) all available information comprising the child's medical history. If the child was placed into the state of New York for the purpose of adoption and such placement was subject to the provisions of section three hundred seventy-four-a of the social services law, the authorized agency shall attach to the petition a copy of the document, signed by New York's administrator of the interstate compact for the placement of children or his designee, which informs the agency or person who placed the child into the state that such placement complied with the provisions of the compact.

4. None of the papers in the proceeding shall state the surname of the child in the title and no petition, agreement, consent, affidavit, nor any other document which is required to be signed by the adoptive

parents shall contain the surname of the adoptive child.

5. The petition must be verified, the agreement and consents executed and acknowledged and the proof given by the respective persons before such judge or surrogate; but where the verification, agreement or necessary consent is duly acknowledged or proved and certified in form sufficient to entitle a conveyance to be recorded in this state, (except that when executed and acknowledged within the state of New York, no certificate of the county clerk shall be required), such judge or surrogate may grant the order of adoption without the personal appearance of such persons or parties or any of them for good cause shown, which reason shall be recited in the order of adoption.

6. Where the adoptive child is less than eighteen years of age, no order of adoption shall be made until such child has resided with the adoptive parents for at least three months unless the judge or surrogate in his discretion shall dispense with such period of residence and shall recite in the order the reason for such action. When the adoptive parents are the foster parents in whose home the adoptive child has been placed out or boarded out for a period in excess of three months, such period shall be deemed to constitute the required period of residence.

7. Before making an order of adoption the judge or surrogate shall inquire of the department of social services and the department shall inform the court whether an adoptive parent is the subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment pursuant to title six of article six of the social services law and shall cause to be made an investigation by a disinterested person or by an authorized agency specifically designated by the judge or surrogate to examine into the allegations set forth in the petition and to ascertain such other facts relating to the adoptive child and adoptive parents as will give such judge or surrogate adequate basis for determining the propriety of approving the adoption. A written report of such investigation shall be submitted before the order of adoption is made. As used in this subdivision, "disinterested person" includes the probation service of

the family court. Such an inquiry shall not be required if the findings of such an inquiry made within the past twelve months is available to the judge or surrogate.

7-a. Any order subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

8. Rules of court shall permit the filing of a petition for adoption of a child whose custody and guardianship has not yet been committed to an authorized agency where a proceeding to terminate parental rights is pending. Such adoption petition shall be filed in the court where the termination of parental rights proceeding is pending. The clerk of such court shall accept the adoption petition for filing and processing and shall request such inquiries of the department of social services as are required by subdivision seven of this section, provided, however, that the petition, supporting documents and the fact of their filing shall not be provided to the judge before whom the petition for termination of parental rights is pending until such time as fact-finding is concluded under such petition.

§ 112-a. Expedited calendaring of adoption proceedings. 1. The

adoption proceeding shall be deemed filed upon receipt by the clerk of the court of all the documents required in subdivisions two, two-a, three, five and seven of section one hundred twelve of this title, and by rules of the court, together with an affidavit of readiness from the petitioner's attorney. The affidavit of readiness shall attest that the petitioner has prepared a petition for the adoption of the child and has collected documentation as required by such rules and subdivisions two, two-a, three and five of section one hundred twelve of this title.

2. Upon the filing of the documents required by subdivision one of this section, the court, pursuant to rules promulgated by the chief administrator of the court, shall schedule the proceeding for a review, to take place within time frames established by such rules, to determine if there is adequate basis for approving the adoption.

(a) If such basis is found, the appearance of the adoptive parents and child before the court for approval of the adoption shall be calendared pursuant to such rules.

(b) If, upon the court's review, the court finds that there is not an adequate basis for approval of the adoption, the court shall direct such further hearings, submissions or appearances as may be required, and the proceedings shall be adjourned as required for such purposes.

3. The chief administrator of the court shall establish by rule time frames for the calendaring and disposition of adoption proceedings and shall report by the thirty-first day of December of each year to the governor and the temporary president of the senate, speaker of the assembly, and chairpersons of the judiciary and children and families committees on the implementation of such rules and their impact upon adoptions from authorized agencies.

§ 112-b. Post-adoption contact agreements; judicial approval; enforcement. 1. Nothing in this section shall be construed to prohibit the parties to a proceeding under this chapter from entering into an agreement regarding communication with or contact between an adoptive child, adoptive parent or parents and a birth parent or parents and/or the adoptive child's biological siblings or half-siblings.

2. Agreements regarding communication or contact between an adoptive child, adoptive parent or parents, and a birth parent or parents and/or biological siblings or half-siblings of an adoptive child shall not be legally enforceable unless the terms of the agreement are incorporated into a written court order entered in accordance with the provisions of this section. The court shall not incorporate an agreement regarding communication or contact into an order unless the terms and conditions of the agreement have been set forth in writing and consented to in writing by the parties to the agreement, including the attorney representing the adoptive child. The court shall not enter a proposed order unless the court that approved the surrender of the child determined and stated in its order that the communication with or contact between the adoptive child, the prospective adoptive parent or parents and a birth parent or parents and/or biological siblings or half-siblings, as agreed upon and as set forth in the agreement, would be in the adoptive child's best interests. Notwithstanding any other provision of law, a copy of the order entered pursuant to this section incorporating the post-adoption contact agreement shall be given to all parties who have agreed to the terms and conditions of such order.

3. Failure to comply with the terms and conditions of an approved order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of written consent to an adoption after that consent has been approved by the court as provided in this section.

4. An order incorporating an agreement regarding communication or contact entered under this section may be enforced by any party to the agreement or the attorney for the child by filing a petition in the family court in the county where the adoption was approved. Such petition shall have annexed to it a copy of the order approving the agreement regarding communication or contact. The court shall not enforce an order under this section unless it finds that the enforcement is in the child's best interests.

5. If a birth parent has surrendered a child to an authorized agency

pursuant to the provisions of section three hundred eighty-three-c or section three hundred eighty-four of the social services law, and if the court before whom the surrender instrument was presented for approval approved an agreement providing for communication or contact pursuant to paragraph (a) of subdivision two of section three hundred eighty-three-c or paragraph (a) of subdivision two of section three hundred eighty-four of the social services law, a copy of the surrender instrument and of the approved agreement shall be annexed to the petition of adoption. The court shall issue an order incorporating the terms and conditions of the approved agreement into the order of adoption. Notwithstanding any other provision of law, a copy of any order entered pursuant to this subdivision shall be given to the parties who approved such agreement.

6. If a surrender instrument executed by a birth parent pursuant to section three hundred eighty-three-c or three hundred eighty-four of the social services law contains terms and conditions that provide for communication with or contact between a child and a birth parent or parents, such terms and conditions shall not be legally enforceable after any adoption approved by a court pursuant to this article unless the court has entered an order pursuant to this section incorporating those terms and conditions into a court ordered adoption agreement.

§ 113. Special provisions relating to adoption from authorized agencies. 1. An authorized agency may consent to the adoption of a minor whose custody and guardianship has been transferred to such agency. An authorized agency may also consent to the adoption of a minor whose care and custody has been transferred to such agency pursuant to section one thousand fifty-five of the family court act or section three hundred eighty-four-a of the social services law, where such child's parents are both deceased, or where one parent is deceased and the other parent is not a person entitled to notice pursuant to sections one hundred eleven and one hundred eleven-a of this chapter.

2. In accordance with subparagraph three of paragraph (g) of subdivision six of section three hundred ninety-eight of the social

services law, an authorized agency may submit a written request to a social services district with a population of more than two million for approval to consent to the adoption of a child whose custody and guardianship, or of a child where such child's parents are both deceased, or where one parent is deceased and the other parent is not entitled to notice pursuant to sections one hundred eleven and one hundred eleven-a of this chapter, and whose care and custody, has been transferred to a social services official and who has been placed by the social services official with the authorized agency. If the request is not disapproved by the social services district within sixty days after its submission, it shall be deemed approved, and the authorized agency may give all necessary consent to the adoption of the child. Nothing herein shall result in the transfer of care and custody or custody and guardianship of the child from the social services official to the authorized agency.

3. (a) The agreement of adoption shall be executed by such authorized agency.

(b)(i) If the adoption petition is filed pursuant to subdivision eight of section one hundred twelve of this article or subdivision ten of section three hundred eighty-three-c or subdivision eleven of section three hundred eighty-four-b of the social services law, the petition shall be filed in the county where the termination of parental rights proceeding or judicial surrender proceeding, as applicable, is pending and shall be assigned, wherever practicable, to the same judge.

(ii) In any other agency adoption proceeding, the petition shall be filed in the same court and, wherever practicable, shall be assigned to the same judge of the county in which parental rights had been terminated, a judicial surrender had been approved or the most recent proceeding under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law had been heard, whichever occurred last, or in the county where the adoptive parents reside or, if such adoptive parents do not reside in this state, in the county where such authorized agency has its principal office. The following procedures shall be applicable in cases where the child is under the jurisdiction of a family court, but where the adoption petition has been filed in a court other than the court that presided

over the termination of parental rights, surrender or most recent proceeding under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law, whichever occurred last:

(A) Before hearing such an adoption proceeding, the court in which the adoption petition was filed shall ascertain whether the child is under the jurisdiction of a family court as a result of a placement under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law, a surrender under section three hundred eighty-three-c or three hundred eighty-four of the social services law or an order committing guardianship and custody under article six of the family court act or section three hundred eighty-four-b of the social services law, and, if so, which court exercised jurisdiction over the most recent permanency or other proceeding involving the child.

(B) If the court determines that the child is under the jurisdiction of a different family court, the court in which the adoption petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the family court judge who exercised jurisdiction over the most recent permanency or other proceeding involving the child. The communication shall be recorded or summarized on the record by the court in which the adoption petition was filed. Both courts shall notify the parties and the attorney for the child, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction.

(C) The family court judge who exercised jurisdiction over the most recent permanency or other proceeding involving the child shall determine whether he or she should assume or decline jurisdiction over the adoption proceeding. In making its determination, the family court judge shall consider, among other factors: the relative familiarity of each court with the facts and circumstances regarding permanency planning for, and the needs and best interests of, the child; the ability of the attorney for the child to continue such representation in the adoption proceeding, if appropriate; the convenience of each court to the residence of the prospective adoptive parent or parents; and the relative ability of each court to hear and determine the adoption

petition expeditiously. The court in which the adoption petition was filed shall issue an order incorporating this determination of jurisdiction within thirty days of the filing of the adoption petition.

(D) If the family court that exercised jurisdiction over the most recent permanency or other proceeding determines that it should exercise jurisdiction over the adoption petition, the order of the court in which the adoption petition was filed shall direct the transfer of the proceeding forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the family court judge who heard the most recent permanency or other proceeding involving the child.

(E) If the family court that exercised jurisdiction over the permanency or other proceeding involving the child declines to exercise jurisdiction over the adoption petition, the court in which the adoption petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(iii) Neither such authorized agency nor any officer or agent thereof need appear before the judge or surrogate. The judge or surrogate in his or her discretion may accept the report of an authorized agency verified by one of its officers or agents as the report of investigation hereinbefore required. In making orders of adoption the judge or surrogate when practicable must give custody only to persons of the same religious faith as that of the adoptive child in accordance with article six of the social services law.

§ 113-a. Effect of death of potential adoptive parent. Notwithstanding any other provision of law to the contrary, when a petition for adoption by two persons has been duly filed, and one of the petitioners dies before the adoption is complete, it shall be treated as a change of circumstance. This change may be reviewed to assure that the adoption is in the best interest of the child. The death of one of the adoptive parents shall not, by itself, invalidate a certification nor shall the death of one of the adoptive parents cause a new petition for adoption to be filed. The deceased adoptive parent shall be considered one of the legal parents, unless the surviving adoptive parent requests otherwise.

§ 114. Order of adoption. 1. If satisfied that the best interests of the adoptive child will be promoted thereby, the judge or surrogate shall make an order approving the adoption and directing that the adoptive child shall thenceforth be regarded and treated in all respects as the child of the adoptive parents or parent. In determining whether the best interests of the adoptive child will be promoted by the adoption, the judge or surrogate shall give due consideration to any assurance by a local commissioner of social services that he or she will provide necessary support and maintenance for the adoptive child pursuant to the social services law. Such order shall contain the full name, date and place of birth and reference to the schedule annexed to the petition containing the medical history of the child in the body thereof and shall direct that the child's medical history, heritage of the birth parents, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the birth parents at the time of the birth and also at the time of surrender of the adoptive child; general physical appearance of the birth parents at the time of the birth and also at the time of surrender of the adoptive child, which shall include height, weight, color of hair, eyes, skin; occupation of the birth parents at the time of the birth and also at the time of surrender of the adoptive child; health and medical history of the birth parents at the time of the birth and also at the time of surrender of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, including the talents, hobbies and special interests of the birth parents as contained in the petition, be furnished to the adoptive parents, the commissioner and the appropriate local registrar of vital statistics. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the adoptive child be changed to the name stated in the agreement of adoption and that henceforth he or she shall be known by that name. All such orders made by a family court judge of Westchester county since September first, nineteen hundred sixty-two, and on file in the office

of the county clerk of such county shall be transferred to the clerk of the family court of such county. Such order and all the papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parents and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection and examination only as hereinafter provided. Notwithstanding the fact that adoption records shall be sealed and secret, they may be microfilmed and processed pursuant to an order of the court, provided that such order provides that the confidentiality of such records be maintained. If the confidentiality is violated, the person or company violating it can be found guilty of contempt of court. The fact that the adoptive child was born out of wedlock shall in no case appear in such order. The written report of the investigation together with all other papers pertaining to the adoption shall be kept by the judge or surrogate as a permanent record of his or her court and such papers must be sealed by him or her and withheld from inspection. No certified copy of the order of adoption shall issue unless authorized by court order, except that certified copies may issue to the agency or agencies in the proceeding prior to the sealing of the papers. Before the record is sealed, such order may be granted upon written ex parte application on good cause shown and upon such conditions as the court may impose. After the record is sealed, such order may be granted only upon notice as hereinafter provided for disclosure or access and inspection of records. The clerk upon request of a person or agency entitled thereto shall issue certificates of adoption which shall contain only the new name of the child and the date and place of birth of the child, the name of the adoptive parents and the date when and court where the adoption was granted, which certificate as to the facts recited therein shall have the same force and effect as a certified copy of an order of adoption. For the purposes of this subdivision, the term "commissioner" shall mean the state commissioner of health and, with respect to an adoptive child born in the city of New York, the commissioner of health and mental hygiene of the city of New York.

2. No person, including the attorney for the adoptive parents shall

disclose the surname of the child directly or indirectly to the adoptive parents except upon order of the court. No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct. Nothing contained herein shall be deemed to require the state commissioner of health or his designee to secure a court order authorizing disclosure of information contained in adoption or birth records requested pursuant to the authority of section forty-one hundred thirty-eight-c or section forty-one hundred thirty-eight-d of the public health law; upon the receipt of such request for information, the court shall transmit the information authorized to be released thereunder to the state commissioner of health or his designee.

3. In like manner as a court of general jurisdiction exercises such powers, a judge or surrogate of a court in which the order of adoption was made may open, vacate or set aside such order of adoption for fraud, newly discovered evidence or other sufficient cause.

4. Good cause for disclosure or access to and inspection of sealed adoption records and orders and any index thereof, hereinafter the "adoption records", under this section may be established on medical grounds as provided herein. Certification from a physician licensed to practice medicine in the state of New York that relief under this subdivision is required to address a serious physical or mental illness shall be prima facie evidence of good cause. Such certification shall indentify the information required to address such illness. Except where there is an immediate medical need for the information sought, in which case the court may grant access to the adoption records directly to the petitioner, the court hearing petition under the subdivision shall appoint a guardian ad litem or other disinterested person, who shall have access to the adoption records for the purpose of obtaining the medical information sought from those records or, where the records are insufficient for such purpose, through contacting the biological

parents. The guardian or other disinterested person shall offer a biological parent the option of disclosing the medical information sought by the petitioner pursuant to this subdivision, as well as the option of granting consent to examine the parent's medical records. If the guardian or other disinterested person appointed does not obtain the medical information sought by the petitioner, such guardian or disinterested person shall make a report of his or her efforts to obtain such information to the court. Where further efforts to obtain such information are appropriate, the court may in its discretion authorize direct disclosure or access to and inspection of the adoption records by the petitioner.

TITLE III

PRIVATE-PLACEMENT ADOPTION

Section 115. General provisions relating to private-placement adoptions.

115-a. Special provisions relating to children to be brought into the state for private-placement adoption.

115-b. Special provisions relating to consents in private-placement adoptions.

115-c. Temporary guardianship by adoptive parent.

115-d. Petition for certification.

115-e. Effect of death of potential adoptive parent.

116. Orders of investigation and order of adoption.

§ 115. General provisions relating to private-placement adoptions. 1.

(a) Except as otherwise provided in this title, private-placement adoptions shall be effected in the same manner as provided in sections one hundred twelve and one hundred fourteen of title two of this article.

(b) A person or persons seeking to commence a private-placement adoption shall, prior to the submission of a petition for such adoption and prior to any transfer of physical custody of an adoptive child, be certified as a qualified adoptive parent or parents by a court of competent jurisdiction pursuant to section one hundred fifteen-d of this

title. The provisions of such section may be waived upon the court's own motion or upon the application of any party for good cause shown.

(c) A non-resident person or persons seeking to commence a private-placement adoption of a child present within the state at the time of placement shall, prior to any transfer of physical custody of an adoptive child, make application for certification as a qualified adoptive parent or parents by a court of competent jurisdiction pursuant to section one hundred fifteen-d of this title. Upon application of such person or persons, the court of the county to which the certification petition is properly filed may take or retain jurisdiction of the adoption proceeding. The provisions of this paragraph may be waived upon the court's own motion or upon the application of any party for good cause shown.

2. The proceeding shall be instituted in the county where the adoptive parents reside or, if such adoptive parents do not reside in this state, in the county where the adoptive child resides.

3. The adoptive parents or parent, the adoptive child and all persons whose consent is required by section one hundred eleven of this article must appear for examination before the judge or surrogate of the court where the adoption proceedings are instituted. The judge or surrogate may dispense with the personal appearance of the adoptive child or of an adoptive parent who is on active duty in the armed forces of the United States.

4. The agreement of adoption shall be executed by the adoptive parents or parent.

5. Where the petition alleges that either or both of the birth parents of the child have been deprived of civil rights or are mentally ill or developmentally disabled, proof shall be submitted that such disability exists at the time of the proposed adoption.

6. The adoptive parent or parents shall also present in an affidavit a description of any change of circumstances since their certification as a qualified adoptive parent or parents, pursuant to section one hundred

fifteen-d of this title, which may be relevant and material to such certification.

7. Where the adoptive child is to be adopted upon the consent of some person other than his father or mother, there shall also be presented the affidavit of such person showing how he or she obtained lawful custody of the child.

8. The adoptive parent or parents shall also present an affidavit describing all fees, compensation and other remunerations paid by such parent or parents on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or adoption. The attorney representing the adoptive parents shall also present an affidavit describing all fees, compensation and other remuneration received by him on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption.

9. The petition must be verified, the agreement and consents executed and acknowledged, the proof given and the affidavit sworn to by the respective persons before such judge or surrogate; but where the verification, agreement or consent of an adoptive parent, birth parent or person whose consent is necessary to the adoption is duly acknowledged or proved and certified in form sufficient to entitle a conveyance to be recorded in this state, (except that when executed and acknowledged within the state of New York, no certificate of the county clerk shall be required), such judge or surrogate may grant the order of adoption without the personal appearance of such adoptive parent, birth parent or person. The judge or surrogate may, in his discretion, dispense with the requirement that the adoptive child appear for examination or join in the petition, where otherwise required. In any adoption proceeding where the judge or surrogate shall dispense with the personal appearance of such adoptive parent, birth parent, person whose consent is necessary to the adoption, or adoptive child, the reason therefor must be for good cause shown, and shall be recited in the order

of adoption.

10. In all cases where the consents of the persons mentioned in subdivision two, three and four of section one hundred eleven of this article are not required or where the adoptive child is an adult notice of such application shall be served upon such persons as the judge or surrogate may direct.

11. The provisions of title two prohibiting the surname of the child from appearing in the papers, prohibiting disclosure of the surname of the child to the adoptive parents, and requiring a separate application for issuance of a certified copy of an order of adoption prior to the sealing of the papers, requiring the filing of a verified schedule, shall not apply to private-placement adoptions; provided, however, that the facts required to be stated in the verified schedule in an agency adoption shall be set forth in the petition.

12. (a) If the child who is being adopted was placed or brought into New York for the purpose of adoption from a state which is a party to the interstate compact on the placement of children and the provisions of the compact applied to such placements, the petition must contain a statement that the provisions of section three hundred seventy-four-a of the social services law were complied with and where applicable, that the provisions of section three hundred eighty-two of such law were also complied with.

(b) If the child who is being adopted was placed or brought into New York for the purpose of adoption from a state which is not a party to the interstate compact on the placement of children, the petition, where applicable, must contain a statement that the provisions of section three hundred eighty-two of the social services law were complied with.

13. If the placement of a child into the state of New York is subject to the provisions of sections three hundred seventy-four-a and/or three hundred eighty-two of the social services law, there shall be attached to the petition a copy of the document signed by New York's administrator of the interstate compact on the placement of children or his designee which informs the agency or person who placed the child

into the state that such placement complied with the provisions of the compact and/or a copy of the license which is issued pursuant to the provisions of section three hundred eighty-two of the social services law to the person, institution, corporation or agency which placed or brought the child into this state.

§ 115-a. Special provisions relating to children to be brought into the state for private-placement adoption. 1. In the case of a child whose admission to the United States as an eligible orphan with non-quota immigrant status pursuant to the federal immigration and nationality act is sought for the purpose of adoption in the state of New York, the following pre-adoption requirements shall be observed: (a) The adoptive parents or parent must present to a judge or surrogate having jurisdiction of adoption proceedings, in the county of residence of such adoptive parents or parent, a verified written application containing the information set forth in subdivision two of this section, in such form as the judge or surrogate may prescribe for an order of pre-adoption investigation, to determine whether the adoption may be in the best interests of the child.

(b) The adoptive parents or parent must appear for examination before the judge or surrogate of the court where the pre-adoption proceedings are instituted.

(c) The application must be accompanied by duly authenticated documentary evidence: (1) that the child is a noncitizen under the age of sixteen and (2) that he or she is an orphan because of the death or disappearance of both parents, or because of abandonment, or desertion by, or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment, or desertion by, or separation or loss from the other parent, and the remaining parent is incapable of providing care for such orphan and has in writing irrevocably released him or her for emigration and adoption, and has consented to the proposed adoption. In all cases where the orphan has no remaining parent under the circumstances set forth above, documentary evidence must be presented that the person, public authority or duly constituted agency having lawful custody of the orphan at the time of the making of the application, hereunder, has in writing irrevocably

released him or her for immigration and adoption and has consented to the proposed adoption and (3) that the adoptive parents agree to adopt and treat the adoptive child as their or his or her own lawful child.

(d) In addition thereto such additional releases and consents as the court may in its sound discretion require.

2. The verified written application shall contain the following information: the names and place of residence of the adoptive parent or parents; whether they are of full age; whether they are married or unmarried and, if married, whether they are living together as husband and wife; the name, date and place of birth of the adoptive child as nearly as the same can be ascertained; the religious faith of the adoptive parent or parents; the religious faith of the adoptive child and his parents as nearly as the same can be ascertained; the medical history of the adoptive child as nearly as the same can be ascertained; the occupation and approximate income of the adoptive parent or parents, and the name by which the adoptive child is to be known; that no previous application has been made to any court or judge for the relief sought or if so made, the disposition of it and a statement as to whether the adoptive child has been previously adopted, if such fact is known to the adoptive parent or parents; the facts which establish that the child is an eligible orphan who would be entitled to enter the United States with non-quota immigrant status for the purpose of adoption in New York state, pursuant to the provisions in the federal immigration and nationality act, in such case made; the circumstances whereby, and names and addresses of the intermediaries, if any, through whom the adoptive parent or parents learned of the existence and eligibility of the child and the names and addresses of the person or persons, public authority or duly constituted agency in the land of the child's residence executing the written release of the child for emigration and adoption, and the consent to such adoption, the circumstances under which the release and consent were obtained, insofar as they are known to the adoptive parent or parents.

2-a. The verified written application shall contain the following information: the heritage of the parents as nearly as the same can be ascertained, which shall include nationality, ethnic background and

race; education, which shall be the number of years of school completed by the parents at the time of the birth of the adoptive child; general physical appearance of the parents at the time of the birth of the adoptive child, which shall include height, weight, color of hair, eyes, skin; occupation of the parents at the time of the birth of the adoptive child; health and medical history of the parents at the time of the birth of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, talents, hobbies and special interests of parents.

3. Upon receiving the verified written application, required documentary evidence, agreement and consents, the judge or surrogate, upon finding that the applicable provisions of section one hundred fifteen-a have been complied with and that it appears that the proposed adoption may be in the best interests of the child, shall issue an order of pre-adoption investigation hereunder. The order of pre-adoption investigation shall require that the report of such investigation be made by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience, or by an authorized agency specifically designated by him to examine into the statements set forth in the application. The investigator shall make a written report of his investigation into the truth and accuracy of the statements in the application and where applicable, into the validity of the documentary evidence, submitted with the application, and he shall ascertain as fully as possible, and incorporate in his report the various factors which may bear upon the determination of the application for adoption including, but not limited to, the following information:

- (a) the marital and family status, and history, of adoptive parents;
- (b) the physical and mental health of the adoptive parents;
- (c) the property owned by and the income of the adoptive parents;
- (d) the compensation paid or agreed upon with respect to the placement of the child for adoption;
- (e) whether either adoptive parent has ever been respondent in any proceeding concerning allegedly neglected, abandoned or delinquent children;

(f) the desirability of bringing the child into New York state for private-placement adoption;

(g) any other facts relating the familial, social, religious, emotional and financial circumstances of the adoptive parents which may be relevant to a determination of suitability of the adoption.

The written report of pre-adoption investigation shall be submitted to the judge or surrogate within thirty days after the same is directed to be made, unless for good cause shown the judge or surrogate shall grant a reasonable extension of such period. The report shall be filed with the judge or surrogate, in any event, before the court shall issue its pre-adoption certificate that it appears that the adoption is in the best interests of the child.

4. On the return of the pre-adoption investigation order the judge or surrogate shall examine the written report of the pre-adoption investigation, and shall determine upon the basis of such written report and such further proof, if any, as he may deem necessary, whether to issue a pre-adoption certificate as provided for in this subdivision.

If the court is satisfied that the adoption may be in the best interests of the child, and that there has been compliance with all requirements hereof and is satisfied that the moral and temporal interests of the child will be promoted by the adoption, the judge or surrogate shall issue an original certificate under seal of the court and two certified copies thereof, setting forth the fact that a pre-adoption investigation has been conducted, and reciting the documents and papers submitted therewith and stating that in the opinion of the court there is compliance with all applicable laws and that it appears from such investigation that the moral and temporal interests of the child will be promoted by the proposed adoption. The original certificate shall be filed with the clerk of the court, one certified copy with the state commissioner of social services, and the adoptive parents shall receive the second certified copy. The fact that the adoptive child was born out of wedlock shall in no case appear in such certificate. The written report of pre-adoption investigation together with all other papers pertaining to the pre-adoption investigation and

the original certificate shall be kept by the court as a permanent record and such papers must be sealed by the judge and withheld from inspection. No person shall be allowed access to such sealed records and original certificate and any index thereof except upon an order of the court in which the pre-adoption certificate was made or an order of a justice of the supreme court. No order for access and inspection shall be granted except on due notice to the adoptive parents and on good cause shown. In like manner as a court of general jurisdiction exercises such powers, the court in which the pre-adoption certificate was made may open, vacate or set aside such certificate for fraud, newly discovered evidence or other sufficient cause.

5. The private-placement adoption of children who have been brought into the United States and the state for such purpose and placed with the adoptive parent or parents, shall be effected after issuance of the pre-adoption certificate, in the manner provided by this title, excepting that (a) the petition shall also recite the pre-adoption proceedings, and (b) the court may in its discretion for good cause shown, waive a subsequent investigation. In such case the order of adoption shall recite the reason for such action.

6. In any case where there has been a failure to comply with the requirements of this section, if applicable, no order of adoption shall be made until one year after the court shall have received the petition to adopt. The court may shorten such waiting period for good cause shown, and, in such case the order of adoption shall recite the reason for such action.

7. The provisions of this section, shall not be applicable to the adoption of children placed out or to be placed out for adoption by an authorized agency as defined in section three hundred seventy-one of the social services law.

8. Notwithstanding any provision of law to the contrary, where a child is placed with a couple or individual in New York state for the purpose of adoption, and where said adoption has theretofore been finalized in the country of birth, outside the United States, the couple or person

may petition the court in their county of residence in New York state, for the readoption of said child in accordance with the provisions of this chapter, providing for adoptions originally commenced in this state. In any proceeding for readoption, proof of finalization of an adoption outside the United States shall be prima facie evidence of the consent of those parties required to give consent to an adoption pursuant to section one hundred eleven of this article.

§ 115-b. Special provisions relating to consents in private-placement adoptions. 1. A duly executed and acknowledged consent to a private-placement adoption shall state that no action or proceeding may be maintained by the consenting parent for the custody of the child to be adopted except as provided in this section. Notwithstanding any other section of law, a consent to adoption executed by a person who is in foster care shall only be executed before a judge of the family court.

2. Judicial consents. (a) A consent to a private placement adoption may be executed or acknowledged before any judge or surrogate in this state having jurisdiction over adoption proceedings. Such consent shall state that it is irrevocable upon such execution or acknowledgment. A consent executed or acknowledged before a court in another state shall satisfy the requirements of this section if it is executed by a resident of the other state before a court of record which has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding, showing compliance with paragraph (b) of this subdivision, is filed as part of the adoption proceeding in this state.

(b) At the time that a parent appears before a judge or surrogate to execute or acknowledge a consent to adoption, the judge or surrogate shall inform such parent of the consequences of such act pursuant to the provisions of this section, including informing such parent of the right to be represented by legal counsel of the parent's own choosing; of the right to obtain supportive counseling and of any rights the parent may have pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law. The judge or surrogate shall

give such parent a copy of such consent upon the execution thereof.

3. Extrajudicial consents. (a) Whenever a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section such consent shall become irrevocable forty-five days after the execution of the consent unless written notice of revocation thereof is received by the court in which the adoption proceeding is to be commenced within said forty-five days.

(b) Notwithstanding that such written notice is received within said forty-five days, the notice of revocation shall be given effect only if the adoptive parents fail to oppose such revocation, as provided in subdivision six of this section, or, if they oppose such revocation and the court as provided in subdivision six of this section has determined that the best interests of the child will be served by giving force and effect to such revocation.

4. (a) In any case where a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section, the consent shall state, in conspicuous print of at least eighteen point type:

(i) the name and address of the court in which the adoption proceeding has been or is to be commenced; and

(ii) that the consent may be revoked within forty-five days of the execution of the document and where the consent is not revoked within said forty-five days no proceeding may be maintained by the parent for the return of the custody of the child; and

(iii) that such revocation must be in writing and received by the court where the adoption proceeding is to be commenced within forty-five days of the execution of said consent; and

(iv) that, if the adoptive parents contest the revocation, timely notice of the revocation will not necessarily result in the return of the child to the parent's custody, and that the rights of the parent to custody of the child shall not be superior to those of the adoptive parents but that a hearing will be required before a judge pursuant to the provisions of this section to determine: (1) whether the notice of revocation was timely and properly given; and if necessary, (2) whether the best interests of the child will be served by: (A) returning custody

of the child to the parent; or (B) by continuing the adoption proceeding commenced by the adoptive parents; or (C) by disposition other than adoption by the adoptive parents; or (D) by placement of the child with an authorized agency, and if any such determination is made, the court shall make such disposition of the custody of the child as will best serve the interests of the child; and

(v) that the parent has the right to legal representation of the parent's own choosing; the right to obtain supportive counseling and may have the right to have the court appoint an attorney pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law.

(b) Such consent shall be executed or acknowledged before a notary public or other officer authorized to take proof of deeds.

(c) A copy of such consent shall be given to such parent upon the execution thereof. The consent shall include the following statement: "I, (name of consenting parent), this ____ day of _____, _____, have received a copy of this consent. (Signature of consenting parent)". Such consenting parent shall so acknowledge the delivery and the date of the delivery in writing on the consent.

(d) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction other than the court named in the consent provided that such commencement is initiated more than forty-five days after the consent is executed. Such commencement shall not revive, extend or toll the period for revocation of a consent pursuant to this section.

5. For the purposes of commencing an adoption proceeding, the clerk of a court of competent jurisdiction shall accept an adoption petition for filing which is complete on its face and shall not require any supplementary documentation as a condition of filing. Nothing in this section shall compel a court to hear an adoption petition until all documents necessary to the adoption proceeding have been filed to the satisfaction of the court.

6. (a) A parent may revoke his consent to adoption only by giving notice, in writing, of such revocation, no later than forty-five days

after the execution of the consent, or twenty days after the receipt of a notice of denial, withdrawal or removal pursuant to paragraph (a) of subdivision four of section seventeen hundred twenty-five of the surrogate's court procedure act, whichever is later, to the court in which the adoption proceeding has been or is to be commenced. Such notice shall set forth the name and address of the court in which the adoption proceeding is to be commenced, the address of the parent and may, in addition, set forth the name and address of the attorney for the parent.

(b) If, within forty-five days of the execution of the consent, the court has received such notice of revocation, the court shall promptly notify the adoptive parents and their attorney, by certified mail, of the receipt by the court of such notice of revocation.

(i) Such notice to the adoptive parents shall set forth that if within fifteen days from the date of such notice the court has not received from the adoptive parents or their attorneys notice, in writing, of their intention to oppose such revocation by the parents, the adoption proceeding will be dismissed and that, in case of such dismissal, the court will send to the parents, the adoptive parents and their respective attorneys the notice of dismissal, as provided in paragraph (c) of this subdivision.

(ii) Such notice to the adoptive parents shall further set forth that if, within fifteen days from the date of such notice, the court shall receive from the adoptive parents notice, in writing, of their intention to oppose such revocation by the parents, the court will, upon notice to the parents, the adoptive parents and their respective attorneys, proceed, as provided in paragraph (d) of this subdivision, to a determination of whether such notice of revocation by the parents shall be given force and effect and to a determination of what disposition shall be made of the custody of the child.

(c) If the adoption proceeding is dismissed pursuant to the provisions of paragraph (b) of this subdivision,

(i) Written notice of such dismissal shall forthwith be sent to the parent, the adoptive parents and their respective attorneys.

(ii) Such notice of dismissal shall set forth the name and address of the parent, the name and address of the attorney for the parent, if any, the name and address of the attorney for the adoptive parents.

(iii) Such notice of dismissal shall further set forth that if the child is not returned to the custody of the parent within ten days from the date of such notice of dismissal, the court will forthwith upon request, in writing, by the parent or by the attorney for the parent, furnish to said parent or attorney so requesting, the names and address of the adoptive parents.

(iv) Such notice of dismissal shall further state that, in the event the custody of the child is not returned to the parent by the adoptive parents upon request therefor, a proceeding to obtain custody may be instituted by the parent in the Supreme Court or the Family Court.

(d) If, pursuant to the provisions of paragraph (b) of this subdivision, the adoptive parents give timely and proper notice of their intention to oppose the revocation of the parent's consent:

(i) The court shall promptly notify, in writing, the parent, the adoptive parents, their respective attorneys, and the attorney for the child appointed pursuant to section two hundred forty-nine of the family court act or a guardian ad litem appointed pursuant to section four hundred three-a of the surrogate's court procedure act, that the court will, upon the date specified in such notice by the court, or as soon thereafter as the parties may be heard pursuant to this paragraph, hear and determine whether revocation of the consent of the parent was timely and properly given and whether the adoptive parent's notice of intent to oppose such revocation was timely and properly given and if necessary, hear and determine what disposition should be made with respect to the custody of the child.

(ii) The court shall, upon the date specified, take proof as to whether the best interests of the child will be served by returning custody of the child to the parents, or by the adoption of the child by the adoptive parents, or by placement of the child with an authorized agency for foster care with or without authority to consent to the adoption of the child, or by other disposition of the custody of the child.

(iii) If the court determines that the best interests of the child will be served by returning custody of the child to the parent or by placement of the child with an authorized agency or by disposition other than adoption by the adoptive parents, the revocation of consent shall be given force and effect and the court shall make such disposition of

the custody of the child as will best serve the interests of the child.

(iv) If the court determines that the best interests of the child will be served by adoption of the child by the adoptive parents, the court shall enter an order denying any force or effect to the notice of revocation of consent and shall dispose of the custody of the child as if no such notice of revocation had been given by the parent.

(v) In such proceeding the parent or parents who consented to such adoption shall have no right to the custody of the child superior to that of the adoptive parents, notwithstanding that the parent or parents who consented to the adoption are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

7. Nothing contained in this section shall limit or affect the power and authority of the court in an adoption proceeding, pursuant to the provisions of section one hundred sixteen of this title, to remove the child from the home of the adoptive parents, upon the ground that the welfare of the child requires such action, and thereupon to return the child to a birth parent or place the child with an authorized agency, or, in the case of a surrogate, transfer the child to the family court; nor shall this section bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of an adoption consent.

8. Notwithstanding any other provision of this section, a parent having custody of a child whose adoption is sought by his or her spouse need only consent that his or her child be adopted by a named stepfather or stepmother.

9. Any consent to adoption subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by

section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

§ 115-c. Temporary guardianship by adoptive parent. In any case where physical custody of a child is transferred from the child's parent or guardian to another person or persons for the purposes of adoption and a consent to the adoption of such child has been executed pursuant to section one hundred fifteen-b of this title, the adoptive parent or parents shall, within ten court days of taking physical custody, either file a petition for adoption with a court of competent jurisdiction or file an application for temporary guardianship of the person of the child pursuant to this section with the court in which the adoption will be filed, pursuant to section seventeen hundred twenty-five of the surrogate's court procedure act or section six hundred sixty-one of the family court act except as otherwise provided herein. Such application shall include an affidavit by the adoptive parent or parents describing any change of circumstances since their certification as a qualified adoptive parent or parents, pursuant to section one hundred fifteen-d of this title, which may be material to such certification. Such a petition for adoption shall also be deemed an application for temporary guardianship, where no prior application for an order for temporary guardianship has been filed.

In any case where the adoptive parent or parents take physical custody of an adoptive child and requirements for certification as a qualified adoptive parent or parents have been waived, pursuant to section one hundred fifteen-d of this title, an application for temporary

guardianship or petition for adoption for such child shall be filed with the court not later than five court days from obtaining physical custody of such child. Such time period may be extended upon motion of any person or upon the court's own motion for good cause shown.

§ 115-d. Petition for certification. 1. Except as provided for in subdivision eight of this section, a person or persons petitioning for certification as a qualified adoptive parent or parents shall upon a form, promulgated by the chief administrator of the courts, provide to the court:

(a) the applicant's name or applicants' names, residential address and telephone number;

(b) a statement by the applicant or applicants that they are seeking certification by the court as a person or persons qualified to take physical custody of an infant prior to or contemporaneous with the filing of a private-placement adoption petition;

(c) a statement by the applicant or applicants as to whether such applicant or applicants have been the subject of an indicated report of child abuse or maltreatment, pursuant to title six of article six of the social services law; and

(d) a statement that a pre-placement investigation will be undertaken by a disinterested person, as such term is defined in subdivision four of this section, and that a written report of such investigation will be furnished directly to the court by such disinterested person with a copy of such report to be delivered simultaneously to the applicant or applicants. Such disinterested person shall certify to the court that he or she is a disinterested person and has no interest in the outcome of the party's or parties' application. Such disinterested person shall further disclose to the court any fee paid or to be paid to such person for services rendered in connection with the pre-placement investigation.

Such petition shall also require information regarding:

(i) the marital and family status and history of the adoptive parent or parents;

(ii) the physical and mental health of the adoptive parent or parents;

(iii) the property owned by and the income of adoptive parent or parents;

(iv) whether the adoptive parent or either of the adoptive parents has ever been a respondent in any proceeding concerning allegedly abused, neglected, abandoned or delinquent children; and

(v) whether the applicant or applicants have made any prior application for certification as a qualified adoptive parent or parents and, if so, the disposition of such application for certification.

2. In any case where the applicant or applicants do not intend to cause a pre-placement investigation to be undertaken pursuant to the provisions of paragraph (d) of subdivision one of this section, such applicant or applicants shall request the court to appoint a disinterested person to conduct such pre-placement investigation. The investigative written report shall be submitted to the judge or surrogate within thirty days, unless for good cause shown the judge or surrogate shall grant a reasonable extension of such period.

3. Such applicant or applicants shall be financially responsible for the costs of any pre-placement investigation conducted pursuant to subdivision one or two of this section.

3-a. (a) The court shall submit fingerprint cards and order a report from the division of criminal justice services setting forth any existing criminal history record of the applicant for certification as a qualified adoptive parent.

(b) Notwithstanding any other provision of law to the contrary, a petition for certification as a qualified adoptive parent shall be denied where a criminal history record of the applicant reveals a conviction for (i) a felony conviction at any time involving: (1) child abuse or neglect; (2) spousal abuse; (3) a crime against a child, including child pornography; or (4) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or (ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense.

(c) For the purposes of this subdivision, "spousal abuse" is an

offense defined in section 120.05, 120.10, 121.12, or 121.13 of the penal law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse shall not include a crime in which the applicant was the defendant, and the court finds in accordance with this subdivision that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the applicant to commit such offense.

4. A pre-placement investigation conducted pursuant to the provisions of this section shall be made by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience to examine into the allegations set forth in the application and any other factors which may be relevant to the suitability of the applicant or applicants as a qualified adoptive parent or parents. For the purposes of this section, a disinterested person shall also include a licensed master social worker, licensed clinical social worker, the probation service of the family court or an authorized agency specifically designated by the court to conduct pre-placement investigations.

5. Such disinterested person shall file with the court a written report of his or her investigation into the truth and accuracy of the allegations set forth in the application and his or her investigation of the various factors which may be relevant to the suitability of the applicant or applicants as qualified adoptive parents. Such investigation shall include, but not be limited to, a personal interview and visit at the applicant's or applicants' home and an investigation of any other facts relating to the familial, social, religious, emotional and financial circumstances of the adoptive parent or parents which may be relevant to certification as a qualified adoptive parent or parents.

6. Certification and provisional certification. If after consideration of the report submitted by the disinterested person, and all other relevant and material factors, the court grants the application, the applicant or applicants may accept physical custody of a child for the purposes of adoption, either prior to or contemporaneous with the filing of an adoption petition. The order granting the petition shall be valid

for a period not to exceed eighteen months and shall be accepted as proof of certification by any court of competent jurisdiction within the state. The court may in its discretion grant a conditional order of certification upon satisfactory completion and submission of a petition wherein the prospective adoptive parent or parents indicate no prior criminal convictions or founded findings of child abuse or neglect, and after completion of a disinterested person investigation provided for in this section, pending completion of any further reports, investigations or inquiries ordered by the court or required by any other statute or court rule. A conditional order of certification shall be valid and remain in force and effect until replaced by an order of certification or by an order denying the petition, whichever shall first occur, but in no event shall such provisional certification continue beyond one hundred eighty days from the date of original issuance. If the court denies the petition, the reasons for such denial shall be stated on the record or in the order.

7. Nothing in this section shall be deemed to waive, limit or restrict the provisions of any other law requiring any inquiry, disinterested person investigation or court review of any persons seeking to adopt a child under any provision of law.

8. The provisions of this section shall not apply to petitions brought by a step-parent for the adoption of a step-child where the step-child has resided with the birth parent and the step-parent for a continuous period of at least one year.

9. Extension of certification. When a petition for adoption is filed by a qualified parent or parents previously certified and the balance of the time period remaining under such certification in accordance with subdivision six of this section is less than one year, the court may on its own motion or on the motion of the petitioners extend the time period of the original certification to a date eighteen months from the date of filing of the adoption petition. When a petition for adoption is filed by a qualified parent or parents who have previously been certified by an order which has expired within a year preceding the date of the adoption petition, the court may extend the termination date of

the earlier certification until eighteen months from the filing of such petition, provided the petitioner apply for such extension and set forth any change of circumstances of the qualified parent or parents since issuance and expiration of the last certification which may be relevant and material to the extension of such certification and affix thereto written verification of any such changed circumstance or lack thereof by a disinterested person as defined in subdivision four of this section. Except as is provided for by this subdivision, the court shall not extend a previously expired order of certification. Any further certification shall require the filing of a new petition for certification in accordance with subdivision six of this section.

In any instance when the court determines whether to extend a certification under this subdivision, the court, in its discretion, may order each or any of (a) a report from the statewide central registry of child abuse and maltreatment to determine whether the child or the petitioner is or has been the subject of or another person named in an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with such register, (b) a report from the division of criminal justice services setting forth any criminal record of such petitioner or petitioners, and (c) an additional pre-placement investigation to be undertaken by a disinterested person. Nothing herein shall be deemed to require that the court enter such an order.

§ 115-e. Effect of death of potential adoptive parent. Notwithstanding any other provision of law to the contrary, when a petition for adoption by two persons has been duly filed, and one of the petitioners dies before the adoption is complete, it shall be treated as a change of circumstance. This change may be reviewed to assure that the adoption is in the best interest of the child. The death of one of the adoptive parents shall not, by itself, invalidate a certification nor shall the death of one of the adoptive parents cause a new petition for adoption to be filed. The deceased adoptive parent shall be considered one of the legal parents, unless the surviving adoptive parent requests otherwise.

§ 116. Orders of investigation and order of adoption. 1. When the adoptive child is less than eighteen years of age, no order of adoption shall be made until three months after the court shall have received the petition to adopt, except where the spouse of the adoptive parent is the birth parent of the child and the child has resided with the birth parent and adoptive parent for more than three months, such waiting period shall not be required. The judge or surrogate may shorten such waiting period for good cause shown, and, in such case the order of adoption shall recite the reason for such action. The three months residence period specified in section one hundred twelve of title two of this article and the three months waiting period provided in this subdivision may run concurrently in whole or in part.

2. Stage one of private-placement adoption. At the time of receiving the petition, agreement and consents, the judge or surrogate, upon finding that the applicable provisions of this title have been complied with and that it appears that the adoption may be in the best interests of the child, shall issue an order of investigation hereunder. The order of investigation shall require that the report of such investigation be made in accordance with subdivision three of this section, and may require or authorize further investigations from time to time until the granting of the order of adoption. Such order shall direct that such investigation shall not unnecessarily duplicate any previous investigations which have been made of the petitioner or petitioners pursuant to section one hundred fifteen-d of this title. Should such investigation give apparent cause, the judge or surrogate shall require the petitioner or petitioners to show cause why the child should not be removed from the home, upon due notice to all persons whose consent is required for the adoption, and in any case where the consent of the birth mother would not otherwise be required, the judge or surrogate may in his discretion require that she be given due notice. On the return date the judge or surrogate shall take proof of the facts shown by any such investigation. If the court is satisfied that the welfare of the child requires that it be removed from the home, the judge or surrogate shall by order remove the child from the home of the petitioner or petitioners and return the child to a birth parent or place the child

with an appropriate authorized agency, or, in the case of a surrogate, transfer the child to the family court. The judge or surrogate may also require that notice be given to an appropriate authorized agency.

3. The judge or surrogate shall cause to be made an investigation by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience, or by an authorized agency specifically designated by him to examine into the allegations set forth in the petition. A post-placement investigation conducted pursuant to the provisions of this section shall be made by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience to perform post-placement investigations. Such disinterested person shall certify to the court that he or she is a disinterested person and has no interest in the outcome of petitioner's or petitioners' application. Such disinterested person shall further disclose to the court any fee paid or to be paid to such person for services rendered in connection with the post-placement investigation. The investigator shall make a written report of his investigation into the truth and accuracy of the allegations of the petition, and, where applicable, into the statements contained in the affidavit required by section one hundred fifteen of this title, and he shall ascertain as fully as possible, and incorporate in his report the various factors which may bear upon the determination of the application for adoption including, but not limited to, the following information:

- (a) the marital and family status, and history, of the adoptive parents and adoptive child;

- (b) the physical and mental health of the adoptive parents and adoptive child;

- (c) the property owned by and the income of the adoptive parents;

- (d) the compensation paid or agreed upon with respect to the placement of the child for adoption;

- (e) whether either adoptive parent has ever been respondent in any proceeding concerning allegedly abused, neglected, abandoned or delinquent children;

- (f) any other facts relating to the familial, social, religious, emotional and financial circumstances of the adoptive parents which may be relevant to a determination of adoption.

The written report of investigation shall be submitted to the judge or surrogate within thirty days after the same is directed to be made, unless for good cause shown the judge or surrogate shall grant a reasonable extension of such period. The report shall be filed with the judge or surrogate, in any event, before the final order of adoption is granted.

4. Stage two of private-placement adoption. If the judge or surrogate has found that there has been compliance with all the requirements hereof and is satisfied that the best interests of the child will be promoted by granting an order of adoption, the provisions of section one hundred fourteen of title two of this article shall apply.

5. As used in this section, "disinterested person" includes the probation service of the family court, a licensed master social worker, licensed clinical social worker, or an authorized agency specifically designated by the court to conduct pre-placement investigations.

TITLE IV

EFFECT OF ADOPTION FROM AN AUTHORIZED AGENCY, OF PRIVATE-PLACEMENT ADOPTION, AND ABROGATIONS THEREOF

Section 117. Effect of adoption.

§ 117. Effect of adoption. 1. (a) After the making of an order of adoption the birth parents of the adoptive child shall be relieved of all parental duties toward and of all responsibilities for and shall have no rights over such adoptive child or to his property by descent or succession, except as hereinafter stated.

(b) The rights of an adoptive child to inheritance and succession from and through his birth parents shall terminate upon the making of the order of adoption except as hereinafter provided.

(c) The adoptive parents or parent and the adoptive child shall sustain toward each other the legal relation of parent and child and shall have all the rights and be subject to all the duties of that

relation including the rights of inheritance from and through each other and the birth and adopted kindred of the adoptive parents or parent.

(d) When a birth or adoptive parent, having lawful custody of a child, marries or remarries and consents that the stepparent may adopt such child, such consent shall not relieve the parent so consenting of any parental duty toward such child nor shall such consent or the order of adoption affect the rights of such consenting spouse and such adoptive child to inherit from and through each other and the birth and adopted kindred of such consenting spouse.

(e) Notwithstanding the provisions of paragraphs (a), (b) and (d) of this subdivision, as to estates of persons dying after the thirty-first day of August, nineteen hundred eighty-seven, if:

(1) the decedent is the adoptive child's birth grandparent or is a descendant of such grandparent, and

(2) an adoptive parent (i) is married to the child's birth parent, (ii) is the child's birth grandparent, or (iii) is descended from such grandparent,

the rights of an adoptive child to inheritance and succession from and through either birth parent shall not terminate upon the making of the order of adoption.

However, an adoptive child who is related to the decedent both by birth relationship and by adoption shall be entitled to inherit only under the birth relationship unless the decedent is also the adoptive parent, in which case the adoptive child shall then be entitled to inherit pursuant to the adoptive relationship only.

(f) The right of inheritance of an adoptive child extends to the distributees of such child and such distributees shall be the same as if he were the birth child of the adoptive parent.

(g) Adoptive children and birth children shall have all the rights of fraternal relationship including the right of inheritance from each other. Such right of inheritance extends to the distributees of such adoptive children and birth children and such distributees shall be the same as if each such child were the birth child of the adoptive parents.

(h) The consent of the parent of a child to the adoption of such child by his or her spouse shall operate to vest in the adopting spouse only the rights as distributee of a birth parent and shall leave otherwise

unaffected the rights as distributee of the consenting spouse.

(i) This subdivision shall apply only to the intestate descent and distribution of real and personal property.

2. (a) Except as hereinafter stated, after the making of an order of adoption, adopted children and their issue thereafter are strangers to any birth relatives for the purpose of the interpretation or construction of a disposition in any instrument, whether executed before or after the order of adoption, which does not express a contrary intention or does not expressly include the individual by name or by some classification not based on a parent-child or family relationship.

(b) As to the wills of persons executed after the thirty-first day of August, nineteen hundred eighty-six, or to lifetime instruments executed after such date whether executed before or after the order of adoption, a designation of a class of persons described in section 2-1.3 of the estates, powers and trusts law shall, unless the will or instrument expresses a contrary intention, be deemed to include an adoptive child who was a member of such class in his or her birth relationship prior to adoption, and the issue of such child, only if:

(1) an adoptive parent (i) is married to the child's birth parent, (ii) is the child's birth grandparent, or (iii) is a descendant of such grandparent, and

(2) the testator or creator is the child's birth grandparent or a descendant of such grandparent.

(c) A person who, by reason of this subdivision, would be a member of the designated class, or a member of two or more designated classes pursuant to a single instrument, both by birth relationship and by adoption shall be entitled to benefit only under the birth relationship, unless the testator or creator is the adoptive parent, in which case the person shall then be entitled to benefit only under the adoptive relationship.

(d) The provisions of this subdivision shall not impair or defeat any rights which have vested on or before the thirty-first day of August, nineteen hundred eighty-six, or which have vested prior to the adoption regardless of when the adoption occurred.

3. The provisions of law affected by the provisions of this section in

force prior to March first, nineteen hundred sixty-four shall apply to the estates or wills of persons dying prior thereto and to lifetime instruments theretofore executed which on said date were not subject to grantor's power to revoke or amend.

ARTICLE 8

GENETIC SURROGATE PARENTING CONTRACTS

Section 121. Definitions.

122. Public policy.

123. Prohibitions and penalties.

124. Proceedings regarding parental rights, status or obligations.

§ 121. Definitions. When used in this article, unless the context or subject matter manifestly requires a different interpretation:

1. "Genetic surrogate" shall mean a person who gives birth to a child who is the person's genetic child pursuant to a genetic surrogate parenting agreement.

2. "Genetic surrogate parenting agreement" shall mean any agreement, oral or written, in which:

(a) a genetic surrogate agrees either to be inseminated with the sperm of a person who is not their spouse or to be impregnated with an embryo that is the product of the genetic surrogate's ovum fertilized with the sperm of a person who is not their spouse; and

(b) the genetic surrogate agrees to, or intends to, surrender or consent to the adoption of the child born as a result of such insemination or impregnation.

§ 122. Public policy. Genetic surrogate parenting agreements are hereby declared contrary to the public policy of this state, and are void and unenforceable.

§ 123. Prohibitions and penalties. 1. No person or other entity shall knowingly request, accept, receive, pay or give any fee, compensation or other remuneration, directly or indirectly, in connection with any genetic surrogate parenting agreement, or induce, arrange or otherwise assist in arranging a genetic surrogate parenting agreement for a fee, compensation or other remuneration, except for:

(a) payments in connection with the adoption of a child permitted by subdivision six of section three hundred seventy-four of the social services law and disclosed pursuant to subdivision eight of section one hundred fifteen of this chapter; or

(b) payments for reasonable and actual medical fees and hospital expenses for artificial insemination or in vitro fertilization services incurred by the genetic surrogate in connection with the birth of the child.

2. (a) Any party to a genetic surrogate parenting agreement or the spouse of any party to a genetic surrogate parenting agreement who violates this section shall be subject to a civil penalty not to exceed five hundred dollars.

(b) Any other person or entity who or which induces, arranges or otherwise assists in the formation of a genetic surrogate parenting contract for a fee, compensation or other remuneration or otherwise violates this section shall be subject to a civil penalty not to exceed ten thousand dollars and forfeiture to the state of any such fee, compensation or remuneration in accordance with the provisions of subdivision (a) of section seven thousand two hundred one of the civil practice law and rules, for the first such offense. Any person or entity who or which induces, arranges or otherwise assists in the formation of a genetic surrogate parenting contract for a fee, compensation or other remuneration or otherwise violates this section, after having been once subject to a civil penalty for violating this section, shall be guilty of a felony.

§ 124. Proceedings regarding parental rights, status or obligations.
In any action or proceeding involving a purported genetic surrogacy

parenting agreement, the parentage of the child will be determined based on the laws of New York state and:

1. the court shall not consider the genetic surrogate's participation in a genetic surrogate parenting agreement as adverse to their parental rights, status, or obligations; and

2. the court, having regard to the circumstances of the case and of the respective parties including the parties' relative ability to pay such fees and expenses, in its discretion and in the interests of justice, may award to either party reasonable and actual counsel fees and legal expenses incurred in connection with such action or proceeding. Such award may be made in the order or judgment by which the particular action or proceeding is finally determined, or by one or more orders from time to time before the final order or judgment, or by both such order or orders and the final order or judgment; provided, however, that in any dispute involving a genetic surrogate who has executed a valid surrender or consent to the adoption, nothing in this section shall empower a court to make any award that it would not otherwise be empowered to direct.

ARTICLE 9

ACTION TO ANNUL A MARRIAGE OR DECLARE IT VOID

Section 140. Action for judgment declaring nullity of void marriages or annulling voidable marriage.

(a) Former husband or wife living.

(b) Party under age of consent.

(c) Party a person with a developmental illness or person with a mental illness.

(d) Physical incapacity.

(e) Consent by force, duress or fraud.

(f) Incurable mental illness for five years.

141. Action to annul marriage on ground of incurable mental illness for five years; procedure; support.

142. Dismissal of complaint in action by next friend to annul a marriage.

- 143. Jury trial.
- 144. Proof required.
- 146. Judgment, how far conclusive.

§ 140. Action for judgment declaring nullity of void marriages or annulling voidable marriage. (a) Former husband or wife living. An action to declare the nullity of a void marriage upon the ground that the former husband or wife of one of the parties was living, the former marriage being in force, may be maintained by either of the parties during the life-time of the other, or by the former husband or wife.

(b) Party under age of consent. An action to annul a marriage on the ground that one or both of the parties had not attained the age of legal consent may be maintained by the infant, or by either parent of the infant, or by the guardian of the infant's person; or the court may allow the action to be maintained by any person as the next friend of the infant. But a marriage shall not be annulled under this subdivision at the suit of a party who was of the age of legal consent when it was contracted, or by a party who for any time after he or she attained that age freely cohabited with the other party as husband or wife.

(c) Party a person with a developmental illness or person with a mental illness. An action to annul a marriage on the ground that one of the parties thereto was a person with a developmental disability may be maintained at any time during the life-time of either party by any relative of a person with a developmental disability, who has an interest to avoid the marriage. An action to annul a marriage on the ground that one of the parties thereto was a person with a mental illness may be maintained at any time during the continuance of the mental illness, or, after the death of the person with a mental illness in that condition, and during the life of the other party to the marriage, by any relative of the person with a mental illness who has an interest to avoid the marriage. Such an action may also be maintained by the person with a mental illness at any time after restoration to a sound mind; but in that case, the marriage should not be annulled if it appears that the parties freely cohabited as husband and wife after the person with a mental illness was restored to a sound mind. Where one of the parties to a marriage was a person with a mental illness at the time

of the marriage, an action may also be maintained by the other party at any time during the continuance of the mental illness, provided the plaintiff did not know of the mental illness at the time of the marriage. Where no relative of the person with a developmental disability or person with a mental illness brings an action to annul the marriage and the person with a mental illness is not restored to sound mind, the court may allow an action for that purpose to be maintained at any time during the life-time of both the parties to the marriage, by any person as the next friend of the person with a mental illness or person with a developmental disability.

(d) Physical incapacity. An action to annul a marriage on the ground that one of the parties was physically incapable of entering into the marriage state may be maintained by the injured party against the party whose incapacity is alleged; or such an action may be maintained by the party who was incapable against the other party, provided the incapable party was unaware of the incapacity at the time of marriage, or if aware of such incapacity, did not know it was incurable. Such an action can be maintained only where an incapacity continues and is incurable, and must be commenced before five years have expired since the marriage.

(e) Consent by force, duress or fraud. An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by force or duress may be maintained at any time by the party whose consent was so obtained. An action to annul a marriage on the ground that the consent of one of the parties thereto was obtained by fraud may be maintained by the party whose consent was so obtained within the limitations of time for enforcing a civil remedy of the civil practice law and rules. Any such action may also be maintained during the life-time of the other party by the parent, or the guardian of the person of the party whose consent was so obtained, or by any relative of that party who has an interest to avoid the marriage, provided that in an action to annul a marriage on the ground of fraud the limitation prescribed in the civil practice law and rules has not run. But a marriage shall not be annulled on the ground of force or duress if it appears that, at any time before the commencement of the action, the parties thereto voluntarily cohabited as husband and wife; or on the ground of fraud, if it appears that, at any time before the commencement thereof, the parties voluntarily cohabited as husband and wife, with a

full knowledge of the facts constituting the fraud.

(f) Incurable mental illness for five years. An action to annul a marriage upon the ground that one of the parties has been incurably mentally ill for a period of five years or more may be maintained by or on behalf of either of the parties to such marriage.

§ 141. Action to annul marriage on ground of incurable mental illness for five years; procedure; support. 1. If the marriage be annulled on the ground of the mental illness of a spouse, the court may include in the judgment an order providing for his or her suitable support, care and maintenance during life from the property or income of the other spouse. The court shall specify the amount of such support, care and maintenance and, before rendering judgment, may exact security for such support, care and maintenance during life and shall order the filing and recording of the instrument creating such security in the office of the clerk of the county in which the action is brought and the filing of two certified copies thereof with the office of mental health at its Albany office. The provisions of the judgment relating to support, care and maintenance of the spouse with a mental illness during his or her life and to security therefor may be modified or amended at any time by the court upon due notice to the other party and other interested parties as the court may direct and in proper case the value of the suitable support, care and maintenance to such spouse during the balance of his or her life based upon appropriate mortality tables may be adjudged and determined by the court in which the estate of a deceased spouse is being administered and the same may be recovered on behalf of the spouse with a mental illness from the estate of the deceased spouse. If the spouse with a mental illness is maintained in an institution or otherwise under the jurisdiction of the office of mental health, the suitable support, care and maintenance as required in the judgment, unless otherwise directed by the court, shall be the charge established by the commissioner of mental health and such charge may be recovered in the manner provided by law. Such amount shall continue to be so required for the support of the spouse with a mental illness in the event of his or her removal from the custody of the office of mental health unless thereafter otherwise directed by the court. Any security exacted for the

suitable support, care and maintenance during life of the spouse with a mental illness shall be available to that spouse or any person on his or her behalf or to any person or agency providing support, care and maintenance for such spouse in the event that the required payments for such support, care and maintenance have not been made and upon application to the court the other spouse shall be ordered and directed to provide additional or further security.

2. Judgment annulling a marriage on such ground shall not be rendered until, in addition to any other proofs in the case, a thorough examination of the alleged party with a mental illness shall have been made by three physicians who are recognized authorities on mental disease, to be appointed by the court, all of whom shall have agreed that such party has an incurable mental illness and shall have so reported to the court. In such action, the testimony of a physician attached to a state hospital in the department of mental hygiene as to information which he acquired in attending a patient in a professional capacity at such hospital, shall be taken before a referee appointed by a judge of the court in which such action is pending if the court in its discretion shall determine that the distance such physician must travel to attend the trial would be a great inconvenience to him or the hospital, or that other sufficient reason exists for the appointment of a referee for such purpose; provided, however, that any judge of such court at any time in his discretion, notwithstanding such deposition, may order that a subpoena issue for the attendance and examination of such physician upon the trial of the action. In such case a copy of the order shall be served together with the subpoena.

3. Except as provided in paragraph five of this section, when the person alleged to have an incurable mental illness is confined in a state hospital for persons with a mental illness of this state, one, and one only, of the physicians so appointed shall be a member of the resident medical staff of such hospital designated by the director thereof. If the alleged incurably person with a mental illness is not confined in a state hospital for persons with a mental illness of this state, one of the examining physicians named in pursuance of this section shall be the director of a state hospital for persons with a

mental illness if the alleged person with a mental illness is within this state, or the superintendent or comparable officer of a state hospital for persons with a mental illness of the state or country where the alleged person with a mental illness is present if the alleged person with a mental illness is outside of this state. The report of such superintendent or comparable officer of a state hospital for persons with a mental illness of such other state or country shall not be received in evidence or considered by the court unless he shall be a well educated physician with at least five years of training and experience in the care and treatment of persons suffering from mental disorders.

4. When the plaintiff has been permitted to bring such action or prosecute the same as a poor person and the alleged incurably defendant with a mental illness is present within this state, the court shall appoint three physicians who are examining physicians, as defined by section 1.05 of the mental hygiene law, in the employment of the department of mental hygiene. If the alleged person with a mental illness be outside of this state, the court may, upon proof thereof, appoint three examining physicians who are qualified under the laws or regulations of the foreign state or country where the alleged person with a mental illness is present and who have qualifications comparable to those specified in section 1.05 of the mental hygiene law of the state, provided, however, that one of such examining physicians shall be the superintendent or comparable officer of a state hospital for persons with a mental illness of such foreign state or country with qualifications as specified in paragraph four. Such examiners shall make the examination of the alleged party with a mental illness present in this state and file with the court a verified report of their findings and conclusions without costs to such plaintiff when the plaintiff is a poor person. Examination of an alleged party with a mental illness present outside of this state shall be made at the expense of the plaintiff. Such report shall be received in evidence upon the trial of the action without the personal appearance or testimony of such examiners. If the court shall deem it necessary that the testimony of any such examiners be taken, the court may order the taking of such testimony by deposition only. The examiners so appointed by the court

may be members of the resident medical staff of any state hospital, whether or not the alleged person with a mental illness is being confined there.

§ 142. Dismissal of complaint in action by next friend to annul a marriage. Where the next friend of an infant, person with a developmental disability or person with a mental illness maintains an action annulling a marriage, the court may dismiss the complaint if justice so requires, although, in a like case, the party to the marriage, if plaintiff, would be entitled to judgment.

§ 143. Jury trial. In an action to annul a marriage, except where it is founded upon an allegation of the physical incapacity of one of the parties thereto, there is a right to trial by a jury of all the issues of fact.

§ 144. Proof required. 1. In an action to annul a marriage, a final judgment annulling the marriage shall not be rendered by default for want of an appearance or pleading, or by consent, or upon a trial of an issue, without proof of the facts upon which the allegation of nullity is founded. Plaintiff shall prove that there has been no such cohabitation between the parties as would bar a judgment except that in an action under subdivision (c) of section one hundred forty the plaintiff may prove instead that the mental illness still continues.

2. In any action, whether or not contested, brought to annul a marriage, the declaration or confession of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the facts must be produced.

§ 146. Judgment, how far conclusive. A final judgment, annulling a marriage rendered during the lifetime of both the parties is conclusive evidence of the invalidity of the marriage in every court of record or

not of record, in any action or special proceeding, civil or criminal. Such a judgment rendered after the death of either party to the marriage is conclusive only as against the parties to the action and those claiming under them.

ARTICLE 10

ACTION FOR DIVORCE

Section 170. Action for divorce.

170-a. Special action.

171. When divorce denied, although adultery proved.

172. Co-respondent as party.

173. Jury trial.

175. Legitimacy of children.

§ 170. Action for divorce. An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds:

(1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

(2) The abandonment of the plaintiff by the defendant for a period of one or more years.

(3) The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

(4) The commission of an act of adultery, provided that adultery for the purposes of articles ten, eleven, and eleven-A of this chapter, is hereby defined as the commission of an act of vaginal sexual contact, oral sexual contact or anal sexual contact, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual contact and anal sexual contact include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision four of section 130.20 of the penal law.

(5) The spouses have lived apart pursuant to a decree or judgment of

separation for a period of six months or more after the granting of such decree or judgment, and satisfactory proof has been submitted by the plaintiff that such plaintiff has substantially performed all the terms and conditions of such decree or judgment.

(6) The spouses have lived separate and apart pursuant to a written agreement of separation, subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded, for a period of six months or more after the execution of such agreement and satisfactory proof has been submitted by the plaintiff that such plaintiff has substantially performed all the terms and conditions of such agreement. Such agreement shall be filed in the office of the clerk of the county wherein either party resides. In lieu of filing such agreement, either party to such agreement may file a memorandum of such agreement, which memorandum shall be similarly subscribed and acknowledged or proved as was the agreement of separation and shall contain the following information: (a) the names and addresses of each of the parties, (b) the date of marriage of the parties, (c) the date of the agreement of separation and (d) the date of this subscription and acknowledgment or proof of such agreement of separation.

(7) The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

§ 170-a. Special action. a. A spouse against whom a decree of divorce has been obtained under the provisions of subdivision five or six of section one hundred seventy of this chapter, where the decree, judgment or agreement of separation was obtained or entered into prior to January twenty-first, nineteen hundred seventy, may institute an action in which

there shall be recoverable, in addition to any rights under this or any other provisions of law, an amount equivalent to the value of any economic and property rights of which the spouse was deprived by virtue of such decree, except where the grounds for the separation judgment would have excluded recovery of economic and property rights.

b. In determining the value of the economic and property rights described in subdivision a hereof, the plaintiff's interest shall be calculated as though the defendant died intestate and as if the death of the defendant had immediately antedated the divorce.

c. If the defendant shall establish that intervening circumstances have rendered an award described in subdivision a hereof inequitable, the court may award to the plaintiff such portion of such economic and property rights as justice may require.

d. If the defendant shall establish that the plaintiff has expressly or impliedly waived all or some portion of the aforesaid economic or property rights, the court shall deny recovery of all such rights, or deny recovery of the portion of such rights as justice may require.

e. Actions under this subdivision may be brought:

(i) Within two years of the enactment of this section, or

(ii) Within two years of the obtainment of the subject divorce, whichever is later.

§ 171. When divorce denied, although adultery proved. In either of the following cases, the plaintiff is not entitled to a divorce, although the adultery is established:

1. Where the offense was committed by the procurement or with the connivance of the plaintiff.

2. Where the offense charged has been forgiven by the plaintiff. The forgiveness may be proven, either affirmatively, or by the voluntary cohabitation of the parties with the knowledge of the fact.

3. Where there has been no express forgiveness, and no voluntary cohabitation of the parties, but the action was not commenced within five years after the discovery by the plaintiff of the offense charged.

4. Where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce.

§ 172. Co-respondent as party. 1. In an action brought to obtain a divorce on the ground of adultery the plaintiff or defendant may serve a copy of his pleading on a co-respondent named therein. At any time within twenty days after such service, the co-respondent may appear to defend such action so far as the issues affect him. If no such service be made, then at any time before the entry of judgment a co-respondent named in any of the pleadings may make a written demand on any party for a copy of a summons and a pleading served by such party, which must be served within ten days thereafter, and he may appear to defend such action so far as the issues affect him.

2. In an action for divorce where a co-respondent has appeared and defended, in case no one of the allegations of adultery controverted by such co-respondent shall be proven, such co-respondent shall be entitled to a bill of costs against the person naming him as such co-respondent, which bill of costs shall consist only of the sum now allowed by law as a trial fee, and disbursements.

§ 173. Jury trial. In an action for divorce there is a right to trial by jury of the issues of the grounds for granting the divorce.

§ 175. Legitimacy of children. 1. Where the action for divorce is brought by the wife, the legitimacy of any child of the parties, born or begotten before the commencement of the action, is not affected by the judgment dissolving the marriage.

2. Where the action for divorce is brought by the husband, the legitimacy of a child born or begotten before the commission of the offense charged is not affected by a judgment dissolving the marriage; but the legitimacy of any other child of the wife may be determined as one of the issues in the action. In the absence of proof to the contrary, the legitimacy of all the children begotten before the commencement of the action must be presumed.

ARTICLE 11

ACTION FOR SEPARATION

Section 200. Action for separation.

202. Defense of justification.

203. Judgment for separation revocable.

§ 200. Action for separation. An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever, or for a limited time, for any of the following causes:

1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

2. The abandonment of the plaintiff by the defendant.

3. The neglect or refusal of the defendant-spouse to provide for the support of the plaintiff-spouse where the defendant-spouse is chargeable with such support under the provisions of section thirty-two of this chapter or of section four hundred twelve of the family court act.

4. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties

with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of vaginal sexual contact, oral sexual contact or anal sexual contact, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual contact and anal sexual contact include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision four of section 130.20 of the penal law.

5. The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

6. The relationship between the spouses has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment for separation shall be granted under this subdivision unless and until any applicable, timely and relevant economic issues, which may include the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage, have been resolved by the parties, or determined by the court and incorporated into the action.

§ 202. Defense of justification. The defendant in an action for separation from bed and board may set up, in justification, the misconduct of the plaintiff; and if that defense is established to the satisfaction of the court, the defendant is entitled to judgment.

§ 203. Judgment for separation revocable. Upon the joint application of the parties, accompanied with satisfactory evidence of their reconciliation, a judgment for a separation, forever, or for a limited period, rendered as prescribed in this article, may be revoked at any

time by the court which rendered it, subject to such regulations and restrictions as the court thinks fit to impose.

ARTICLE 11-A

SPECIAL PROVISIONS RELATING TO DIVORCE AND SEPARATION

Section 210. Limitations on actions for divorce and separation.

211. Pleadings, proof and motions.

§ 210. Limitations on actions for divorce and separation. No action for divorce or separation may be maintained on a ground which arose more than five years before the date of the commencement of that action for divorce or separation except where:

(a) In an action for divorce, the grounds therefor are one of those specified in subdivision (2), (4), (5) or (6) of section one hundred seventy of this chapter, or

(b) In an action for separation, the grounds therefor are one of those specified in subdivision 2 or 4 of section two hundred of this chapter.

§ 211. Pleadings, proof and motions. A matrimonial action shall be commenced by the filing of a summons with the notice designated in section two hundred thirty-two of this chapter, or a summons and verified complaint as provided in section three hundred four of the civil practice law and rules. A final judgment shall be entered by default for want of appearance or pleading, or by consent, only upon competent oral proof or upon written proof that may be considered on a motion for summary judgment. Where a complaint or counterclaim in an action for divorce or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

ARTICLE 12

DISSOLUTION OF MARRIAGE ON GROUND OF ABSENCE

Section 220. Special proceeding to dissolve marriage on the ground of absence.

221. Procedure.

§ 220. Special proceeding to dissolve marriage on the ground of absence. A special proceeding to dissolve a marriage on the ground of absence may be maintained in either of the following cases:

1. Where the petitioner is a resident of this state and has been a resident thereof for one year immediately preceding the commencement of the special proceeding.

2. Where the matrimonial domicile at the time of the disappearance of the absent spouse was within the state.

§ 221. Procedure. The petition shall allege that the husband or wife of such party has absented himself or herself for five successive years then last past without being known to such party to be living during that time; that such party believes such husband or wife to be dead; and that a diligent search has been made to discover evidence showing that such husband or wife is living, and no such evidence has been found. The court shall thereupon by order require notice of the presentation and object of such petition to be published in a newspaper in the English language designated in the order as most likely to give notice to such absent husband or wife once each week for three successive weeks; such notice shall be directed to the husband or wife who has so absented himself or herself and shall state the time and place of the hearing upon such petition, which time shall be not less than forty days after the completion of the publication of such notice; said notice must be subscribed with the name of the petitioner and with the name of the petitioner's attorney and with his office address, specifying a place within the state where there is a post-office. If in a city, said notice must also set forth the street and street number, if any, of such attorney's office address or other suitable designation of the particular locality in which said office address is located. In addition

to the foregoing requirements said notice must be in substantially the following form, the blanks being properly filled: "Supreme court,county. In the matter of the application of.....for dissolution of his or her marriage with..... To.....: Take notice that a petition has been presented to this court by....., your husband or wife, for the dissolution of your marriage on the ground that you have absented yourself for five successive years last past without being known to him or her to be living and that he or she believes you to be dead, and that pursuant to an order of said court, entered theday of, 19....., a hearing will be had upon said petition at the said supreme court,term part....., in thecounty court house, in the..... state of New York, on the..... day of, 19....., at o'clock in thenoon. Dated.....;" and if the court, after the filing of proof of the proper publication of said notice and after a hearing and proof taken, is satisfied of the truth of all the allegations contained in the petition, it may make a final order dissolving such marriage.

ARTICLE 13

PROVISIONS APPLICABLE TO MORE THAN ONE TYPE OF MATRIMONIAL ACTION

- Section 230. Required residence of parties.
231. Residence of married persons.
232. Notice of nature of matrimonial action; proof of service.
233. Sequestration of defendant's property in action for divorce, separation or annulment where defendant cannot be personally served.
234. Title to or occupancy and possession of property.
235. Information as to details of matrimonial actions or proceedings.
236. Special controlling provisions; prior actions or proceedings; new actions or proceedings.
237. Counsel fees and expenses.
238. Expenses in enforcement and modification proceedings.
239. Stay in divorce or separation action on default of payment.

- 240. Custody and child support; orders of protection.
- 240-a. Judgment or decree; additional provision.
- 240-b. Order of support by parent.
- 240-c. Review and cost of living adjustment of child support orders.
- 240-d. Support orders for certain adult dependents.
- 241. Interference with or withholding of visitation rights; alimony or maintenance suspension.
- 243. Security for payments by defendant in action for divorce, separation or annulment; sequestration.
- 244. Enforcement by execution of judgment or order in action for divorce, separation or annulment.
- 244-a. Enforcement of arrears which accrue during pendency of an enforcement proceeding.
- 244-b. Child support proceedings and enforcement of arrears; suspension of driving privileges.
- 244-c. Child support proceedings and enforcement of arrears; suspensions of state professional, occupational and business licenses.
- 244-d. Child support proceedings and enforcement of arrears; suspension of recreational license.
- 245. Enforcement by contempt proceedings of judgment or order in action for divorce, separation or annulment.
- 246. Persons financially unable to comply with orders or judgments directing the payment of alimony.
- 247. Alimony or maintenance payments suspended during confinement in prison.
- 248. Modification of judgment or order in action for divorce or annulment.
- 249. Trial preferences in matrimonial actions.
- 250. Agreements relating to marriage; statute of limitations.
- 251. Filing of order in family court.
- 252. Effect of pendency of action for divorce, separation or annulment on petition for order of protection.
- 253. Removal of barriers to remarriage.
- 254. Confidentiality.
- 255. Prerequisites for judgments under articles nine, ten and

eleven of this chapter; health care coverage.

§ 230. Required residence of parties. An action to annul a marriage, or to declare the nullity of a void marriage, or for divorce or separation may be maintained only when:

1. The parties were married in the state and either party is a resident thereof when the action is commenced and has been a resident for a continuous period of one year immediately preceding, or
2. The parties have resided in this state as husband and wife and either party is a resident thereof when the action is commenced and has been a resident for a continuous period of one year immediately preceding, or
3. The cause occurred in the state and either party has been a resident thereof for a continuous period of at least one year immediately preceding the commencement of the action, or
4. The cause occurred in the state and both parties are residents thereof at the time of the commencement of the action, or
5. Either party has been a resident of the state for a continuous period of at least two years immediately preceding the commencement of the action.

§ 231. Residence of married persons. If a married person dwells within the state when he or she commences an action against his or her spouse for divorce, annulment or separation, such person is deemed a resident thereof, although his or her spouse resides elsewhere.

§ 232. Notice of nature of matrimonial action; proof of service. a. In an action to annul a marriage or for divorce or for separation, if the complaint is not personally served with the summons, the summons shall

have legibly written or printed upon the face thereof: "Action to annul a marriage", "Action to declare the nullity of a void marriage", "Action for a divorce", or "Action for a separation", as the case may be, and shall specify the nature of any ancillary relief demanded. A judgment shall not be rendered in favor of the plaintiff upon the defendant's default in appearing or pleading, unless either (1) the summons and a copy of the complaint were personally delivered to the defendant; or (2) the copy of the summons (a) personally delivered to the defendant, or (b) served on the defendant pursuant to an order directing the method of service of the summons in accordance with the provisions of section three hundred eight or three hundred fifteen of the civil practice law and rules, shall contain such notice.

b. An affidavit or certificate proving service shall state affirmatively in the body thereof that the required notice was written or printed on the face of the copy of the summons delivered to the defendant and what knowledge the affiant or officer who executed the certificate had that he was the defendant named and how he acquired such knowledge. The court may require the affiant or officer who executed the affidavit or certificate to appear in court and be examined in respect thereto.

§ 233. Sequestration of defendant's property in action for divorce, separation or annulment where defendant cannot be personally served. Where in an action for divorce, separation, annulment or declaration of nullity of a void marriage it appears to the court that the defendant is not within the state, or cannot be found therein, or is concealing himself or herself therein, so that process cannot be personally served upon the defendant, the court may at any time and from time to time make any order or orders without notice directing the sequestration of his or her property, both real and personal and whether tangible or intangible, within the state, and may appoint a receiver thereof, or by injunction or otherwise take the same into its possession and control. The property thus sequestered and the income therefrom may be applied in whole or in part and from time to time, under the direction of the court and as justice may require, to the payment of such sum or sums as the court may

deem it proper to award, by order or judgment as the case may be, and during the pendency of the action or at the termination thereof, for the education or maintenance of any of the children of a marriage, or for the support of a spouse, or for his or her expenses in bringing and carrying on said action and the proceedings incidental thereto or connected therewith; and if the rents and profits of the real estate, together with the other property so sequestered, be insufficient to pay the sums of money required, the court, upon such terms and conditions as it may prescribe, may direct the mortgage or sale of sufficient of said real estate to pay such sums. The court may appoint the plaintiff spouse receiver or sequestrator in such cases. The court may authorize such spouse to use and occupy, free of any liability for rent or use and occupation or otherwise, any house or other suitable property of the defendant spouse as a dwelling for himself or herself with or without the children of the marriage, and may likewise turn over to the plaintiff spouse for the use of such spouse with or without the children of the marriage any chattel or chattels of the defendant spouse. The relief herein provided for is in addition to any and every other remedy to which a spouse may be entitled under the law.

§ 234. Title to or occupancy and possession of property. In any action for divorce, for a separation, for an annulment or to declare the nullity of a void marriage, the court may (1) determine any question as to the title to property arising between the parties, and (2) make such direction, between the parties, concerning the possession of property, as in the court's discretion justice requires having regard to the circumstances of the case and of the respective parties. Such direction may be made in the final judgment, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and final judgment. Where the title to real property is affected, a copy of such judgment, order or decree, duly certified by the clerk of the court wherein said judgement was rendered, shall be recorded in the office of the recording officer of the county in which such property is situated, as provided by section two hundred ninety-seven-b of the real property law.

§ 235. Information as to details of matrimonial actions or proceedings. 1. An officer of the court with whom the proceedings in a matrimonial action or a written agreement of separation or an action or proceeding for custody, visitation or maintenance of a child are filed, or before whom the testimony is taken, or his clerk, either before or after the termination of the suit, shall not permit a copy of any of the pleadings, affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separation or memorandum thereof, or testimony, or any examination or perusal thereof, to be taken by any other person than a party, or the attorney or counsel of a party, except by order of the court.

2. If the evidence on the trial of such an action or proceeding be such that public interest requires that the examination of the witnesses should not be public, the court or referee may exclude all persons from the room except the parties to the action and their counsel, and in such case may order the evidence, when filed with the clerk, sealed up, to be exhibited only to the parties to the action or proceeding or someone interested, on order of the court.

3. Upon the application of any person to the county clerk or other officer in charge of public records within a county for evidence of the disposition, judgment or order with respect to a matrimonial action, the clerk or other such officer shall issue a "certificate of disposition", duly certifying the nature and effect of such disposition, judgment or order and shall in no manner evidence the subject matter of the pleadings, testimony, findings of fact, conclusions of law or judgment of dissolution derived in any such action.

4. Any county, city, town or village clerk or other municipal official issuing marriage licenses shall be required to accept, as evidence of dissolution of marriage, such "certificate of disposition" in lieu of a complete copy of the findings of fact, conclusions of law and judgment of dissolution.

5. The limitations of subdivisions one, two and three of this section

in relation to confidentiality shall cease to apply one hundred years after date of filing, and such records shall thereupon be public records available to public inspection.

§ 236. Special controlling provisions; prior actions or proceedings; new actions or proceedings. Except as otherwise expressly provided in this section, the provisions of part A shall be controlling with respect to any action or proceeding commenced prior to the date on which the provisions of this section as amended become effective and the provisions of part B shall be controlling with respect to any action or proceeding commenced on or after such effective date. Any reference to this section or the provisions hereof in any action, proceeding, judgment, order, rule or agreement shall be deemed and construed to refer to either the provisions of part A or part B respectively and exclusively, determined as provided in this paragraph any inconsistent provision of law notwithstanding.

PART A

PRIOR ACTIONS OR PROCEEDINGS

Alimony, temporary and permanent. 1. Alimony. In any action or proceeding brought (1) during the lifetime of both parties to the marriage to annul a marriage or declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, the court may direct either spouse to provide suitably for the support of the other as, in the court's discretion, justice requires, having regard to the length of time of the marriage, the ability of each spouse to be self supporting, the circumstances of the case and of the respective parties. Such direction may require the payment of a sum or sums of money either directly to either spouse or to third persons for real and personal property and services furnished to either spouse, or for the rental of or mortgage amortization or interest payments, insurance, taxes, repairs or other carrying charges on premises occupied by either spouse, or for both payments to either spouse and to such third persons. Such direction shall be effective as of the date of the application therefor, and any retroactive amount of alimony due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of

temporary alimony which has been paid. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by either spouse (1) by reason of a finding by the court that a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to either spouse in an action in which jurisdiction over the person of the other spouse was not obtained, or (2) by reason of the misconduct of the other spouse, unless such misconduct would itself constitute grounds for separation or divorce, or (3) by reason of a failure of proof of the grounds of either spouse's action or counterclaim. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to either spouse under this section with any amount payable to either spouse under section two hundred forty of this chapter. Upon the application of either spouse, upon such notice to the other party and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or by final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this chapter, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc based on newly discovered evidence.

2. Compulsory financial disclosure. In all matrimonial actions and proceedings commenced on or after September first, nineteen hundred seventy-five in supreme court in which alimony, maintenance or support is in issue and all support proceedings in family court, there shall be compulsory disclosure by both parties of their respective financial

states. No showing of special circumstances shall be required before such disclosure is ordered. A sworn statement of net worth shall be provided upon receipt of a notice in writing demanding the same, within twenty days after the receipt thereof. In the event said statement is not demanded, it shall be filed by each party, within ten days after joinder of issue, in the court in which the procedure is pending. As used in this section, the term net worth shall mean the amount by which total assets including income exceed total liabilities including fixed financial obligations. It shall include all income and assets of whatsoever kind and nature and wherever situated and shall include a list of all assets transferred in any manner during the preceding three years, or the length of the marriage, whichever is shorter; provided, however that transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth. Noncompliance shall be punishable by any or all of the penalties prescribed in section thirty-one hundred twenty-six of the civil practice law and rules, in examination before or during trial.

PART B

NEW ACTIONS OR PROCEEDINGS

Maintenance and distributive award. 1. Definitions. Whenever used in this part, the following terms shall have the respective meanings hereinafter set forth or indicated:

a. The term "maintenance" shall mean payments provided for in a valid agreement between the parties or awarded by the court in accordance with the provisions of subdivisions five-a and six of this part, to be paid at fixed intervals for a definite or indefinite period of time, but an award of maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this chapter.

b. The term "distributive award" shall mean payments provided for in a valid agreement between the parties or awarded by the court, in lieu of or to supplement, facilitate or effectuate the division or distribution

of property where authorized in a matrimonial action, and payable either in a lump sum or over a period of time in fixed amounts. Distributive awards shall not include payments which are treated as ordinary income to the recipient under the provisions of the United States Internal Revenue Code.

c. The term "marital property" shall mean all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held, except as otherwise provided in agreement pursuant to subdivision three of this part. Marital property shall not include separate property as hereinafter defined.

d. The term separate property shall mean:

(1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse;

(2) compensation for personal injuries;

(3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse;

(4) property described as separate property by written agreement of the parties pursuant to subdivision three of this part.

e. The term "custodial parent" shall mean a parent to whom custody of a child or children is granted by a valid agreement between the parties or by an order or decree of a court.

f. The term "child support" shall mean a sum paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

2. Matrimonial actions. a. Except as provided in subdivision five of this part, the provisions of this part shall be applicable to actions for an annulment or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage, for a

declaration of the validity or nullity of a foreign judgment of divorce, for a declaration of the validity or nullity of a marriage, and to proceedings to obtain maintenance or a distribution of marital property following a foreign judgment of divorce, commenced on and after the effective date of this part. Any application which seeks a modification of a judgment, order or decree made in an action commenced prior to the effective date of this part shall be heard and determined in accordance with the provisions of part A of this section.

b. With respect to matrimonial actions which commence on or after the effective date of this paragraph, the plaintiff shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy of the automatic orders set forth in this paragraph. The automatic orders shall take effect and be binding upon the plaintiff in a matrimonial action immediately upon the filing of the summons, or summons and complaint, and shall be binding upon the defendant immediately upon the service of the automatic orders with the summons. Each automatic order shall remain in full force and effect until the judgment of divorce is entered or the action is dismissed, discontinued or stayed, whichever shall occur first, unless the order is terminated, modified or amended by further order of the court upon motion of either of the parties or upon written agreement between the parties duly executed and acknowledged. The automatic orders are as follows:

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any

kind, without the consent of the other party in writing, or upon further order of the court; except that any party who is already in pay status may continue to receive such payments thereunder.

(3) Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

(6) If either party receives notice of a tax lien, foreclosure, bankruptcy, or litigation, or the filing of same, or of the lifting of a stay in bankruptcy, that could adversely affect the marital estate, that party shall, within ten days after receiving such notice, send written notice of such event to the other party.

3. Agreement of the parties. An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded. Notwithstanding any other provision of law, an acknowledgment of an agreement made before marriage may be executed before any person authorized to solemnize a marriage pursuant to subdivisions one, two and three of section eleven of this chapter. Such an agreement may include (1) a contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will; (2) provision for the ownership, division or distribution of separate and marital property; (3) provision for the amount and duration of maintenance or other terms and conditions of the marriage relationship, subject to the provisions of section 5-311 of the general obligations law, and provided

that such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment; and (4) provision for the custody, care, education and maintenance of any child of the parties, subject to the provisions of section two hundred forty of this article. Nothing in this subdivision shall be deemed to affect the validity of any agreement made prior to the effective date of this subdivision.

4. Compulsory financial disclosure. a. In all matrimonial actions and proceedings in which alimony, maintenance or support is in issue, there shall be compulsory disclosure by both parties of their respective financial states. No showing of special circumstances shall be required before such disclosure is ordered. A sworn statement of net worth shall be provided upon receipt of a notice in writing demanding the same, within twenty days after the receipt thereof. In the event said statement is not demanded, it shall be filed with the clerk of the court by each party, within ten days after joinder of issue, in the court in which the proceeding is pending. As used in this part, the term "net worth" shall mean the amount by which total assets including income exceed total liabilities including fixed financial obligations. It shall include all income and assets of whatsoever kind and nature and wherever situated and shall include a list of all assets transferred in any manner during the preceding three years, or the length of the marriage, whichever is shorter; provided, however that transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth. All such sworn statements of net worth shall be accompanied by a current and representative paycheck stub and the most recently filed state and federal income tax returns including a copy of the W-2(s) wage and tax statement(s) submitted with the returns. In addition, both parties shall provide information relating to any and all group health plans available to them for the provision of care or other medical benefits by insurance or otherwise for the benefit of the child or children for whom support is sought, including all such information as may be required to be included in a qualified medical child support order as defined in section six hundred nine of the employee retirement income security act

of 1974 (29 USC 1169) including, but not limited to: (i) the name and last known mailing address of each party and of each dependent to be covered by the order; (ii) the identification and a description of each group health plan available for the benefit or coverage of the disclosing party and the child or children for whom support is sought; (iii) a detailed description of the type of coverage available from each group health plan for the potential benefit of each such dependent; (iv) the identification of the plan administrator for each such group health plan and the address of such administrator; (v) the identification numbers for each such group health plan; and (vi) such other information as may be required by the court. Noncompliance shall be punishable by any or all of the penalties prescribed in section thirty-one hundred twenty-six of the civil practice law and rules, in examination before or during trial.

b. As soon as practicable after a matrimonial action has been commenced, the court shall set the date or dates the parties shall use for the valuation of each asset. The valuation date or dates may be anytime from the date of commencement of the action to the date of trial.

5. Disposition of property in certain matrimonial actions. a. Except where the parties have provided in an agreement for the disposition of their property pursuant to subdivision three of this part, the court, in an action wherein all or part of the relief granted is divorce, or the dissolution, annulment or declaration of the nullity of a marriage, and in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine the respective rights of the parties in their separate or marital property, and shall provide for the disposition thereof in the final judgment.

b. Separate property shall remain such.

c. Marital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties.

d. In determining an equitable disposition of property under paragraph c, the court shall consider:

(1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;

(2) the duration of the marriage and the age and health of both parties;

(3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;

(4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;

(5) the loss of health insurance benefits upon dissolution of the marriage;

(6) any award of maintenance under subdivision six of this part;

(7) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party. The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse;

(8) the liquid or non-liquid character of all marital property;

(9) the probable future financial circumstances of each party;

(10) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;

(11) the tax consequences to each party;

(12) the wasteful dissipation of assets by either spouse;

(13) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(14) whether either party has committed an act or acts of domestic violence, as described in subdivision one of section four hundred fifty-nine-a of the social services law, against the other party and the

nature, extent, duration and impact of such act or acts;

(15) in awarding the possession of a companion animal, the court shall consider the best interest of such animal. "Companion animal", as used in this subparagraph, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law; and

(16) any other factor which the court shall expressly find to be just and proper.

e. In any action in which the court shall determine that an equitable distribution is appropriate but would be impractical or burdensome or where the distribution of an interest in a business, corporation or profession would be contrary to law, the court in lieu of such equitable distribution shall make a distributive award in order to achieve equity between the parties. The court in its discretion, also may make a distributive award to supplement, facilitate or effectuate a distribution of marital property.

f. In addition to the disposition of property as set forth above, the court may make such order regarding the use and occupancy of the marital home and its household effects as provided in section two hundred thirty-four of this chapter, without regard to the form of ownership of such property.

g. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

h. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph d of this subdivision.

5-a. Temporary maintenance awards. a. Except where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part, in any matrimonial action the court, upon application by a party, shall make its award for temporary maintenance pursuant to the provisions of this subdivision.

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of action.

(4) "Income" shall mean income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act.

(5) "Income cap" shall mean up to and including one hundred eighty-four thousand dollars of the payor's annual income; provided, however, beginning March first, two thousand twenty and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(6) "Guideline amount of temporary maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(7) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(8) "Agreement" shall have the same meaning as provided in subdivision three of this part.

c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

(1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of temporary maintenance shall be the amount

determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) if child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act, temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income pursuant to this subdivision and added to the payee's income pursuant to this subdivision as part of the calculation of the child support obligation.

d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of the payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph h of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. Notwithstanding the provisions of this subdivision, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no temporary maintenance is awarded.

f. The court shall determine the duration of temporary maintenance by considering the length of the marriage.

g. Temporary maintenance shall terminate no later than the issuance of the judgment of divorce or the death of either party, whichever occurs first.

h. (1) The court shall order the guideline amount of temporary maintenance up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the guideline amount of temporary maintenance is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(h) the availability and cost of medical insurance for the parties;

(i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(1) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage; and

(m) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the guideline amount of temporary maintenance is unjust or inappropriate and the court adjusts the guideline amount of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the guideline amount of temporary maintenance, the factors it considered, and the reasons that the court adjusted the guideline amount of temporary maintenance. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the court informs the unrepresented party or parties of the guideline amount of temporary maintenance.

i. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into agreements or stipulations as defined in subdivision three of this part which deviate from the presumptive award of temporary maintenance.

j. When a payor has defaulted and/or the court is otherwise presented with insufficient evidence to determine income, the court shall order the temporary maintenance award based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered evidence.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

1. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

m. In determining temporary maintenance, the court shall consider and allocate, where appropriate, the responsibilities of the respective spouses for the family's expenses during the pendency of the proceeding.

n. The temporary maintenance order shall not prejudice the rights of either party regarding a post-divorce maintenance award.

6. Post-divorce maintenance awards. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action, the court, upon application by a party, shall make its award for post-divorce maintenance pursuant to the provisions of this subdivision.

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Income" shall mean:

(a) income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act, without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act; and

(b) income from income-producing property distributed or to be

distributed pursuant to subdivision five of this part.

(4) "Income cap" shall mean up to and including one hundred eighty-four thousand dollars of the payor's annual income; provided, however, beginning March first, two thousand twenty and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(5) "Guideline amount of post-divorce maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(6) "Guideline duration of post-divorce maintenance" shall mean the durational period determined by the application of paragraph f of this subdivision.

(7) "Post-divorce maintenance guideline obligation" shall mean the guideline amount of post-divorce maintenance and the guideline duration of post-divorce maintenance.

(8) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of the action.

(9) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(10) "Agreement" shall have the same meaning as provided in subdivision three of this part.

c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.

(f) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

(g) maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or

equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.

(f) if child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act, post-divorce maintenance shall be calculated prior to child support because the amount of post-divorce maintenance shall be subtracted from the payor's income pursuant to this subdivision and added to the payee's income pursuant to this subdivision as part of the calculation of the child support obligation.

(g) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph e of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. (1) The court shall order the post-divorce maintenance guideline obligation up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the post-divorce maintenance guideline obligation

accordingly based upon such consideration:

- (a) the age and health of the parties;
 - (b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;
 - (c) the need of one party to incur education or training expenses;
 - (d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;
 - (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;
 - (f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
 - (g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
 - (h) the availability and cost of medical insurance for the parties;
 - (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;
 - (j) the tax consequences to each party;
 - (k) the standard of living of the parties established during the marriage;
 - (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;
 - (m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;
 - (n) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
 - (o) any other factor which the court shall expressly find to be just and proper.
- (2) Where the court finds that the post-divorce maintenance guideline

obligation is unjust or inappropriate and the court adjusts the post-divorce maintenance guideline obligation pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the unadjusted post-divorce maintenance guideline obligation, the factors it considered, and the reasons that the court adjusted the post-divorce maintenance obligation. Such decision shall not be waived by either party or counsel.

f. The duration of post-divorce maintenance may be determined as follows:

(1) The court may determine the duration of post-divorce maintenance in accordance with the following advisory schedule:

Length of the marriage	Percent of the length of the marriage for which maintenance will be payable
0 up to and including 15 years	15% - 30%
More than 15 up to and including 20 years	30% - 40%
More than 20 years	35% - 50%

(2) In determining the duration of post-divorce maintenance, whether or not the court utilizes the advisory schedule, it shall consider the factors listed in subparagraph one of paragraph e of this subdivision and shall set forth, in a written decision or on the record, the factors it considered. Such decision shall not be waived by either party or counsel. Nothing herein shall prevent the court from awarding non-durational maintenance in an appropriate case.

(3) Notwithstanding the provisions of subparagraph one of this paragraph, post-divorce maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this article.

(4) Notwithstanding the provisions of subparagraph one of this paragraph, when determining duration of post-divorce maintenance, the court shall take into consideration anticipated retirement assets, benefits, and retirement eligibility age of both parties if ascertainable at the time of decision. If not ascertainable at the time of decision, the actual full or partial retirement of the payor with

substantial diminution of income shall be a basis for a modification of the award.

g. Where either or both parties are unrepresented, the court shall not enter a maintenance order or judgment unless the court informs the unrepresented party or parties of the post-divorce maintenance guideline obligation.

h. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the post-divorce maintenance guideline obligation.

i. When a payor has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the post-divorce maintenance based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly discovered evidence.

j. Post-divorce maintenance may be modified pursuant to paragraph b of subdivision nine of this part.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this

subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such agreement.

m. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

n. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

o. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph e of this subdivision.

6-a. Law revision commission study. a. The legislature hereby finds and declares it to be the policy of the state that it is necessary to achieve equitable outcomes when families divorce and it is important to ensure that the economic consequences of a divorce are fairly shared by divorcing couples. Serious concerns have been raised that the implementation of New York state's maintenance laws have not resulted in equitable results. Maintenance is often not granted and where it is granted, the results are inconsistent and unpredictable. This raises serious concerns about the ability of our current maintenance laws to achieve equitable and fair outcomes.

The legislature further finds a comprehensive review of the provisions

of our state's maintenance laws should be undertaken. It has been thirty years since the legislature significantly reformed our state's divorce laws by enacting equitable distribution of marital property and introduced the concept of maintenance to replace alimony. Concerns that the implementation of our maintenance laws have not resulted in equitable results compel the need for a review of these laws.

b. The law revision commission is hereby directed to:

(1) review and assess the economic consequences of divorce on the parties;

(2) review the maintenance laws of the state, including the way in which they are administered to determine the impact of these laws on post marital economic disparities, and the effectiveness of such laws and their administration in achieving the state's policy goals and objectives of ensuring that the economic consequences of a divorce are fairly and equitably shared by the divorcing couple; and

(3) make recommendations to the legislature, including such proposed revisions of such laws as it determines necessary to achieve these goals and objectives.

c. The law revision commission shall make a preliminary report to the legislature and the governor of its findings, conclusions, and any recommendations not later than nine months from the effective date of this subdivision, and a final report of its findings, conclusions and recommendations not later than December thirty-first, two thousand eleven.

7. Child support. a. In any matrimonial action, or in an independent action for child support, the court as provided in section two hundred forty of this chapter shall order either or both parents to pay temporary child support or child support without requiring a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of either or both parents may be unavailable. Where such information is available, the court may make an order for temporary child support pursuant to section two hundred forty of this article. Such order shall, except as provided for herein, be effective as of the

date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support. The court shall not consider the misconduct of either party but shall make its award for child support pursuant to section two hundred forty of this article.

b. Notwithstanding any other provision of law, any written application or motion to the court for the establishment of a child support obligation for persons not in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative

fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought. Unless the party receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law.

c. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

d. Any child support order made by the court in any proceeding under the provisions of this section shall include, on its face, a notice printed or typewritten in a size equal to at least eight point bold type informing the parties of their right to seek a modification of the child support order upon a showing of:

(i) a substantial change in circumstances; or

(ii) that three years have passed since the order was entered, last modified or adjusted; or

(iii) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted;

however, if the parties have specifically opted out of subparagraph (ii) or (iii) of this paragraph in a validly executed agreement or stipulation, then that basis to seek modification does not apply.

8. Special relief in matrimonial actions. a. In any matrimonial action the court may order a party to purchase, maintain or assign a

policy of insurance providing benefits for health and hospital care and related services for either spouse or children of the marriage not to exceed such period of time as such party shall be obligated to provide maintenance, child support or make payments of a distributive award. The court may also order a party to purchase, maintain or assign a policy of accident insurance or insurance on the life of either spouse, and to designate in the case of life insurance, either spouse or children of the marriage, or in the case of accident insurance, the insured spouse as irrevocable beneficiaries during a period of time fixed by the court. The obligation to provide such insurance shall cease upon the termination of the spouse's duty to provide maintenance, child support or a distributive award. A copy of such order shall be served, by registered mail, on the home office of the insurer specifying the name and mailing address of the spouse or children, provided that failure to so serve the insurer shall not affect the validity of the order.

b. In any action where the court has ordered temporary maintenance, maintenance, distributive award or child support, the court may direct that a payment be made directly to the other spouse or a third person for real and personal property and services furnished to the other spouse, or for the rental or mortgage amortization or interest payments, insurances, taxes, repairs or other carrying charges on premises occupied by the other spouse, or for both payments to the other spouse and to such third persons. Such direction may be made notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by the other spouse.

c. Any order or judgment made as in this section provided may combine any amount payable to either spouse under this section with any amount payable to such spouse as child support or under section two hundred forty of this chapter.

9. Enforcement and modification of orders and judgments in matrimonial actions. a. All orders or judgments entered in matrimonial actions shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules, or in

any other manner provided by law. Orders or judgments for child support, alimony and maintenance shall also be enforceable pursuant to article fifty-two of the civil practice law and rules upon a debtor's default as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of the civil practice law and rules. The establishment of a default shall be subject to the procedures established for the determination of a mistake of fact for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of the civil practice law and rules. For the purposes of enforcement of child support orders or combined spousal and child support orders pursuant to section five thousand two hundred forty-one of the civil practice law and rules, a "default" shall be deemed to include amounts arising from retroactive support. The court may, and if a party shall fail or refuse to pay maintenance, distributive award or child support the court shall, upon notice and an opportunity to the defaulting party to be heard, require the party to furnish a surety, or the sequestering and sale of assets for the purpose of enforcing any award for maintenance, distributive award or child support and for the payment of reasonable and necessary attorney's fees and disbursements.

b. (1) Upon application by either party, the court may annul or modify any prior order or judgment made after trial as to maintenance, upon a showing of the payee's inability to be self-supporting or upon a showing of a substantial change in circumstance, including financial hardship or upon actual full or partial retirement of the payor if the retirement results in a substantial change in financial circumstances. Where, after the effective date of this part, an agreement remains in force, no modification of an order or judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to section two hundred forty-four of this article. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting

party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall not apply to a separation agreement made prior to the effective date of this part.

(2) (i) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be considered voluntary unemployment and shall not be a bar to finding a substantial change in circumstances.

(ii) In addition, unless the parties have specifically opted out of the following provisions in a validly executed agreement or stipulation entered into between the parties, the court may modify an order of child support where:

(A) three years have passed since the order was entered, last modified or adjusted; or

(B) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted. A reduction in income shall not be considered as a ground for modification unless it was involuntary and the party has made diligent attempts to secure employment commensurate with his or her education, ability, and experience.

(iii) No modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support. Such modification may increase child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of child support due shall, except as provided for in this subparagraph, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past

due support. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an immediate execution for support enforcement as provided for by this chapter, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support.

c. Notwithstanding any other provision of law, any written application or motion to the court for the modification or enforcement of a child support or combined maintenance and child support order for persons not in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date

of birth of the child or children; and the name and address of the employers and income payors of the party ordered to pay child support to the other party. Unless the party receiving child support or combined maintenance and child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law.

d. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

§ 237. Counsel fees and expenses. (a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to declare the validity or nullity of a judgment of divorce rendered against a spouse who was the defendant in any action outside the State of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, (5) to obtain maintenance or distribution of property following a foreign judgment of divorce, or (6) to enjoin the prosecution in any other jurisdiction of an action for a divorce, the court may direct either spouse or, where an action for annulment is maintained after the death of a spouse, may direct the person or persons maintaining the action, to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse to enable the other party to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation

from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. An unrepresented litigant shall not be required to file such an affidavit detailing fee arrangements when making an application for an award of counsel fees and expenses; provided he or she has submitted an affidavit that he or she is unable to afford counsel with supporting proof, including a statement of net worth, and, if available, W-2 statements and income tax returns for himself or herself. Any applications for fees and expenses may be maintained by the attorney for either spouse in his or her own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

(b) Upon any application to enforce, annul or modify an order or judgment for alimony, maintenance, distributive award, distribution of marital property or for custody, visitation, or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty of this article provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child, the court may direct a spouse or parent to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse or parent to enable the other party to carry on or defend the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of

fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement, between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Any applications for fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

(c) In any action or proceeding for failure to obey any lawful order compelling payment of support or maintenance, or distributive award the court shall, upon a finding that such failure was willful, order respondent to pay counsel fees to the attorney representing the petitioner.

(d) The term "expenses" as used in subdivisions (a) and (b) of this section shall include, but shall not be limited to, accountant fees, appraisal fees, actuarial fees, investigative fees and other fees and expenses that the court may determine to be necessary to enable a spouse to carry on or defend an action or proceeding under this section. In determining the appropriateness and necessity of fees, the court shall consider:

1. The nature of the marital property involved;
2. The difficulties involved, if any, in identifying and evaluating the marital property;
3. The services rendered and an estimate of the time involved; and
4. The applicant's financial status.

§ 238. Expenses in enforcement and modification proceedings. In any action or proceeding to enforce or modify any provision of a judgment or

order entered in an action for divorce, separation, annulment, declaration of nullity of a void marriage, declaration of validity or nullity of a judgement of divorce rendered against a spouse who was the defendant in any action outside the state of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, or an injunction restraining the prosecution in any other jurisdiction of an action for a divorce, or in any proceeding pursuant to section two hundred forty-three, two hundred forty-four, two hundred forty-five, or two hundred forty-six of this article, the court may in its discretion require either party to pay counsel fees and fees and expenses of experts directly to the attorney of the other party to enable the other party to carry on or defend the action or proceeding as, in the court's discretion, justice requires having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In any such action or proceeding, applications for fees and expenses may be maintained by the attorney for the respective parties in counsel's own name and in counsel's own behalf. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their representative attorneys, shall file an affidavit with the court detailing the financial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

§ 239. Stay in divorce or separation action on default of payment. In an action for divorce or separation the court or the judge thereof may

refuse to grant an order to stay proceedings, where the only default is the failure of a spouse to pay alimony, maintenance or counsel fees due to his or her inability to make such payments. In no event shall a spouse who has been imprisoned for contempt of court for failure to pay alimony, maintenance or counsel fees or by virtue of an order of arrest as a provisional remedy under the civil practice law and rules be stayed from proceeding with the prosecution or defense of an action where the only default is the failure of such spouse to pay alimony, maintenance or counsel fees.

§ 240. Custody and child support; orders of protection. 1. (a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of

domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court must determine custody or visitation in accordance with the terms of this section.

An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten

of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order

directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

(a-1)(1) Permanent and initial temporary orders of custody or visitation. Prior to the issuance of any permanent or initial temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph.

(2) Successive temporary orders of custody or visitation. Prior to the issuance of any successive temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph, unless such a review has been conducted within ninety days prior to the issuance of such order.

(3) Decisions and reports for review. The court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act; and

(ii) reports of the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

(4) Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, including any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

(5) Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not

possible to timely review decisions and reports on registries as required pursuant to subparagraph three of this paragraph.

(6) After issuing a temporary emergency order. After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to subparagraph three of this paragraph within twenty-four hours of the issuance of such temporary emergency order. Should such twenty-four hour period fall on a day when court is not in session, then the required reviews shall take place the next day the court is in session. Upon reviewing decisions and reports the court shall notify associated counsel, self-represented parties and attorneys for children pursuant to subparagraph four of this paragraph and may issue temporary or permanent custody or visitation orders.

(7) Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

(a-2) Military service by parent; effect on child custody orders. (1) During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, any orders issued pursuant to this section, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would materially affect or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order

existed on the date the parent was activated, deployed, or temporarily assigned to military service, shall be subject to review pursuant to subparagraph three of this paragraph. Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.

(2) During such period, the court may enter an order to modify custody if there is clear and convincing evidence that the modification is in the best interests of the child. An attorney for the child shall be appointed in all cases where a modification is sought during such military service. Such order shall be subject to review pursuant to subparagraph three of this paragraph. When entering an order pursuant to this section, the court shall consider and provide for, if feasible and if in the best interests of the child, contact between the military service member and his or her child, including, but not limited to, electronic communication by e-mail, webcam, telephone, or other available means. During the period of the parent's leave from military service, the court shall consider the best interests of the child when establishing a parenting schedule, including visiting and other contact. For such purposes, a "leave from military service" shall be a period of not more than three months.

(3) Unless the parties have otherwise stipulated or agreed, if an order is issued pursuant to this paragraph, the return of the parent from active military service, deployment or temporary assignment shall be considered a substantial change in circumstances. Upon the request of either parent, the court shall determine on the basis of the child's best interests whether the custody judgment or order previously in effect should be modified.

(4) This paragraph shall not apply to assignments to permanent duty stations or permanent changes of station.

(a-3) Court ordered forensic evaluations involving child custody and visitation. (1) The court may appoint a forensic evaluator on behalf of the court to evaluate and investigate the parties and a child or children in a proceeding involving child custody and visitation provided that the child custody forensic evaluator is a psychologist, social worker or psychiatrist who is licensed in the state of New York and has received within the last two years, a certification of completion for completing the training program pursuant to paragraph (o) of subdivision

three of section five hundred seventy-five of the executive law.

(2) Notwithstanding any provision of law to the contrary, no individual shall be appointed by a court to conduct a forensic evaluation in a proceeding involving child custody and visitation pursuant to this paragraph unless such individual has received within the last two years, a certification of completion for completing the training program pursuant to paragraph (o) of subdivision three of section five hundred seventy-five of the executive law.

(3) A psychologist, social worker or psychiatrist authorized to conduct court ordered child custody forensic evaluations pursuant to this section shall notify the court in which such individual requests to be considered for such court ordered evaluations. Any psychologist, social worker or psychiatrist who no longer meets the requirements of this section in regards to completing within the last two years the training program pursuant to paragraph (o) of subdivision three of section five hundred seventy-five of the executive law shall be obligated to inform such courts within seventy-two hours of noncompliance so as to be removed from consideration for court ordered evaluations.

(4) Upon appointment, the court shall require such child custody forensic evaluator to show proof of certification for completing within the last two years the training program pursuant to paragraph (o) of subdivision three of section five hundred seventy-five of the executive law.

(5) A court shall appoint a forensic evaluator who has completed the training program pursuant to paragraph (o) of subdivision three of section five hundred seventy-five of the executive law when the child is living out-of-state and is farther than one hundred miles from the New York state border; provided, however, that such forensic custody evaluation may be conducted remotely utilizing videoconferencing technology. The evaluator must take all steps reasonably available to protect the confidentiality of the child's disclosures for any evaluation conducted remotely utilizing videoconferencing technology, as needed.

(b) As used in this section, the following terms shall have the following meanings:

(1) "Health insurance benefits" means any medical, dental, optical and

prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans.

(2) "Available health insurance benefits" means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person, shall be considered unavailable.

(3) When the person on whose behalf the petition is brought is a child in accordance with paragraph (c) of this subdivision, health insurance benefits shall be considered "reasonable in cost" if the cost of health insurance benefits does not exceed five percent of the combined parental gross income. The cost of health insurance benefits shall refer to the cost of the premium and deductible attributable to adding the child or children to existing coverage or the difference between such costs for self-only and family coverage. Provided, however, the presumption that the health insurance benefits are reasonable in cost may be rebutted upon a finding that the cost is unjust or inappropriate which finding shall be based on the circumstances of the case, the cost and comprehensiveness of the health insurance benefits for which the child or children may otherwise be eligible, and the best interests of the child or children. In no instance shall health insurance benefits be considered "reasonable in cost" if a parent's share of the cost of extending such coverage would reduce the income of that parent below the self-support reserve. Health insurance benefits are "reasonably accessible" if the child lives within the geographic area covered by the plan or lives within thirty minutes or thirty miles of travel time from the child's residence to the services covered by the health insurance benefits or through benefits provided under a reciprocal agreement; provided, however, this presumption may be rebutted for good cause shown including, but not limited to, the special health needs of the child. The court shall set forth such finding and the reasons therefor in the order of support.

(c) When the person on whose behalf the petition is brought is a child, the court shall consider the availability of health insurance

benefits to all parties and shall take the following action to ensure that health insurance benefits are provided for the benefit of the child:

(1) Where the child is presently covered by health insurance benefits, the court shall direct in the order of support that such coverage be maintained, unless either parent requests the court to make a direction for health insurance benefits coverage pursuant to paragraph two of this subdivision.

(2) Where the child is not presently covered by health insurance benefits, the court shall make a determination as follows:

(i) If only one parent has available health insurance benefits, the court shall direct in the order of support that such parent provide health insurance benefits.

(ii) If both parents have available health insurance benefits the court shall direct in the order of support that either parent or both parents provide such health insurance. The court shall make such determination based on the circumstances of the case, including, but not limited to, the cost and comprehensiveness of the respective health insurance benefits and the best interests of the child.

(iii) If neither parent has available health insurance benefits, the court shall direct in the order of support that the custodial parent apply for the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law and the medical assistance program established pursuant to title eleven of article five of the social services law. A direction issued under this subdivision shall not limit or alter either parent's obligation to obtain health insurance benefits at such time as they become available, as required pursuant to paragraph (a) of this subdivision. Nothing in this subdivision shall alter or limit the authority of the medical assistance program to determine when it is considered cost effective to require a custodial parent to enroll a child in an available group health insurance plan pursuant to paragraphs (b) and (c) of subdivision one of section three hundred sixty-seven-a of the social services law.

(d) The cost of providing health insurance benefits or benefits under the state's child health insurance plan or the medical assistance program, pursuant to paragraph (c) of this subdivision, shall be deemed cash medical support, and the court shall determine the obligation of

either or both parents to contribute to the cost thereof pursuant to subparagraph five of paragraph (c) of subdivision one-b of this section.

(e) The court shall provide in the order of support that the legally responsible relative immediately notify the other party, or the other party and the support collection unit when the order is issued on behalf of a child in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, of any change in health insurance benefits, including any termination of benefits, change in the health insurance benefit carrier, premium, or extent and availability of existing or new benefits.

(f) Where the court determines that health insurance benefits are available, the court shall provide in the order of support that the legally responsible relative immediately enroll the eligible dependents named in the order who are otherwise eligible for such benefits without regard to any seasonal enrollment restrictions. Such order shall further direct the legally responsible relative to maintain such benefits as long as they remain available to such relative. Such order shall further direct the legally responsible relative to assign all insurance reimbursement payments for health care expenses incurred for his or her eligible dependents to the provider of such services or the party actually having incurred and satisfied such expenses, as appropriate.

(g) When the court issues an order of child support or combined child and spousal support on behalf of persons in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, such order shall further direct that the provision of health care benefits shall be immediately enforced pursuant to section fifty-two hundred forty-one of the civil practice law and rules.

(h) When the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall also issue a separate order which shall include the necessary direction to ensure the order's characterization as a qualified medical child support order as defined by section six hundred nine of the employee retirement income security act of 1974 (29 USC 1169). Such order shall: (i) clearly state that it creates or recognizes the existence of the right of the

named dependent to be enrolled and to receive benefits for which the legally responsible relative is eligible under the available group health plans, and shall clearly specify the name, social security number and mailing address of the legally responsible relative, and of each dependent to be covered by the order; (ii) provide a clear description of the type of coverage to be provided by the group health plan to each such dependent or the manner in which the type of coverage is to be determined; and (iii) specify the period of time to which the order applies. The court shall not require the group health plan to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred and ninety-six g of title forty-two of the United States code.

(i) Upon a finding that a legally responsible relative wilfully failed to obtain health insurance benefits in violation of a court order, such relative will be presumptively liable for all health care expenses incurred on behalf of such dependents from the first date such dependents were eligible to be enrolled to receive health insurance benefits after the issuance of the order of support directing the acquisition of such coverage.

(j) The order shall be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall, except as provided for herein, be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil

practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the courts shall not direct the schedule of repayment of retroactive support. Where such direction is for child support and paternity has been established by a voluntary acknowledgement of paternity as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgement has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgement with the appropriate registrar within five business days. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under section two hundred thirty-six of this article. Upon the application of either parent, or of any other person or party having the care, custody and control of such child pursuant to such judgment or order, after such notice to the other party, parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of child support due shall be support

arrears/past due support and shall be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules.

1-a. In any proceeding brought pursuant to this section to determine the custody or visitation of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is some credible evidence of the alleged abuse or maltreatment and that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of social services or his designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of social services or his designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by the commissioner or his designee, shall be admissible if it meets the other requirements of this subdivision and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

1-b. (a) The court shall make its award for child support pursuant to the provisions of this subdivision. The court may vary from the amount of the basic child support obligation determined pursuant to paragraph

(c) of this subdivision only in accordance with paragraph (f) of this subdivision.

(b) For purposes of this subdivision, the following definitions shall be used:

(1) "Basic child support obligation" shall mean the sum derived by adding the amounts determined by the application of subparagraphs two and three of paragraph (c) of this subdivision except as increased pursuant to subparagraphs four, five, six and seven of such paragraph.

(2) "Child support" shall mean a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

(3) "Child support percentage" shall mean:

(i) seventeen percent of the combined parental income for one child;

(ii) twenty-five percent of the combined parental income for two children;

(iii) twenty-nine percent of the combined parental income for three children;

(iv) thirty-one percent of the combined parental income for four children; and

(v) no less than thirty-five percent of the combined parental income for five or more children.

(4) "Combined parental income" shall mean the sum of the income of both parents.

(5) "Income" shall mean, but shall not be limited to, the sum of the amounts determined by the application of clauses (i), (ii), (iii), (iv), (v) and (vi) of this subparagraph reduced by the amount determined by the application of clause (vii) of this subparagraph:

(i) gross (total) income as should have been or should be reported in the most recent federal income tax return. If an individual files his/her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his/her gross income individually;

(ii) to the extent not already included in gross income in clause (i) of this subparagraph, investment income reduced by sums expended in connection with such investment;

(iii) to the extent not already included in gross income in clauses

(i) and (ii) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

- (A) workers' compensation,
- (B) disability benefits,
- (C) unemployment insurance benefits,
- (D) social security benefits,
- (E) veterans benefits,
- (F) pensions and retirement benefits,
- (G) fellowships and stipends,
- (H) annuity payments, and

(I) alimony or maintenance actually paid or to be paid to a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article.

(iv) at the discretion of the court, the court may attribute or impute income from such other resources as may be available to the parent, including, but not limited to:

- (A) non-income producing assets,
- (B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or indirectly confer personal economic benefits,
- (C) fringe benefits provided as part of compensation for employment,

and

(D) money, goods, or services provided by relatives and friends;

In determining the amount of income that may be attributed or imputed, the court shall consider the specific circumstances of the parent, to the extent known, including such factors as the parent's assets, residence, employment and earning history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors such as the age, number, needs, and care of the children covered by the child support order. Attribution or imputation of income shall be accompanied by specific written findings identifying the basis or bases for such determination utilizing factors required or permitted to be considered pursuant to this clause;

(v) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support; provided that incarceration shall not be considered voluntary unemployment;

(vi) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the following self-employment deductions attributable to self-employment carried on by the taxpayer:

(A) any depreciation deduction greater than depreciation calculated on a straight-line basis for the purpose of determining business income or investment credits, and

(B) entertainment and travel allowances deducted from business income to the extent said allowances reduce personal expenditures;

(vii) the following shall be deducted from income prior to applying the provisions of paragraph (c) of this subdivision:

(A) unreimbursed employee business expenses except to the extent said expenses reduce personal expenditures,

(B) alimony or maintenance actually paid to a spouse not a party to the instant action pursuant to court order or validly executed written agreement,

(C) alimony or maintenance actually paid or to be paid to a spouse who

is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article.

(D) child support actually paid pursuant to court order or written agreement on behalf of any child for whom the parent has a legal duty of support and who is not subject to the instant action,

(E) public assistance,

(F) supplemental security income,

(G) New York city or Yonkers income or earnings taxes actually paid, and

(H) federal insurance contributions act (FICA) taxes actually paid.

(6) "Self-support reserve" shall mean one hundred thirty-five percent of the poverty income guidelines amount for a single person as reported by the federal department of health and human services. For the calendar year nineteen hundred eighty-nine, the self-support reserve shall be eight thousand sixty-five dollars. On March first of each year, the self-support reserve shall be revised to reflect the annual updating of the poverty income guidelines as reported by the federal department of health and human services for a single person household.

(c) The amount of the basic child support obligation shall be determined in accordance with the provision of this paragraph:

(1) The court shall determine the combined parental income.

(2) The court shall multiply the combined parental income up to the amount set forth in paragraph (b) of subdivision two of section one

hundred eleven-i of the social services law by the appropriate child support percentage and such amount shall be prorated in the same proportion as each parent's income is to the combined parental income.

(3) Where the combined parental income exceeds the dollar amount set forth in subparagraph two of this paragraph, the court shall determine the amount of child support for the amount of the combined parental income in excess of such dollar amount through consideration of the factors set forth in paragraph (f) of this subdivision and/or the child support percentage.

(4) Where the custodial parent is working, or receiving elementary or secondary education, or higher education or vocational training which the court determines will lead to employment, and incurs child care expenses as a result thereof, the court shall determine reasonable child care expenses and such child care expenses, where incurred, shall be prorated in the same proportion as each parent's income is to the combined parental income. Each parent's pro rata share of the child care expenses shall be separately stated and added to the sum of subparagraphs two and three of this paragraph.

(5) The court shall determine the parties' obligation to provide health insurance benefits pursuant to this section and to pay cash medical support as provided under this subparagraph.

(i) "Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by a parent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans, and/or for other health care expenses not covered by insurance.

(ii) Where health insurance benefits pursuant to subparagraph one and clauses (i) and (ii) of subparagraph two of paragraph (c) of subdivision one of this section are determined by the court to be available, the cost of providing health insurance benefits shall be prorated between the parties in the same proportion as each parent's income is to the combined parental income. If the custodial parent is ordered to provide such benefits, the non-custodial parent's pro rata share of such costs shall be added to the basic support obligation. If the non-custodial parent is ordered to provide such benefits, the custodial parent's pro rata share of such costs shall be deducted from the basic support

obligation.

(iii) Where health insurance benefits pursuant to subparagraph one and clauses (i) and (ii) of subparagraph two of paragraph (c) of subdivision one of this section are determined by the court to be unavailable, if the child or children are determined eligible for coverage under the medical assistance program established pursuant to title eleven of article five of the social services law, the court shall order the non-custodial parent to pay cash medical support as follows:

(A) In the case of a child or children authorized for managed care coverage under the medical assistance program, the lesser of the amount that would be required as a family contribution under the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law for the child or children if they were in a two-parent household with income equal to the combined income of the non-custodial and custodial parents or the premium paid by the medical assistance program on behalf of the child or children to the managed care plan. The court shall separately state the non-custodial parent's monthly obligation. The non-custodial parent's cash medical support obligation under this clause shall not exceed five percent of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.

(B) In the case of a child or children authorized for fee-for-service coverage under the medical assistance program other than a child or children described in item (A) of this clause, the court shall determine the non-custodial parent's maximum annual cash medical support obligation, which shall be equal to the lesser of the monthly amount that would be required as a family contribution under the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law for the child or children if they were in a two-parent household with income equal to the combined income of the non-custodial and custodial parents times twelve months or the number of months that the child or children are authorized for fee-for-service coverage during any year. The court shall separately state in the order the non-custodial parent's maximum annual cash medical support obligation and, upon proof to the court that the non-custodial parent, after notice of the amount due, has failed to pay the public entity for incurred health care expenses, the court shall order the non-custodial

parent to pay such incurred health care expenses up to the maximum annual cash medical support obligation. Such amounts shall be support arrears/past due support and shall be subject to any remedies as provided by law for the enforcement of support arrears/past due support. The total annual amount that the non-custodial parent is ordered to pay under this clause shall not exceed five percent of his or her gross income or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.

(C) The court shall order cash medical support to be paid by the non-custodial parent for health care expenses of the child or children paid by the medical assistance program prior to the issuance of the court's order. The amount of such support shall be calculated as provided under item (A) or (B) of this clause, provided that the amount that the non-custodial parent is ordered to pay under this item shall not exceed five percent of his or her gross income or the difference between the non-custodial parent's income and the self-support reserve, whichever is less, for the year when the expense was incurred. Such amounts shall be support arrears/past due support and shall be subject to any remedies as provided by law for the enforcement of support arrears/past due support.

(iv) Where health insurance benefits pursuant to subparagraph one and clauses (i) and (ii) of subparagraph two of paragraph (c) of subdivision one of this section are determined by the court to be unavailable, and the child or children are determined eligible for coverage under the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law, the court shall prorate each parent's share of the cost of the family contribution required under such child health insurance plan in the same proportion as each parent's income is to the combined parental income, and state the amount of the non-custodial parent's share in the order. The total amount of cash medical support that the non-custodial parent is ordered to pay under this clause shall not exceed five percent of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.

(v) In addition to the amounts ordered under clause (ii), (iii), or (iv), the court shall pro rate each parent's share of reasonable health care expenses not reimbursed or paid by insurance, the medical

assistance program established pursuant to title eleven of article five of the social services law, or the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law, in the same proportion as each parent's income is to the combined parental income, and state the non-custodial parent's share as a percentage in the order. The non-custodial parent's pro rata share of such health care expenses determined by the court to be due and owing shall be support arrears/past due support and shall be subject to any remedies provided by law for the enforcement of support arrears/past due support. In addition, the court may direct that the non-custodial parent's pro rata share of such health care expenses be paid in one sum or in periodic sums, including direct payment to the health care provider.

(vi) Upon proof by either party that cash medical support pursuant to clause (ii), (iii), (iv), or (v) of this subparagraph would be unjust or inappropriate pursuant to paragraph (f) of this subdivision, the court shall:

(A) order the parties to pay cash medical support as the court finds just and appropriate, considering the best interests of the child; and

(B) set forth in the order the factors it considered, the amount calculated under this subparagraph, the reason or reasons the court did not order such amount, and the basis for the amount awarded.

(6) Where the court determines that the custodial parent is seeking work and incurs child care expenses as a result thereof, the court may determine reasonable child care expenses and may apportion the same between the custodial and non-custodial parent. The non-custodial parent's share of such expenses shall be separately stated and paid in a manner determined by the court.

(7) Where the court determines, having regard for the circumstances of the case and of the respective parties and in the best interests of the child, and as justice requires, that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate, the court may award educational expenses. The non-custodial parent shall pay educational expenses, as awarded, in a manner determined by the court, including direct payment to the educational provider.

(d) Notwithstanding the provisions of paragraph (c) of this

subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month, provided, however, that if the court finds that such basic child support obligation is unjust or inappropriate, which finding shall be based upon considerations of the factors set forth in paragraph (f) of this subdivision, the court shall order the non-custodial parent to pay such amount of the child support as the court finds just and appropriate. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, in addition to any amounts that the court may, in its discretion, order in accordance with subparagraphs four, five, six and/or seven of paragraph (c) of this subdivision.

(e) Where a parent is or may be entitled to receive non-recurring payments from extraordinary sources not otherwise considered as income pursuant to this section, including but not limited to:

- (1) Life insurance policies;
- (2) Discharges of indebtedness;
- (3) Recovery of bad debts and delinquency amounts;
- (4) Gifts and inheritances; and
- (5) Lottery winnings,

the court, in accordance with paragraphs (c), (d) and (f) of this subdivision may allocate a proportion of the same to child support, and such amount shall be paid in a manner determined by the court.

(f) The court shall calculate the basic child support obligation, and the non-custodial parent's pro rata share of the basic child support obligation. Unless the court finds that the non-custodial parents's pro-rata share of the basic child support obligation is unjust or inappropriate, which finding shall be based upon consideration of the

following factors:

(1) The financial resources of the custodial and non-custodial parent, and those of the child;

(2) The physical and emotional health of the child and his/her special needs and aptitudes;

(3) The standard of living the child would have enjoyed had the marriage or household not been dissolved;

(4) The tax consequences to the parties;

(5) The non-monetary contributions that the parents will make toward the care and well-being of the child;

(6) The educational needs of either parent;

(7) A determination that the gross income of one parent is substantially less than the other parent's gross income;

(8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclause (D) of clause (vii) of subparagraph five of paragraph (b) of this subdivision, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action;

(9) Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and

(10) Any other factors the court determines are relevant in each case, the court shall order the non-custodial parent to pay his or her pro rata share of the basic child support obligation, and may order the non-custodial parent to pay an amount pursuant to paragraph (e) of this subdivision.

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the

amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

(h) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this subdivision, and that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded. In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the basic child support obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section. Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of this article, that includes a provision for child support unless the unrepresented party or parties

have received a copy of the child support standards chart promulgated by the commissioner of the office of temporary and disability assistance pursuant to subdivision two of section one hundred eleven-i of the social services law. Where either party is in receipt of child support enforcement services through the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart.

(j) In addition to financial disclosure required in section two hundred thirty-six of this article, the court may require that the income and/or expenses of either party be verified with documentation including, but not limited to, past and present income tax returns, employer statements, pay stubs, corporate, business, or partnership books and records, corporate and business tax returns, and receipts for expenses or such other means of verification as the court determines appropriate. Nothing herein shall affect any party's right to pursue discovery pursuant to this chapter, the civil practice law and rules, or the family court act.

(k) When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the support obligation shall be based on available information about the specific circumstances of the parent, in accordance with clause (iv) of subparagraph five of paragraph (b) of this subdivision. Such order may be retroactively modified upward, without a showing of change in circumstances.

(l) In any action or proceeding for modification of an order of child support existing prior to the effective date of this paragraph, brought pursuant to this article, the child support standards set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order; provided, however, that (1) where the circumstances warrant modification of such order, or (2) where any party objects to an adjusted child support order made or proposed at the direction of the support collection unit pursuant to section one hundred eleven-h or one hundred eleven-n of the social services law, and the court is reviewing the current order of child support, such standards

shall be applied by the court in its determination with regard to the request for modification, or disposition of an objection to an adjusted child support order made or proposed by a support collection unit. In applying such standards, when the order to be modified incorporates by reference or merges with a validly executed separation agreement or stipulation of settlement, the court may consider, in addition to the factors set forth in paragraph (f) of this subdivision, the provisions of such agreement or stipulation concerning property distribution, distributive award and/or maintenance in determining whether the amount calculated by using the standards would be unjust or inappropriate.

1-c. (a) Notwithstanding any other provision of this chapter to the contrary, no court shall make an order providing for visitation or custody to a person who has been convicted of murder in the first or second degree in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of any child who is the subject of the proceeding. Pending determination of a petition for visitation or custody, such child shall not visit and no person shall visit with such child present, such person who has been convicted of murder in the first or second degree in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding without the consent of such child's custodian or legal guardian.

(b) Notwithstanding any other provision of this chapter to the contrary, there shall be a rebuttable presumption that it is not in the best interests of the child to:

(A) be placed in the custody of or to visit with a person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when a child who is the subject of the proceeding was conceived as a result:

(1) rape in the first or second degree;

- (2) course of sexual conduct against a child in the first degree;
- (3) predatory sexual assault; or
- (4) predatory sexual assault against a child; or

(B) be placed in the custody of or have unsupervised visits with a person who has been convicted of a felony sex offense, as defined in section 70.80 of the penal law, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute such a felony sex offense, where the victim of such offense was the child who is the subject of the proceeding.

(c) Notwithstanding paragraph (a) or (b) of this subdivision a court may order visitation or custody where:

(i) (A) such child is of suitable age to signify assent and such child assents to such visitation or custody; or

(B) if such child is not of suitable age to signify assent, the child's custodian or legal guardian assents to such order; or

(C) the person who has been convicted of murder in the first or second degree, or an offense in another jurisdiction which if committed in this state, would constitute either murder in the first or second degree, can prove by a preponderance of the evidence that:

(1) he or she, or a family or household member of either party, was a victim of domestic violence by the victim of such murder; and

(2) the domestic violence was causally related to the commission of such murder;

(ii) and the court finds that such visitation or custody is in the best interests of the child.

(d) For the purpose of making a determination pursuant to clause (C) of subparagraph (i) of paragraph (c) of this subdivision, the court shall not be bound by the findings of fact, conclusions of law or ultimate conclusion as determined by the proceedings leading to the conviction of murder in the first or second degree in this state or of an offense in another jurisdiction which, if committed in this state, would constitute murder in either the first or second degree, of a parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding. In all proceedings under this section, an attorney shall be appointed for the child.

2. (a) An order directing payment of money for child support shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules or in any other manner provided by law. Such orders or judgments for child support and maintenance shall also be enforceable pursuant to article fifty-two of the civil practice law and rules upon a debtor's default as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of the civil practice law and rules. The establishment of a default shall be subject to the procedures established for the determination of a mistake of fact for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of the civil practice law and rules. For the purposes of enforcement of child support orders or combined spousal and child support orders pursuant to section five thousand two hundred forty-one of the civil practice law and rules, a "default" shall be deemed to include amounts arising from retroactive support.

b. (1) When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall direct that the child support payments be made to the support collection unit. Unless (i) the court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding; or (ii) when the child is not in receipt of public assistance, a written agreement providing for an alternative arrangement has been reached between the parties, the support collection unit shall issue an income execution immediately for child support or combined maintenance and child support, and may issue an execution for medical support enforcement in accordance with the provisions of the order of support. Such written agreement may include an oral stipulation made on the record resulting in a written order. For purposes of this paragraph, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income execution shall not constitute good cause. When an immediate income execution or an execution for medical support enforcement is issued by the support collection unit, such income execution shall be issued pursuant to section five thousand two hundred forty-one of the civil practice law

and rules, except that the provisions thereof relating to mistake of fact, default and any other provisions which are not relevant to the issuance of an income execution pursuant to this paragraph shall not apply; provided, however, that if the support collection unit makes an error in the issuance of an income execution pursuant to this paragraph, and such error is to the detriment of the debtor, the support collection unit shall have thirty days after notification by the debtor to correct the error. Where permitted under federal law and where the record of the proceedings contains such information, such order shall include on its face the social security number and the name and address of the employer, if any, of the person chargeable with support; provided, however, that failure to comply with this requirement shall not invalidate such order. When the court determines that there is good cause not to immediately issue an income execution or when the parties agree to an alternative arrangement as provided in this paragraph, the court shall provide expressly in the order of support that the support collection unit shall not issue an immediate income execution. Notwithstanding any such order, the support collection unit shall issue an income execution for support enforcement when the debtor defaults on the support obligation, as defined in section five thousand two hundred forty-one of the civil practice law and rules.

(2) When the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall issue an income deduction order pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules at the same time it issues the order of support. The court shall enter the income deduction order unless the court finds and sets forth in writing (i) the reasons that there is good cause not to require immediate income withholding; or (ii) that an agreement providing for an alternative arrangement has been reached between the parties. Such agreement may include a written agreement or an oral stipulation, made on the record, that results in a written order. For purposes of this paragraph, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income deduction order shall not constitute good cause. Where permitted under federal law and where the

record of the proceedings contains such information, such order shall include on its face the social security number and the name and address of the employer, if any, of the person chargeable with support; provided, however, that failure to comply with this requirement shall not invalidate the order. When the court determines that there is good cause not to issue an income deduction order immediately or when the parties agree to an alternative arrangement as provided in this paragraph, the court shall provide expressly in the order of support the basis for its decision and shall not issue an income deduction order.

c. Any order of support issued on behalf of a child in receipt of family assistance or child support enforcement services pursuant to section one hundred eleven-g of the social services law shall be subject to review and adjustment by the support collection unit pursuant to section one hundred eleven-n of the social services law. Such review and adjustment shall be in addition to any other activities undertaken by the support collection unit relating to the establishment, modification, and enforcement of support orders payable to such unit.

3. Order of protection. a. The court may make an order of protection in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by any party. Such an order may require any party:

(1) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court;

(2) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(3) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons;

(4) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court

act;

(5) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(6) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(7) to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the person protected by the order or a minor child residing in such person's household. "Companion animal," as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law;

(8) (i) to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may: (A) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (B) specify the manner in which such return shall be accomplished.

(ii) For purposes of this subparagraph, "identification document" shall mean any of the following: (A) exclusively in the name of the protected party: birth certificate, passport, social security card, health insurance or other benefits card, a card or document used to access bank, credit or other financial accounts or records, tax returns, any driver's license, and immigration documents including but not limited to a United States permanent resident card and employment authorization document; and (B) upon motion and after notice and an opportunity to be heard, any of the following, including those that may reflect joint use or ownership, that the court determines are necessary and are appropriately transferred to the protected party: any card or document used to access bank, credit or other financial accounts or records, tax returns, and any other identifying cards and documents;

(9) (i) to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

(ii) For purposes of this subparagraph, "connected device" shall mean

any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address; and

(10) to observe such other conditions as are necessary to further the purposes of protection.

a-1. Translation and interpretation of orders of protection. The office of court administration shall, in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law, ensure that a court order of protection and temporary order of protection is translated in writing into the appropriate language for a party to a proceeding where the court has appointed an interpreter. The office of court administration shall ensure that the standard language of the office of court administration order of protection and temporary order of protection forms shall be translated in writing in the languages most frequently used in the courts of each judicial department in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law. A copy of the written translation shall be given to each party in the proceeding, along with the original order or temporary order of protection issued in English. A copy of this written translation shall also be included as part of the record of the proceeding. The court shall read the essential terms and conditions of the order aloud on the record and direct the court appointed interpreter to interpret the same terms and conditions. Such written translation or interpretation shall not affect the validity or enforceability of the order. In every case a party to a proceeding shall be provided with an English copy of any court order of protection or temporary order of protection issued. The authority provided herein shall be in addition to and shall not be deemed to diminish or reduce any rights of the parties under existing law.

b. An order of protection entered pursuant to this subdivision shall bear in a conspicuous manner, on the front page of said order, the language "Order of protection issued pursuant to section two hundred forty of the domestic relations law". The order of protection shall also contain the following notice: "This order of protection will remain in effect even if the protected party has, or consents to have, contact or

communication with the party against whom the order is issued. This order of protection can only be modified or terminated by the court. The protected party cannot be held to violate this order nor be arrested for violating this order.". The absence of such language shall not affect the validity of such order. The presentation of a copy of such an order to any peace officer acting pursuant to his or her special duties, or police officer, shall constitute authority, for that officer to arrest a person when that person has violated the terms of such an order, and bring such person before the court and, otherwise, so far as lies within the officer's power, to aid in securing the protection such order was intended to afford.

c. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action or in a proceeding to obtain custody of or visitation with any child under this section, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

d. The chief administrator of the courts shall promulgate appropriate uniform temporary orders of protection and orders of protection forms, applicable to proceedings under this article, to be used throughout the state. Such forms shall be promulgated and developed in a manner to ensure the compatibility of such forms with the statewide computerized registry established pursuant to section two hundred twenty-one-a of the executive law.

e. No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counter-claim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a

judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss an application for such an order, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the application or the conclusion of the action. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order.

f. In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

g. Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

h. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with sections eight hundred forty-two-a and eight hundred forty-six-a of the family court act, as applicable. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in

an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action.

i. The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate such an order nor may such protected party be arrested for violating such order.

* 3-a. Service of order of protection. a. If a temporary order of protection has been issued or an order of protection has been issued upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided hereunder shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition or complaint if not previously served. Service of such temporary order of protection or order of protection and associated papers shall, insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this subdivision, and his or her employer, shall not be liable for damages resulting from failure to achieve service where, having made a reasonable effort, such officer or designated person is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order. A statement subscribed by the officer or designated person, and affirmed

by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of service of the summons, petition and temporary order of protection or order of protection. When the temporary order of protection or order of protection and other papers, if any, have been served, such officer or designated person shall provide the court with an affirmation, certificate or affidavit of service and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law.

b. Notwithstanding any other provision of law, all orders of protection and temporary orders of protection filed and entered along with any associated papers that may be served simultaneously may be transmitted by facsimile transmission or electronic means for expedited service in accordance with the provisions of this subdivision. For purposes of this subdivision, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

* NB Separately amended cannot be put together

* 3-a. Service of order of protection. (a) If a temporary order of protection has been issued or an order of protection has been issued upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection together with any associated papers that may be served simultaneously including the summons and petition, to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided in this section

shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition or complaint if not previously served. Service of such temporary order of protection or order of protection and associated papers shall, insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this subdivision, and his or her employer, shall not be liable for damages resulting from failure to achieve service where, having made a reasonable effort, such officer or designated person is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order.

(b) When the temporary order of protection or order of protection and associated papers, if any, have been served, such officer or designated person shall provide the court with an affirmation, certificate or affidavit of service when the temporary order of protection or order of protection has been served, and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law. A statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of service of the summons, petition and temporary order of protection or order of protection.

(c) Where an officer or designated person obliged to perform service pursuant to this section is unable to complete service of the temporary order of protection or order of protection, such officer or designated person shall provide the court with proof of attempted service of the temporary order of protection or order of protection with information regarding the dates, times, locations and manner of attempted service. An affirmation, certificate or affidavit of service with a statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the name of the party and the papers attempted to be served on said person, and for each attempted service, the date, time, address or in the event there is no address, place, and manner of attempted service, shall be proof of

attempted service.

(d) Any peace or police officer or designated person performing service under this subdivision shall not charge a fee for such service, including, but not limited to, fees as provided under section eight thousand eleven of the civil practice law and rules.

* NB Separately amended cannot be put together

3-b. Emergency powers; local criminal court. If the court that issued an order of protection or temporary order of protection under this section or warrant in connection thereto is not in session when an arrest is made for an alleged violation of the order or upon a warrant issued in connection with such violation, the arrested person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of the criminal procedure law and arraigned by such court. Such local criminal court shall order the commitment of the arrested person to the custody of the sheriff, admit to, fix or accept bail, or release the arrested person on his or her recognizance pending appearance in the court that issued the order of protection, temporary order of protection or warrant. In making such order, such local criminal court shall consider the bail recommendation, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

3-c. Orders of protection; filing and enforcement of out-of-state orders. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

a. An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if:

(1) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

(2) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

(3) in the case of orders of protection or temporary orders of protection issued against both a petitioner and respondent, the order or portion thereof sought to be enforced was supported by: (i) a pleading requesting such order, including, but not limited to, a petition, cross-petition or counterclaim; and (ii) a judicial finding that the requesting party is entitled to the issuance of the order, which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order was issued had give knowing, intelligent and voluntary consent to its issuance.

b. Notwithstanding the provisions of article fifty-four of the civil practice law and rules, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law; provided, however, that such filing and registry entry shall not be required for enforcement of the order.

4. One-time adjustment of child support orders issued prior to September fifteenth, nineteen hundred eighty-nine. Any party to a child support order issued prior to September fifteenth, nineteen hundred

eighty-nine on the behalf of a child in receipt of public assistance or child support services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit undertake one review of the order for adjustment purposes pursuant to section one hundred eleven-h of the social services law. A hearing on the adjustment of such order shall be granted upon the objection of either party pursuant to the provisions of this section. An order shall be adjusted if as of the date of the support collection unit's review of the correct amount of child support as calculated pursuant to the provisions of this section would deviate by at least ten percent from the child support ordered in the current order of support. Additionally, a new order shall be issued upon a showing that the current order of support does not provide for the health care needs of the child through insurance or otherwise. Eligibility of the child for medical assistance shall not relieve any obligation the parties otherwise have to provide for the health care needs of the child. The support collection unit's review of a child support order shall be made on notice to all parties to the current support order. Nothing herein shall be deemed in any way to limit, restrict, expand or impair the rights of any party to file for a modification of a child support order as is otherwise provided by law.

(1) Upon mailing of an adjustment finding and where appropriate a proposed order in conformity with such finding filed by either party or by the support collection unit, a party shall have thirty-five days from the date of mailing to submit to the court identified thereon specific written objections to such finding and proposed order.

(a) If specific written objections are submitted by either party or by the support collection unit, a hearing shall be scheduled by the court on notice to the parties and the support collection unit, who then shall have the right to be heard by the court and to offer evidence in support of or in opposition to adjustment of the support order.

(b) The party filing the specific written objections shall bear the burden of going forward and the burden of proof; provided, however, that if the support collection unit has failed to provide the documentation and information required by subdivision fourteen of section one hundred eleven-h of the social services law, the court shall first require the support collection unit to furnish such documents and information to the parties and the court.

(c) If the court finds by a preponderance of the evidence that the specific written objections have been proven, the court shall recalculate or readjust the proposed adjusted order accordingly or, for good cause, shall remand the order to the support collection unit for submission of a new proposed adjusted order. Any readjusted order so issued by the court or resubmitted by the support collection unit after a remand by the court shall be effective as of the date the proposed adjusted order would have been effective had no specific written objections been filed.

(d) If the court finds that the specific written objections have not been proven by a preponderance of the evidence, the court shall immediately issue the adjusted order as submitted by the support collection unit, which shall be effective as of the date the order would have been effective had no specific written exceptions been filed.

(e) If the court receives no specific written objections to the support order within thirty-five days of the mailing of the proposed order the clerk of the court shall immediately enter the order without further review, modification, or other prior action by the court or any judge or support magistrate thereof, and the clerk shall immediately transmit copies of the order of support to the parties and to the support collection unit.

(2) A motion to vacate an order of support adjusted pursuant to this section may be made no later than forty-five days after an adjusted support order is executed by the court where no specific written objections to the proposed order have been timely received by the court. Such motion shall be granted only upon a determination by the court issuing such order that personal jurisdiction was not timely obtained over the moving party.

* 5. Provision of child support orders to the state case registry. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

* NB There are 2 subdivision 5's

* 5. On-going cost of living adjustment of child support orders issued

prior to September fifteenth, nineteen hundred eighty-nine. Any party to a child support order issued prior to September fifteenth, nineteen hundred eighty-nine on the behalf of a child in receipt of public assistance or child support services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit review the order for a cost of living adjustment in accordance with the provisions of section two hundred forty-c of this article.

* NB There are 2 subdivision 5's

§ 240-a. Judgment or decree; additional provision. In any action or proceeding brought under the provisions of this chapter wherein all or part of the relief granted is divorce or annulment of a marriage any interlocutory or final judgment or decree shall contain, as a part thereof, the social security numbers of the named parties in the action or proceeding, as well as a provision that each party may resume the use of his or her premarriage surname or any other former surname.

§ 240-b. Order of support by parent. When the court makes an order of support pursuant to section two hundred forty of this article, and where permitted under federal law and where the record of the proceedings contains such information, the court shall require the social security number of such parent to be affixed to such order; provided, however, that no such order shall be invalid because of the omission of such number. Where the record of the proceedings contains such information, such order shall also include on its face the name and address of the employer, if any, of the person chargeable with support provided, however, that failure to comply with this requirement shall not invalidate such order. Where the order of child support or combined child and spouse support is made on behalf of persons in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall require each party to provide, and update upon any change, the following information to the court by reporting such change to the support collection unit designated by the appropriate social services district:

social security number, residential and mailing addresses, telephone number, driver's license number; and name, address and telephone number of the parties' employers. Due process requirements for notice and service of process for subsequent hearings are met, with respect to such party, upon sending written notice by first class mail to the most recent residential address on record with the support collection unit; or by sending by first class mail written notice to the most recent employer address on record with the support collection unit, if a true copy thereof also is sent by first class mail to the most recent residential address on record with the support collection unit. Any such order issued on or after the first day of October, nineteen hundred ninety-nine shall also include, where available, the social security number of each child on whose behalf support has been ordered.

§ 240-c. Review and cost of living adjustment of child support orders.

1. Request. Any party to a child support order issued on behalf of a child in receipt of public assistance, or child support enforcement services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit review the order for cost of living adjustment purposes pursuant to section one hundred eleven-n of the social services law.

2. Adjustment process. (a) A cost of living adjustment shall be made by the support collection unit with respect to an order of support under review if the sum of the annual average changes of the consumer price index for all urban consumers (CPI-U), as published annually by the United States department of labor bureau of labor statistics, is ten percent or greater.

(b) The cost of living adjustment and adjusted child support obligation amount as calculated by the review shall be reflected on the adjusted order issued by the support collection unit and mailed to the parties by first class mail. The child support obligation amount contained in the adjusted order shall be due and owing on the date the first payment is due under the terms of the order of support which was reviewed and adjusted occurring on or after the effective date of the adjusted order.

(c) The support collection unit shall provide a copy of the adjusted order to the court which issued the most recent order of support, which shall append it to the order.

3. Objection process. (a) An objection to a cost of living adjustment, as reflected in an adjusted order issued by a support collection unit, may be made to the court by either party to the order, or by the support collection unit, and shall be submitted to the court in writing within thirty-five days from the date of mailing of the adjusted order. A copy of the written objection shall be provided by the objecting party to the other party and to the support collection unit.

(b) Where such objections are timely filed, the cost of living adjustment shall not take effect, and a hearing on the adjustment of such order shall be granted pursuant to the provisions of this section, which shall result in either:

(1) the issuance by the court of a new order of support in accordance with the child support standards as set forth in section two hundred forty of this article; or

(2) where application of the child support standards as set forth in section two hundred forty of this article results in a determination that no adjustment is appropriate, an order of no adjustment.

(c) Any order of support made by the court under this section shall occur without the requirement for proof or showing of a change in circumstances.

(d) The court shall conduct the hearing and make its determination no later than forty-five days from the date it receives an objection. If the order under review does not provide for health insurance benefits for the child, the court shall make a determination regarding such benefits pursuant to section two hundred forty of this article. The clerk of the court shall immediately transmit copies of the order of support or order of no adjustment issued by the court pursuant to this subdivision to the parties and the support collection unit. Where a hearing results in the issuance of a new order of support, the effective date of the court order shall be the earlier of the date of the court determination or the date the cost of living adjustment would have been effective had it not been challenged.

(e) Where no objection has been timely raised to a cost of living

adjustment as reflected in an adjusted order, such adjustment shall become final without further review by the court or any judge or support magistrate thereof.

4. Modification of orders. Nothing herein shall be deemed in any way to limit, restrict, expand or impair the rights of any party to file for a modification of a child support order as is otherwise provided by law.

5. Notice. Parties eligible for adjustment of child support orders shall receive notice of the right to review such orders as follows:

(a) All applications or motions by the support collection unit or by persons seeking support enforcement services through the support collection unit for the establishment, modification, enforcement, violation or adjustment of child support orders shall on their face in conspicuous type state:

NOTE: (1) A COURT ORDER OF SUPPORT RESULTING FROM A PROCEEDING COMMENCED BY THIS APPLICATION (MOTION) SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. SUCH COST OF LIVING ADJUSTMENT SHALL BE ON NOTICE TO BOTH PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THE RIGHT TO BE HEARD BY THE COURT AND TO PRESENT EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH SUBDIVISION 1-B OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW, KNOWN AS THE CHILD SUPPORT STANDARDS ACT.

(2) A PARTY SEEKING SUPPORT FOR ANY CHILD(REN) RECEIVING FAMILY ASSISTANCE SHALL HAVE A CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED BY THE SUPPORT COLLECTION UNIT, WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION TWO HUNDRED FORTY-B OF THE DOMESTIC RELATIONS LAW, TO WHICH AN ADJUSTED

ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

(b) All court orders of support payable through a support collection unit shall on their face in conspicuous type state:

NOTE: (1) THIS ORDER OF CHILD SUPPORT SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER THIS ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. UPON APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT, AN ADJUSTED ORDER SHALL BE SENT TO THE PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING TO SUBMIT A WRITTEN OBJECTION TO THE COURT INDICATED ON SUCH ADJUSTED ORDER. UPON RECEIPT OF SUCH WRITTEN OBJECTION, THE COURT SHALL SCHEDULE A HEARING AT WHICH THE PARTIES MAY BE PRESENT TO OFFER EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH THE CHILD SUPPORT STANDARDS ACT.

(2) A RECIPIENT OF FAMILY ASSISTANCE SHALL HAVE THE CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION TWO HUNDRED FORTY-B OF THE DOMESTIC RELATIONS LAW, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

§ 240-d. Support orders for certain adult dependents. 1.

Notwithstanding any other law, a person who would otherwise be chargeable under law with support of a minor child is also chargeable with the support of any such individual until such individual reaches the age of twenty-six, when it shall appear to the satisfaction of the court that the person is developmentally disabled as defined in subdivision twenty-two of section 1.03 of the mental hygiene law, resides with the person seeking such support, and is principally dependent on such person for maintenance. A finding of a developmental disability shall be supported by a diagnosis and accompanying report of a physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker authorized to practice under title eight of the education law, and acting within their lawful scope of practice.

2. Upon petition brought by such person, the court shall make its award for support for such individual with a developmental disability in accordance with the provisions of subdivision one-b of section two hundred forty of this article. In addition to the provisions of subdivision one-b of section two hundred forty of this article, the court may consider whether the financial responsibility of caring for the individual has been unreasonably placed on one parent when determining the support obligation. The duration of time the court may use when considering this factor shall be limited to the time period from when the child turned twenty-one until the individual turns twenty-six. If a child support order ended at the age of eighteen then such time period shall be from when the child turned eighteen until the individual turns twenty-six.

3. The court has jurisdiction to determine proceedings brought by petition and order to show cause, for the determination of support of such adult dependents, as well as to enforce or modify orders or judgments.

4. The court shall have discretion to order the payor party to make support payments either to the petitioner or to the trustee of an

"exception trust" as defined in 42 U.S.C. 1396p(d)(4)(A) and (C), clause (iii) of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law, and section 7-1.12 of the estates, powers and trusts law if such direction would assist in maximizing assistance to the child.

5. Except where inconsistent with this section, all provisions of this article relating to orders of child support shall apply to all orders of support for adults with developmental disabilities; provided, however, that such orders shall not be eligible for services pursuant to section one hundred eleven-g of the social services law.

6. A determination made pursuant to this section that the person is or is not developmentally disabled, as defined in subdivision twenty-two of section 1.03 of the mental hygiene law, shall not be binding on the state, a local government or the person for any other purpose, including determinations of eligibility for services authorized by the office for people with developmental disabilities.

§ 241. Interference with or withholding of visitation rights; alimony or maintenance suspension. When it appears to the satisfaction of the court that a custodial parent receiving alimony or maintenance pursuant to an order, judgment or decree of a court of competent jurisdiction has wrongfully interfered with or withheld visitation rights provided by such order, judgment or decree, the court, in its discretion, may suspend such payments or cancel any arrears that may have accrued during the time that visitation rights have been or are being interfered with or withheld. Nothing in this section shall constitute a defense in any court to an application to enforce payment of child support or grounds for the cancellation of arrears for child support.

§ 243. Security for payments by defendant in action for divorce, separation or annulment; sequestration. Where a judgment rendered or an order made in an action in this state for divorce, separation or annulment, or for a declaration of nullity of a void marriage, or a

judgment rendered in another state for divorce upon any of the grounds provided in section one hundred seventy of this chapter, or for separation or separate support and maintenance for any of the causes specified in section two hundred, or for relief, however designated, granted upon grounds which in this state would be grounds for annulment of marriage or for a declaration of nullity of a void marriage, upon which an action has been brought in this state and judgment rendered therein, requires a spouse to provide for the education or maintenance of any of the children of a marriage, or for the support of his or her spouse, the court, in its discretion, also may direct the spouse from whom maintenance or support is sought to give reasonable security, in such a manner and within such a time as it thinks proper, for the payment, from time to time, of the sums of money required for that purpose. If he or she fails to give the security, or to make any payment required by the terms of such a judgment or order, whether or not security has been given therefor, or to pay any sum of money for the support and maintenance of the children or the support and maintenance of the spouse during the pendency of the action, or for counsel fees and expenses which he or she is required to pay by a judgment or order, the court may cause his or her personal property and the rents and profits of his or her real property to be sequestered, and may appoint a receiver thereof. The rents and profits and other property so sequestered may be applied, from time to time, under the direction of the court, to the payment of any of the sums of money specified in this section, as justice requires; and if the same shall be insufficient to pay the sums of money required, the court, on application of the receiver, may direct the mortgage or sale of such real property by the receiver, under such terms and conditions as it may prescribe, sufficient to pay such sums.

§ 244. Enforcement by execution of judgment or order in action for divorce, separation or annulment. Where a spouse in an action for divorce, separation or annulment, or declaration of nullity of a void marriage, or a person other than a spouse when an action for an annulment is maintained after the death of a spouse, defaults in paying any sum of money as required by the judgment or order directing the

payment thereof, or as required by the terms of an agreement or stipulation incorporated by reference in a judgment, such direction shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules. Upon application the court shall make an order directing the entry of judgment for the amount of arrears of child support together with costs and disbursements. The court shall make an order directing the entry of judgment for the amount of arrears of any other payments so directed, together with costs and disbursements, unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. The court shall not make an order reducing or cancelling arrears unless the facts and circumstances constituting good cause are set forth in a written memorandum of decision. The application for such order shall be upon such notice to the spouse or other person as the court may direct. Such judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments. The relief herein provided for is in addition to any and every other remedy to which a spouse may be entitled under the law; provided that when a judgment for such arrears or any part thereof shall have been entered pursuant to this section, such judgment shall thereafter not be subject to modification under the discretionary power granted by this section; and after the entry of such judgment the judgment creditor shall not hereafter be entitled to collect by any form of remedy any greater portion of such arrears than that represented by the judgment so entered. Such judgment shall provide for the payment of interest on the amount of any arrears if the default was willful, in that the obligated spouse knowingly, consciously and voluntarily disregarded the obligation under a lawful court order. Such interest shall be computed from the date on which the payment was due, at the prevailing rate of interest on judgments as provided in the civil practice law and rules.

§ 244-a. Enforcement of arrears which accrue during pendency of an enforcement proceeding. In any proceeding for enforcement of payment of any sum of money as required by judgment or order the party seeking enforcement may amend the papers in support of the application for

enforcement to include any additional arrears which have accrued since the commencement of such enforcement proceeding at the time of a hearing upon or submission of the matter, provided that written notice of the intention to so amend has been given eight days previously.

§ 244-b. Child support proceedings and enforcement of arrears; suspension of driving privileges.

(a) In any proceeding for the enforcement of a direction or agreement, incorporated in a judgment or order, to pay any sum of money as child support or combined child and spousal support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such judgment or order for a period of four months, the court may order the department of motor vehicles to suspend the respondent's driving privileges, and if such order issues, the respondent may apply to the department of motor vehicles for a restricted use license pursuant to section five hundred thirty of the vehicle and traffic law. The court may at any time upon payment of arrears or partial payment of arrears by the respondent order the department of motor vehicles to terminate the suspension of respondent's driving privileges. For purposes of determining whether a support obligor has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

(b) If the respondent, after receiving appropriate notice, fails to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding, the court may order the department of motor vehicles to suspend the respondent's driving privileges. The court may subsequently order the department of motor vehicles to terminate the suspension of the respondent's driving privileges; however, the court shall order the termination of such suspension when the court is satisfied that the respondent has fully complied with all summonses, subpoenas and warrants relating to a paternity or child support proceeding.

(c) The provisions of subdivision (a) of this section shall not apply

to:

(i) respondents who are receiving public assistance or supplemental security income; or

(ii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this chapter falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this chapter; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this chapter remaining after the payment of the current support obligation would fall below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this chapter.

(d) The court's discretionary decision not to suspend driving privileges shall not have any res judicata effect or preclude any other agency with statutory authority to direct the department of motor vehicles to suspend driving privileges.

§ 244-c. Child support proceedings and enforcement of arrears; suspensions of state professional, occupational and business licenses.

(a) In any proceeding for enforcement of a direction or agreement, incorporated in a judgement or order, to pay any sum of money as child support or combined child and spousal support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such judgment or order for a period of four months and that the respondent is licensed, permitted or registered by or with a board, department, authority or office of this state to conduct a trade, business, profession or occupation, the court may order such board, department, authority or office to commence proceedings as required by law regarding the suspension of such license, permit, registration, or authority to practice and to inform the court of the actions it has taken pursuant to such proceedings. For purposes of determining whether a respondent has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive

support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

(b) If the respondent, after receiving appropriate notice, fails to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding, and the court has determined that the respondent is licensed, permitted or registered by or with a board, department, authority or office of this state or one of its political subdivisions or instrumentalities to conduct a trade, business, profession or occupation, the court may order such board, department, authority or office to commence proceedings as required by law regarding the suspension of such license, permit, registration or authority to practice and to inform the court of the actions it has taken pursuant to such proceeding. The court may subsequently order such board, department, authority or office to terminate the suspension of the respondent's license, permit, registration or authority to practice; however, the court shall order the termination of such suspension when the court is satisfied that the respondent has fully complied with all summons, subpoenas and warrants relating to a paternity or child support proceeding.

(c) If the court determines that the suspension of the license, permit or registration of the respondent would create an extreme hardship to either the licensee, permittee or registrant or to persons whom he or she serves, the court may, in lieu of suspension, suspend the order described in subdivision (a) of this section to the licensing entity for a period not to exceed one year. If, on or before the expiration of this period, the court has not received competent proof presented at hearing that the respondent is in full compliance with his or her support obligation, the court shall cause the suspension of the order to be rescinded and shall further cause such order to be served upon the licensing entity.

(d) The provisions of subdivision (a) of this section shall not apply to:

(i) respondents who are receiving public assistance or supplemental security income; or

(ii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the

domestic relations law falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law, or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law remaining after the payment of the current support obligation would fall below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law.

(e) The court shall inform the respondent that competent proof for purposes of proving payment to a licensing entity shall be a certified check, notice issued by the court, or notice from a support collection unit where the order is for payment to the support collection unit.

§ 244-d. Child support proceedings and enforcement of arrears; suspension of recreational license. (a) In any proceeding for enforcement of a direction or agreement, incorporated in a judgement or order, to pay any sum of money as child support or combined child and spousal support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such judgment or order for a period of four months, the court may order any agency responsible for the issuance of a recreational license to suspend or refuse to reissue a license to the respondent, or deny application for such license by the respondent. For purposes of determining whether a respondent has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

(b) If the respondent, after receiving appropriate notice, fails to comply with a summons, subpoena, or warrant relating to a paternity or child support proceeding, the court may order any agency responsible for the issuance of a recreational license to suspend or to refuse to reissue a license to the respondent or to deny application for such license by the respondent. The court may subsequently order such agency

to terminate the adverse action regarding the respondent's license; however, the court shall order the termination of such suspension or other adverse action when the court is satisfied that the respondent has fully complied with the requirements of all summons, subpoenas, and warrants relating to a paternity or child support proceeding.

(c) The provisions of subdivision (a) of this section shall not apply to:

(i) respondents who are receiving public assistance or supplemental security income; or

(ii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this article; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article remaining after the payment of the current support obligation would fall below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this article.

§ 245. Enforcement by contempt proceedings of judgment or order in action for divorce, separation or annulment. Where a spouse, in an action for divorce, separation, annulment or declaration of nullity of a void marriage, or for the enforcement in this state of a judgment for divorce, separation, annulment or declaration of nullity of a void marriage rendered in another state, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the aggrieved spouse may make application pursuant to the provisions of section seven hundred fifty-six of the judiciary law to punish the defaulting spouse for contempt, and where the judgment or order directs the payment to be made in installments, or at stated intervals, failure to make such single payment or installment may be punished as therein provided, and such punishment, either by fine or commitment, shall not be a bar to a subsequent proceeding to punish the defaulting spouse as for a contempt for failure to pay subsequent

installments, but for such purpose such spouse may be proceeded against under the said order in the same manner and with the same effect as though such installment payment was directed to be paid by a separate and distinct order, and the provisions of the civil rights law are hereby superseded so far as they are in conflict therewith. Such application may also be made without any previous sequestration or direction to give security or any application for enforcement by any other means. No demand of any kind upon the defaulting spouse shall be necessary in order that he or she be proceeded against and punished for failure to make any such payment or to pay any such installment; personal service upon the defaulting spouse of an uncertified copy of the judgment or order under which the default has occurred shall be sufficient.

§ 246. Persons financially unable to comply with orders or judgments directing the payment of alimony. 1. Any person who, by an order or judgment made or entered in an action for divorce, separation, annulment or declaration of the nullity of a void marriage or an action for the enforcement in this state of a judgment for divorce, separation or annulment or declaring the nullity of a void marriage rendered in another state, is directed to make payment of any sum or sums of money and against whom an order to punish for a contempt of court has been made pursuant to the provisions of section two hundred forty-five of this chapter or the judiciary law may, if financially unable to comply with the order or judgment to make such payment, upon such notice to such parties as the court may direct, make application to the court for an order relieving him from such payment and such contempt order. The court, upon the hearing of such application, if satisfied from the proofs and evidence offered and submitted that the applicant is financially unable to make such payment may, upon a showing of good cause, until further order of the court, modify the order or judgment to make such payment and relieve him from such contempt order. No such modification shall reduce or annul unpaid sums or installments accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgement or order directing such payment prior to the accrual of such

arrears. Such modification may increase such support nunc pro tunc based on newly discovered evidence.

2. Whenever, upon application to the court by an interested party, it appears to the satisfaction of the court that any person, who has been relieved totally or partially from making any such payment pursuant to the provisions of this section, is no longer financially unable to comply with the order or judgment to make such payment, then the court may, upon a showing of good cause, modify or revoke its order relieving him totally or partially from making such payment.

3. Any person may assert his financial inability to comply with the directions contained in an order or judgment made or entered in an action for divorce, separation, annulment or declaration of the nullity of a void marriage or an action for the enforcement in this state of a judgment for divorce, separation or annulment or declaring the nullity of a void marriage rendered in another state, as a defense in a proceeding instituted against him under section two hundred forty-five or under the judiciary law to punish him for his failure to comply with such directions and, if the court, upon the hearing of such contempt proceeding, is satisfied from the proofs and evidence offered and submitted that the defendant is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make an order modifying such order or judgment and denying the application to punish the defendant for contempt. No such modification shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc as of the date of the application based on newly discovered evidence. Any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.

§ 247. Alimony or maintenance payments suspended during confinement in

prison. Notwithstanding any inconsistent provision of this article, the provision of any judgment or order rendered or made in an action for divorce, separation, annulment or declaration of nullity of a void marriage, requiring the payment of moneys by one spouse for the support of the other shall be suspended and inoperative so far as punishment for contempt is concerned during the period in which the defaulting spouse shall be imprisoned pursuant to any order adjudging him or her in contempt for failure to comply with any provision in such order.

§ 248. Modification of judgment or order in action for divorce or annulment. Where an action for divorce or for annulment or for a declaration of the nullity of a void marriage is brought by a spouse, and a final judgment of divorce or a final judgment annulling the marriage or declaring its nullity has been rendered, the court, by order upon the application of the payor on notice, and on proof of the marriage of the payee after such final judgment, must modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders, or of both, directing payments of money for the support of the payee. The court in its discretion upon application of the payor on notice, upon proof that the payee is habitually living with another person and holding himself or herself out as the spouse of such other person, although not married to such other person, may modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders or of both, directing payment of money for the support of such payee.

§ 249. Trial preferences in matrimonial actions. Upon motion of either party or upon its own motion, the court may direct that any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to enjoin the prosecution in any other jurisdiction of an action for divorce, be placed forthwith by the clerk on the supreme court calendar and be entitled to preference in the trial thereof, in accordance with Rule 3403 of the civil practice law and rules, provided that in the

courts' discretion, justice so requires. Such direction may be made by separate order or in any order granted in any such action or proceeding upon any application made pursuant to sections two hundred thirty-six, two hundred thirty-seven or two hundred forty of this article.

Such direction, in the event no note of issue has been previously filed with the clerk, may also require either party to file with the clerk proof of service of the summons, two copies of the note of issue and such other data as may be required.

§ 250. Agreements relating to marriage; statute of limitations. 1. The statute of limitations for commencing an action or proceeding or for claiming a defense that arises from an agreement made pursuant to subdivision three of part B of section two hundred thirty-six of this article entered into (a) prior to a marriage or (b) during the marriage, but prior to the service of process in a matrimonial action or proceeding, shall be three years.

2. The statute of limitations shall be tolled until (a) process has been served in such matrimonial action or proceeding, or (b) the death of one of the parties.

3. The provisions of this section shall not apply to a separation agreement or an agreement made during the pendency of a matrimonial action or in settlement thereof.

§ 251. Filing of order in family court. When, in a matrimonial action, the supreme court refers the issues of support, custody or visitation to the family court, the order or judgment shall provide that a copy thereof shall be filed by the plaintiff's attorney, within ten days, with the clerk of the family court therein specified.

§ 252. Effect of pendency of action for divorce, separation or annulment on petition for order of protection. 1. In an action for

divorce, separation or annulment or in an action to declare the nullity of a void marriage in the supreme court, the supreme court or the family court shall entertain an application for an order of protection or temporary order of protection by either party. Such an order may require any party:

(a) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against such child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the person protected by the order or a minor child residing in such person's household. "Companion animal," as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law;

(h) (1) to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may: (A) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (B) specify the manner in which such return shall

be accomplished.

(2) For purposes of this paragraph, "identification document" shall mean any of the following: (A) exclusively in the name of the protected party: birth certificate, passport, social security card, health insurance or other benefits card, a card or document used to access bank, credit or other financial accounts or records, tax returns, any driver's license, and immigration documents including but not limited to a United States permanent resident card and employment authorization document; and (B) upon motion and after notice and an opportunity to be heard, any of the following, including those that may reflect joint use or ownership, that the court determines are necessary and are appropriately transferred to the protected party: any card or document used to access bank, credit or other financial accounts or records, tax returns, and any other identifying cards and documents;

(i) (1) to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

(2) For purposes of this paragraph, "connected device" shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address; and

(j) to observe such other conditions as are necessary to further the purposes of protection.

1-a. Translation and interpretation of orders of protection. The office of court administration shall, in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law, ensure that a court order of protection or temporary order of protection is translated in writing into the appropriate language for a party to a proceeding where the court has appointed an interpreter. The office of court administration shall ensure that the standard language of the office of court administration order of protection and temporary order of protection forms shall be translated in writing in the languages most frequently used in the courts of each judicial department in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law. A copy of the written translation shall be given to each party in the proceeding, along with the original order or temporary

order of protection issued in English. A copy of this written translation shall also be included as part of the record of the proceeding. The court shall read the essential terms and conditions of the order aloud on the record and direct the court appointed interpreter to interpret the same terms and conditions. Such written translation or interpretation shall not affect the validity or enforceability of the order. In every case a party to a proceeding shall be provided with an English copy of any court order of protection or temporary order of protection issued. The authority provided herein shall be in addition to and shall not be deemed to diminish or reduce any rights of the parties under existing law.

2. An order of protection entered pursuant to this subdivision shall bear in a conspicuous manner, on the front page of said order, the language "Order of protection issued pursuant to section two hundred fifty-two of the domestic relations law". The order of protection shall also contain the following notice: "This order of protection will remain in effect even if the protected party has, or consents to have, contact or communication with the party against whom the order is issued. This order of protection can only be modified or terminated by the court. The protected party cannot be held to violate this order nor be arrested for violating this order.". The absence of such language shall not affect the validity of such order. The presentation of a copy of such an order to any peace officer acting pursuant to his or her special duties, or police officer, shall constitute authority, for that officer to arrest a person when that person has violated the terms of such an order, and bring such person before the court and, otherwise, so far as lies within the officer's power, to aid in securing the protection such order was intended to afford.

2-a. If the court that issued an order of protection or temporary order of protection under this section or warrant in connection thereto is not in session when an arrest is made for an alleged violation of the order or upon a warrant issued in connection with such violation, the arrested person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of the criminal procedure law and

arraigned by such court. Such local criminal court shall order the commitment of the arrested person to the custody of the sheriff, admit to, fix or accept bail, or release the arrested person on his or her recognizance pending appearance in the court that issued the order of protection, temporary order of protection or warrant. In making such order, such local criminal court shall consider the bail recommendations, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

3. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

4. No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counterclaim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown.

5. Except with respect to enforcement pursuant to a criminal prosecution under article two hundred fifteen of the penal law, the supreme court may provide in an order made pursuant to this section that the order may be enforced or modified only in the supreme court. If the supreme court so provides, the family court may not entertain an application to enforce or modify such an order of the supreme court.

6. In any such matrimonial action however, the court may not sua sponte consolidate actions or make, vacate or modify orders of protection issued in family court involving the same parties except upon motion and with notice to the non-moving party. Such non-moving party shall be given an opportunity to be heard.

7. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

(a) An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if:

(i) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

(ii) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

(iii) in the case of orders of protection or temporary orders of protection issued against both a petitioner and respondent, the order or portion thereof sought to be enforced was supported by: (A) a pleading requesting such order, including, but not limited to, a petition, cross-petition or counterclaim; and (B) a judicial finding that the requesting party is entitled to the issuance of the order, which may

result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order was issued had given knowing, intelligent and voluntary consent to its issuance.

(b) Notwithstanding the provisions of article fifty-four of the civil practice law and rules, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law; provided, however, that such filing and registry entry shall not be required for enforcement of the order.

8. Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

9. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of firearms in accordance with sections eight hundred forty-two-a and eight hundred forty-six-a of the family court act, as applicable. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order

would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action.

9-a. The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.

10. All orders of protection and temporary orders of protection issued pursuant to this section along with any associated papers that may be served simultaneously shall be served in accordance with subdivision three-a of section two hundred forty of this article.

§ 253. Removal of barriers to remarriage. 1. This section applies only to a marriage solemnized in this state or in any other jurisdiction by a person specified in subdivision one of section eleven of this chapter.

2. Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

3. No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

4. In any action for divorce based on subdivisions five and six of

section one hundred seventy of this chapter in which the defendant enters a general appearance and does not contest the requested relief, no final judgment of annulment or divorce shall be entered unless both parties shall have filed and served sworn statements: (i) that he or she has, to the best of his or her knowledge, taken all steps solely within his or her power to remove all barriers to the other party's remarriage following the annulment or divorce; or (ii) that the other party has waived in writing the requirements of this subdivision.

5. The writing attesting to any waiver of the requirements of subdivision two, three or four of this section shall be filed with the court prior to the entry of a final judgment of annulment or divorce.

6. As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a "barrier to remarriage" within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a "barrier to remarriage" if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses. "All steps solely within his or her power" shall not be construed to include application to a marriage tribunal or other similar organization or agency of a religious denomination which has authority to annul or dissolve a marriage under the rules of such denomination.

7. No final judgment of annulment or divorce shall be entered, notwithstanding the filing of the plaintiff's sworn statement prescribed by this section, if the clergyman or minister who has solemnized the marriage certifies, in a sworn statement, that he or she has solemnized

the marriage and that, to his or her knowledge, the plaintiff has failed to take all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce, provided that the said clergyman or minister is alive and available and competent to testify at the time when final judgment would be entered.

8. Any person who knowingly submits a false sworn statement under this section shall be guilty of making an apparently sworn false statement in the first degree and shall be punished in accordance with section 210.40 of the penal law.

9. Nothing in this section shall be construed to authorize any court to inquire into or determine any ecclesiastical or religious issue. The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry, except as provided in subdivision eight of this section.

§ 254. Confidentiality. 1. Notwithstanding any other provision of law, in any proceeding for custody, divorce, separation or annulment, whether or not an order of protection or temporary order of protection is sought or has been sought in the past, the court may, upon its own motion or upon the motion of any party or the attorney for the child, authorize any party or the child to keep his or her address confidential from any adverse party or the child, as appropriate, in any pleadings or other papers submitted to the court, where the court finds that the disclosure of the address or other identifying information would pose an unreasonable risk to the health or safety of a party or the child. Pending such a finding, any address or other identifying information of the child or party seeking confidentiality shall be safeguarded and sealed in order to prevent its inadvertent or unauthorized use or disclosure.

2. Notwithstanding any other provision of law, if a party or a child has resided or resides in a residential program for victims of domestic violence as defined in section four hundred fifty-nine-a of the social services law, the present address of the party and the child and the

address of the residential program for victims of domestic violence shall not be revealed.

3. Upon authorization as provided in subdivision one of this section, the identifying information shall be sealed and shall not be disclosed in any pleading or other document filed in a proceeding under this article. The court shall designate the clerk of the court or such other disinterested person as it deems appropriate, with consent of such disinterested person, as the agent for service of process for the party whose address is to remain confidential and shall notify the adverse party of such designation in writing. The clerk or disinterested person designated by the court shall, when served with process or other papers on behalf of the party whose address is to remain confidential, promptly notify such party whose address is to remain confidential and forward such process or papers to him or her.

4. In any case in which such a confidentiality authorization is made, the party whose address is to remain confidential shall inform the clerk of the court or disinterested person designated by the court of any change in address for purposes of receipt of service or process or any papers.

§ 255. Prerequisites for judgments under articles nine, ten and eleven of this chapter; health care coverage. A court, prior to signing a judgment of divorce or separation, or a judgment annulling a marriage or declaring the nullity of a void marriage, shall ensure that:

1. Both parties have been notified, at such time and by such means as the court shall determine, that once the judgment is signed, a party thereto may or may not be eligible to be covered under the other party's health insurance plan, depending on the terms of the plan. Provided, however, service upon the defendant, simultaneous with the service of the summons, of a notice indicating that once the judgment is signed, a party thereto may or may not be eligible to be covered under the other party's health insurance plan, depending on the terms of the plan, shall be deemed sufficient notice to a defaulting defendant.

2. If the parties have entered into a stipulation of settlement/agreement on or after the effective date of this section resolving all of the issues between the parties, such settlement/agreement entered into between the parties shall contain a provision relating to the health care coverage of each party; and that such provision shall either: (a) provide for the future coverage of each party, or (b) state that each party is aware that he or she will no longer be covered by the other party's health insurance plan and that each party shall be responsible for his or her own health insurance coverage, and may be entitled to purchase health insurance on his or her own through a COBRA option, if available. The requirements of this subdivision shall not be waived by either party or counsel and, in the event it is not complied with, the court shall require compliance and may grant a thirty day continuance to afford the parties an opportunity to procure their own health insurance coverage.

ARTICLE 15

LAWS REPEALED; WHEN TO TAKE EFFECT

Section 270. Laws repealed.

271. When to take effect.

272. References in this chapter.

§ 270. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 271. When to take effect. This chapter shall take effect immediately.

§ 272. References in this chapter. Whenever in this chapter any reference is made to the children's court act of the State of New York, the children's court or a judge thereof, or to the domestic relations court act of the city of New York, the domestic relations court of the

city of New York or a justice thereof, such reference shall, on and after the effective date of legislation implementing the establishment of the family court, the officers thereof, and prescribing its powers and duties, be deemed to refer, respectively, to such legislation, the family court or a judge thereof, as the case may be, to the extent that such references may be made applicable.