CHAPTER 686

AN ACT to establish a family court for the state of New York to implement article six of the constitution of the state of New York, approved by the people on the seventh day of November, nineteen hundred sixty-one

Became a law April 24, 1962, with the approval of the Governor.

Passed, by a majority vote, three-fifths being present.

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

ARTICLE 1
FAMILY COURT ESTABLISHED

PART 1
APPLICABILITY OF ACT AND CREATION OF COURT

§ 111. Title of act. The title of this act is "the family court act of the state of New York." It may be cited as "The Family Court Act."

§ 112. Applicability. The family court act applies in all counties of the state of New York.

§ 113. Establishment of court. The family court of the state of New York is established in each county of the state as part of the unified court system for the state.

§ 114. "Exclusive original jurisdiction". When used in this act, "exclusive original jurisdiction" means that the proceedings over which the family court is given such jurisdiction must be originated in the family court in the manner prescribed by this act. The provisions of this act shall in no way limit or impair the jurisdiction of the supreme court as set forth in section seven of article six of the constitution of the state of New York.

§ 115. Jurisdiction of family court. (a) The family court has exclusive original jurisdiction over

(i) abuse and neglect proceedings, as set forth in article ten;

(ii) support proceedings, as set forth in article four;

(iii) proceedings to determine paternity and for the support of children born out-of-wedlock, as set forth in article five;

(iv) proceedings to permanently terminate parental rights to guardianship and custody of a child: (A) by reason of permanent neglect, as set forth in part one of article six of this act and paragraph (d) of subdivision four of section three hundred eighty-four-b of the social services law, (B) by reason of mental illness, intellectual disability and severe or repeated child abuse, as set forth in paragraphs (c) and (e) of subdivision four of section three hundred eighty-four-b of the social services law, and (C) by reason of the death of one or both parents, where no guardian of the person of the child has been lawfully appointed, or by reason of abandonment of the child for a period of six months immediately prior to the filing of the petition, where a child is under the jurisdiction of the family court as a result of a placement in foster care by the family court pursuant to article ten or ten-A of this act or section three hundred fifty-eight-a of the social services law, unless the court declines jurisdiction pursuant to section three hundred eighty-four-b of the social services law;

(v) proceedings concerning whether a person is in need of supervision, as set forth in article seven; and

(vi) proceedings concerning juvenile delinquency as set forth in article three.

(b) The family court has such other jurisdiction as is set forth in this act, including jurisdiction over habeas corpus proceedings and over applications for support, maintenance, a distribution of marital property and custody in matrimonial actions when referred to the family court by the supreme court, conciliation proceedings, and proceedings concerning physically handicapped and developmentally disabled children.

(c) The family court has such other jurisdiction as is provided by law, including but not limited to: proceedings concerning adoption and custody of children, as set forth in parts two and three of article six of this act; proceedings concerning the uniform interstate family support act, as set forth in article five-B of this act; proceedings concerning children in foster care and care and custody of children, as set forth in sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and article ten-A of this act; proceedings concerning former foster children as set forth in article ten-B of this act; proceedings concerning destitute children, as set forth in article ten-C of this act; proceedings concerning guardianship and custody of children by reason of the death of, or abandonment or surrender by, the parent or parents, as set forth in sections three hundred eighty-three-c, three hundred eighty-four and paragraphs (a) and (b) of subdivision four of section three hundred eighty-four-b of the social services law; proceedings concerning standby guardianship and guardianship of the person as set forth in part four of article six of this act and article seventeen of the surrogate's court procedure act; proceedings concerning the interstate compact on juveniles as set forth in chapter one hundred fifty-five of the laws of nineteen hundred fifty-five, as amended; proceedings concerning the interstate compact on the placement of children, as set forth in section three hundred seventy-four-a of the social services law; proceedings concerning the uniform child custody jurisdiction and enforcement act, as set forth in article five-A of the domestic relations law; and proceedings concerning the change of the name of a child as set forth in section sixty of the civil rights law.

(d) Notwithstanding subdivisions (a) through (c) of this section, jurisdiction of the family court and tribal courts of Indian tribes designated by the Secretary of the Interior over those child custody proceedings provided for in articles three, seven, ten and ten-A of this act and sections three hundred fifty-eight-a and three hundred eighty-four-b of the social services law involving Indian children as defined in subdivision thirty-six of section two of the social services law shall be subject to the terms and conditions set forth in applicable sections of title twenty-five of the United States code; provided that tribal courts of Indian tribes designated as such by the state of New York shall have jurisdiction over such child custody proceedings involving Indian children to the same extent as federally designated Indian tribes upon the approval of the state office of children and family services pursuant to section thirty-nine of the social services law.

(e) The family court has concurrent jurisdiction with the criminal court over all family offenses as defined in article eight of this act.

(f) The family court has jurisdiction to direct the commencement of proceedings to suspend the driving privileges, recreational licenses and permits, and license, permit, registration or authority to practice of persons who are delinquent in their child or combined child and spousal support obligations or persons who have failed, after receiving appropriate notice, to comply with summonses, subpoenas or warrants relating to paternity and child support proceedings as set forth in sections four hundred fifty-eight-a, four hundred fifty-eight-b, four hundred fifty-eight-c, five hundred forty-eight-a, five hundred forty-eight-b, and five forty-eight-c of this act. Such jurisdiction shall include jurisdiction over all boards, departments, authorities or offices of the state for the purposes of implementing such section.

§ 116. Religion of custodial persons and agencies. (a) Whenever a child is remanded or committed by the court to any duly authorized association, agency, society or institution, other than an institution supported and controlled by the state or a subdivision thereof, such commitment must be made, when practicable, to a duly authorized association, agency, society or institution under the control of persons of the same religious faith or persuasion as that of the child.

(b) Whenever any child thus committed is placed by any such association, agency, society or institution in a family, or in the home, or in the custody, of any person other than that of its birth or adopted parent or parents, or when so placed or paroled directly by the court, such placement or parole must, when practicable, be with or in the custody of a person or persons of the same religious faith or persuasion as that of the child.

(c) In appointing guardians of children, except guardians ad litem, and in granting orders of adoption of children, the court must, when practicable, appoint only as such guardians, and only give custody through adoption to, persons of the same religious faith or persuasion as that of the child.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall be interpreted literally, so as to assure that in the care, protection, guardianship, discipline or control of any child his religious faith shall be preserved and protected by the court. But this section shall not be construed so as to prevent the remanding of a child, during the pendency of a proceeding, to a place of detention designated by rules of court nor to the placing of a child in a hospital or similar institution for necessary treatment.

(e) The words "when practicable" as used in this section shall be interpreted as being without force or effect if there is a proper or suitable person of the same religous faith or persuasion as that of the child available for appointment as guardian, or to be designated as custodian, or to whom control may be given, or to whom orders of adoption may be granted; or if there is a duly authorized association, agency, society or institution under the control of persons of the same religious faith or persuasion as that of the child, at the time available and willing to assume the responsibility for the custody of or control over any such child.

(f) If a child is placed in the custody, or under the supervision or control, of a person or of persons of a religious faith or persuasion different from that of the child, or if a guardian of a child is appointed whose religious faith or persuasion is different from that of the child, or if orders of adoption are granted to a person or persons whose religious faith is different from that of the child adopted, or if a child is remanded or committed to a duly authorized association, agency, society or institution, or to any other place, which is under the control of persons of a religious faith or persuasion different from that of the child, the court shall state or recite the facts which impel it to make such disposition and such statement shall be made a part of the minutes of the proceeding.

(g) The provisions of subdivisions (a), (b), (c), (d), (e) and (f) of this section shall, so far as consistent with the best interests of the child, and where practicable, be applied so as to give effect to the religious wishes of the birth mother, if the child is born out-of-wedlock, or if born in-wedlock, the religious wishes of the birth parents of the child, or if only one of the birth parents of an in-wedlock child is then living, the religious wishes of the birth parent then living. Religious wishes of a birth parent shall include wishes that the child be placed in the same religion as the birth parent or in a different religion from the birth parent or with indifference to religion or with religion a subordinate consideration. Expressed religious wishes of a birth parent shall mean those which have been set forth in a writing signed by the birth parent, except that, in a non-agency adoption, such writing shall be an affidavit of the birth parent. In the absence of expressed religious wishes, as defined in this subdivision, determination of the religious wishes, if any, of the birth parent, shall be made upon the other facts of the particular case, and, if there is no evidence to the contrary, it shall be presumed that the birth parent wishes the child to be reared in the religion of the birth parent.

§ 117. Parts of court. (a) There is hereby established in the family court a "child abuse part". Such part shall be held separate from all other proceedings of the court, and shall have jurisdiction over all proceedings in the family court involving abused children, and shall be charged with the immediate protection of these children. All cases involving abuse shall be originated in or be transferred to this part from other parts as they are made known to the court unless there is or was before the court a proceeding involving any members of the same family or household, in which event the judge who heard said proceeding may hear the case involving abuse. Consistent with its primary purpose, nothing in this section is intended to prevent the child abuse part from hearing other cases.

(b) For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); former section 130.50; sections 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in clause (i), (ii) or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act;

or (vi) other than a misdemeanor, committed by a person at least twelve but less than eighteen years of age, but only where there have been two prior findings by the court that such person has committed a prior act which, if committed by an adult, would be a felony:

(i) There is hereby established in the family court in the city of New York at least one "designated felony act part." Such part or parts shall be held separate from all other proceedings of the court, and shall have jurisdiction over all proceedings involving such an allegation. All such proceedings shall be originated in or be transferred to this part from other parts as they are made known to the court.

(ii) Outside the city of New York, all proceedings involving such an allegation shall have a hearing preference over every other proceeding in the court, except proceedings under article ten.

(c) The chief administrator of the courts may establish one or more separate support parts in each family court for the purpose of expediting support proceedings instituted pursuant to articles four, five and five-A of this act. Where such separate support parts are established, all such proceedings shall be originated in or be transferred to this part or parts as they are made known to the court and shall be heard by support magistrates in accordance with section four hundred thirty-nine of this act.

(d) The appellate division of the supreme court in each department may provide, in accordance with the standards and policies established by the administrative board of the judicial conference, that the family court in counties within its department shall or may be organized into such other parts, if any, as may be appropriate.

§ 118. Seal. The seal of the family court consists of an engraving of the arms of the state of New York and the words "Family Court of the State of New York" followed by the name of the county in which the family court using the seal is located.

§ 119. Definitions. When used in this act and unless the specific context indicates otherwise:

(a) "Duly authorized association, agency, society or institution" means any institution supported or controlled by the state or by a subdivision thereof; any social services official of this state; or an association, agency, society, or institution, duly empowered to care for children, which

(i) is incorporated under the laws of this state;

(ii) actually has its place of business or home within the state; and

(iii) is approved, visited, inspected and supervised by the department of family assistance, or which shall submit and consent to the approval, visitation, inspection and supervision of the department of family assistance.

(b) "Person legally responsible for the child's care" includes the child's custodian, guardian or any other person responsible for the child's care at the relevant time.

(c) The term "infant" or "minor" means a person who has not attained the age of eighteen years.

§ 120. Expenses of the court. (a) All salaries of the judicial and non-judicial personnel of the court and all other expenses of the court whatsoever, except as provided in subdivision (b), shall within the city of New York, be a city charge and in the counties outside the city of New York, a county charge; provided however, that the final determination of the itemized estimates of the annual financial needs of the court shall be made by the appropriate governing bodies of such counties and the city of New York in the manner provided in article seven-a of the judiciary law, and section twenty-nine of article six of the constitution.

(b) Salaries of support magistrates appointed in proceedings to compel support pursuant to section four hundred thirty-nine of this act shall be a state charge payable out of funds appropriated to the office of court administration for that purpose.

PART 2

NUMBER, APPOINTMENT, TERM AND COMPENSATION OF JUDGES WITHIN THE CITY OF NEW YORK

Section 121. Number of judges.

§ 121. Number of judges. The family court within the city of New York shall consist of sixty-seven judges, effective January first, two thousand twenty-five. There shall be at least one family court judge resident in each county of the city of New York.

§ 122. Continuance in office. The justices of the domestic relations court of the city of New York in office on the effective date of this act, shall for the remainder of the term of their appointment continue in office as judges of the family court in the county within the city of New York in which they reside.

§ 123. Appointment by mayor. The mayor of the city of New York shall appoint the judges of the family court in counties within the city of New York for a term of ten years.

§ 124. Eligibility for appointment. No person, other than one who holds such office at the effective date of this act, may assume the office of judge of the family court within the city of New York unless he has been admitted to practice law in this state at least ten years prior to the date of such appointment. In making such appointments, the mayor of the city of New York shall select persons who are especially qualified for the court's work by reason of their character, personality, tact, patience and common sense.

§ 126. Vacancies. When a vacancy occurs, otherwise than by expiration of term on the last day of any year, in the office of judge of the family court in a county within the city of New York, the vacancy shall be filled by appointment of the mayor of the city of New York for the unexpired term.

PART 3

NUMBER, ELECTION, TERM AND COMPENSATION OF JUDGES NOT WITHIN THE CITY OF NEW YORK

§ 131. Number of judges. The number of judges of the family court for each county outside the city of New York shall be as follows:

(a) in each county in which there was a separate office or offices of judge of the children's court authorized by law on the thirty-first day of August nineteen hundred sixty-two, the number of judges of the family court for such county shall be equal to the number of offices so authorized except those authorized by certificate filed pursuant to subdivision two of section four of the children's court act of the state of New York subsequent to March first, nineteen hundred sixty-two; and, effective May fifteenth, nineteen hundred sixty-three, there shall be a separate office of judge of the family court for the county of Niagara; and, effective May fifteenth, nineteen hundred sixty-three, there shall be a separate office of judge of the family court for the county of Ulster; and, effective January first, nineteen hundred sixty-four, there shall be a separate office of judge of the family court for the county of St. Lawrence; and, effective January first, nineteen hundred sixty-five, there shall be a separate office of judge of the family court for the county of Chautauqua; and, effective January first, nineteen hundred sixty-seven, there shall be a separate office of judge of the family court for the county of Oneida; and, effective January first, nineteen hundred sixty-five, there shall be a separate office of judge of the family court for the county of Jefferson; and, effective January first, nineteen hundred sixty-six, there shall be a separate office of judge of the family court for the county of Rockland:

(b) in the other counties except the counties of Chautauqua, Jefferson and Oneida, a judge of the county court shall act as and discharge the duties of judge of the family court;

(c) in the counties of Chautauqua, Jefferson and Oneida, upon the expiration of the term of office of the special county judge who was continued as a judge of the family court pursuant to section one hundred thirty-two of this act, or if there was no special county judge in office on the effective date of this act, a judge of the county court of each such county shall act as and discharge the duties of judge of the family court.

(d) In the county of Nassau there shall be nine family court judges and the number of such judges now existing in said county is hereby increased accordingly.

(e) In the county of Monroe there shall be six family court judges and the number of such judges now existing in said county is hereby increased accordingly; in the county of Erie there shall be six family court judges and the number of such judges now existing in said county is hereby increased accordingly. In the county of Albany there shall be a total of three family court judges and the number of such judges now existing in such county is hereby increased accordingly.

(f) In the county of Onondaga there shall be three additional family court judges and the number of such judges now existing in such county is hereby increased accordingly. The compensation of each such additional family court judge shall be the same as the compensation of existing family court judges in such county.

(g) There shall be a separate office of judge of the family court for the counties of Oswego and Sullivan and the compensation payable for each such separate office of judge of the family court shall be twenty-five thousand dollars per annum. In the county of Saratoga there shall be two additional family court judges and the number of such judges now existing in such county is hereby increased accordingly. The compensation of such additional family court judge shall be the same as the compensation of the existing family court judge in such county.

(h) In the county of Westchester there shall be three additional family court judges and the number of such judges now existing is hereby increased accordingly. The compensation of each additional family court judge shall be the same as the existing family court judge in such county.

(i) In the county of Schenectady there shall be one additional family court judge and the number of such judges now existing is hereby increased accordingly. The compensation of the additional family court judge shall be the same as the existing family court judge in such county.

(j) In the county of Genesee there shall be one additional family court judge and the number of such judges now existing is hereby increased accordingly. The compensation of the additional family court judge shall be the same as the existing family court judge in such county.

(k) In the county of Rockland there shall be one additional family court judge and the number of such judges now existing is hereby increased accordingly. The compensation of the additional family court judge shall be the same as the existing family court judge in such county.

(l) In the county of Dutchess there shall be two additional family court judges and the number of such judges now existing is hereby increased accordingly. The compensation of the additional family court judges shall be the same as the compensation paid to each of the existing family court judges in such county pursuant to section two hundred twenty-one-e of the judiciary law.

(m) In the county of Niagara there shall be one additional family court judge and the number of such judges now existing is hereby increased accordingly. The compensation of the additional family court judge shall be the same as the existing family court judge in such county.

(n) In the county of Ulster there shall be one additional family court judge and the number of such judges now existing is hereby increased accordingly. The compensation of the additional family court judge shall be the same as the existing family court judge in such county.

(o) In the county of Oneida there shall be two additional family court judges making a total of three family court judges in such county. The number of such judges now existing in such county is hereby increased accordingly. The compensation of the additional family court judges shall be the same as the compensation of the existing family court judge in such county.

(p) In the county of Suffolk there shall be four additional family court judges making a total of ten family court judges in such county. The number of such judges now existing in such county is hereby increased accordingly. The compensation of each such family court judge shall be the same as the compensation of existing family court judges in such county.

(q) In the county of Rensselaer, there shall be one additional family court judge and the number of judges now existing is hereby increased accordingly. The compensation of the additional family court judge shall be the same as the existing family court judge in such county.

(r) In the county of Orange there shall be three additional family court judges, making a total of four family court judges, and the number of such judges now existing is hereby increased accordingly. The compensation of each such additional family court judge shall be the same as the compensation paid to each of the existing family court judges in such county.

(s) In the county of Broome there shall be a total of three family court judges and the number of such judges now existing is hereby increased accordingly. The compensation of such additional family court judge shall be the same as the compensation paid to each of the existing family court judges in such county.

(t) There shall be a separate office of judge of the family court for the county of Clinton and the compensation payable for such separate office of judge of the family court shall be the same as the compensation payable to the judge of the county court of Clinton county.

(u) There shall be an additional family court judge for each of the following counties: Albany, Broome, Chautauqua, Franklin, Nassau, Oneida, Oswego, Schenectady, Suffolk, Ulster and Westchester. The compensation of each such additional family court judge shall be the same as the compensation paid to each existing family court judge in the county for which it is established or, if there is no separately-elected family court judge in such county, the same as the compensation paid to a judge of the county court in such county.

(v) There shall be an additional family court judge for each of the following counties: Delaware, Dutchess, Erie, Monroe, and Warren. The compensation of each such additional family court judge shall be the same as the compensation paid to each existing family court judge in the county for which it is established or, if there is no separately-elected family court judge in such county, the same as the compensation paid to a judge of the county court in such county.

(w) There shall be an additional family court judge for each of the following counties: Albany, Chemung, Erie, Monroe, Niagara, Oneida, Onondaga, St. Lawrence, Suffolk, and Westchester. The compensation of each such additional family court judge shall be the same as the compensation paid to each existing family court judge in such county or, if there is no separately-elected family court judge in such county, the same as the compensation paid to a judge of the county court in such county.

(x) There shall be an additional family court judge for each of the following counties: Cayuga, Chenango, Cortland, Erie, Jefferson, Rensselaer, Rockland and Westchester. Moreover, there shall be two additional family court judges from the county of Suffolk and there shall be two additional family court judges from the county of Nassau. The compensation of each such additional family court judge shall be the same as the compensation paid to each existing family court judge in such county or, if there is no separately-elected family court judge in such county, the same as the compensation paid to a judge of the county court in such county.

§ 132. Continuance in office. The special county judges of the counties of Broome, Chautauqua, Jefferson, Oneida and Rockland and the judges of the children's courts in all counties outside the city of New York in office at midnight on August thirty-first, nineteen hundred sixty-two, shall be judges of the family court in and for the county in which they hold office for the remainder of the terms for which they were elected or appointed.

§ 133. Vacancies. When a vacancy occurs, otherwise than by expiration of term, in the office of judge of the family court in a county not within the city of New York, the vacancy shall be filled for a full term at the next general election held not less than three months after such vacancy occurs and, until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or, if the senate not be in session, the governor may fill such vacancy by an appointment which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

§ 134. Eligibility for office. No person, other than one who holds such office on the effective date of this act may serve in the office of judge of the family court unless he or she has been admitted to practice law in the state of New York for at least ten years as of the date he or she commences the duties of office.

§ 135. Term of office. The term of office of a judge elected to the family court in a county outside the city of New York is ten years.

§ 137. County judge designated as family court judge. In each county referred to in subdivisions (b) and (c) of section one hundred thirty-one of this act in which there is more than one county judge, the appellate division of the supreme court of the judicial department in which such county is located shall designate and may revoke any designation of, one or more of the county judges within the county to act as and discharge the duties of family court judge.

§ 138. Additional compensation for designated judge. Any additional compensation for a judge designated under section one hundred thirty-seven to act and discharge the duties of family court judge shall be as provided by law.

PART 4

FAMILY COURT JUDGES

§ 141. Findings. This act defines the conditions on which the family court may intervene in the life of a child, parent and spouse. Once these conditions are satisfied, the court is given a wide range of powers for dealing with the complexities of family life so that its action may fit the particular needs of those before it. The judges of the court are thus given a wide discretion and grave responsibilities.

The people of the state of New York have concluded that legal training and experience should be required before any person may assume the office of family court judge and so provided in section twenty, paragraph a, of the judiciary article of the constitution of the state of New York. Judges of the family court should also be familiar with areas of learning and practice that often are not supplied by the practice of law.

§ 142. Authority to visit school or institution. Judges of the family court may officially visit any school or institution to which any person within the jurisdiction of the court of which he is an officer may be remanded or committed, and the authorities responsible for paying their respective salaries are authorized and required to approve and pay the necessary traveling expenses incurred by such judges in making such visits.

§ 143. Authority to attend meetings of association. Judges discharging the duties of family court judge may attend conferences and meetings of the association of judges of the family court, and the fiscal authorities responsible for paying their respective salaries are authorized and required to approve and pay the necessary traveling expenses incurred by such judges in attending such conferences and meetings, if within the authorized appropriation.

§ 144. Activity in community organizations. Any judge discharging the duties of family court judge is authorized to serve as an officer or member of the governing body of any corporation or association organized and maintained exclusively for religious, charitable, benevolent, or educational purposes.

§ 145. Liability of judge. Any family court judge who in good faith issues process in any proceeding under this act shall not be liable therefor unless it is shown that his action in so doing was malicious or a deliberate abuse of his discretion.

§ 146. Temporary assignment of judges. Nothing in this act is intended to prevent the temporary assignment of family court judges by the appropriate administrative judge to counties other than the one to which they were elected or appointed for the purpose of meeting a temporary need for judicial personnel or for greater contact between courts.

PART 5

GENERAL POWERS

§ 151. Judges as magistrates. Judges of the family court are magistrates.

§ 152. Power to administer oaths. (a) Each family court judge may administer oaths and take acknowledgments, and may designate an official of his court so to do.

(b) In conducting a hearing under this act, a judge may dispense with the formality of placing a minor under oath before taking his testimony.

§ 153. Subpoena, warrant and other process to compel attendance. The family court may issue a subpoena or in a proper case a warrant or other process to secure or compel the attendance of an adult respondent or child or any other person whose testimony or presence at a hearing or proceeding is deemed by the court to be necessary, and to admit to, fix or accept bail, or parole him pending the completion of the hearing or proceeding. The court is also authorized to issue a subpoena duces tecum in accordance with the applicable provisions of the civil practice act and, upon its effective date, in accordance with the applicable provisions of the CPLR. A judge of the family court is also authorized to hear and decide motions relating to child support subpoenas issued pursuant to section one hundred eleven-p of the social services law.

§ 153-a. Warrant of arrest; when and how executed. (a) A warrant of arrest may be executed on any day of the week, and at any hour of the day or night.

(b) Unless encountering physical resistance, flight or other factors rendering normal procedure impractical, the arresting police officer must inform the subject named therein that a warrant for his arrest for attendance at the proceeding designated therein has been issued. Upon request of such subject, the police officer must show him the warrant if he has it in his possession. The officer need not have the warrant in his possession, and, if he has not, he must show it to the subject upon request as soon after the arrest as possible.

(c) In order to effect the arrest, the police officer may use such physical force as is justifiable pursuant to section 35.30 of the penal law.

(d) In order to effect the arrest, the police officer may enter any premises in which he reasonably believes the subject named therein to be present. Before such entry, he must give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof.

(e) If the officer, after giving such notice, is not admitted, he may enter such premises, and by a breaking if necessary.

§ 153-b. Service of process request for order of protection. Whenever a petitioner requests an order of protection or temporary order of protection or files for an extension of such order or a petition or motion for modification or a violation of such an order under any article of this act:

(a) the summons and the petition and, if one has been issued, the temporary order of protection, order of protection issued upon a default, or a copy or copies thereof, may be served on any day of the week, and at any hour of the day or night;

(b) a peace officer, acting pursuant to his or her special duties, or a police officer shall, upon receipt, serve or provide for the service of the summons and the petition together with any associated papers and, if one has been issued, the temporary order of protection, or order of protection issued upon a default and 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;

(c) 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 to any other county or municipal officer who may be directed to effect service under section two hundred fifty-five of this act, 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 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 section, and his or her employer, shall not be liable for damages resulting from the failure to achieve service where, having made a reasonable effort, such officer 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;

(d) where the temporary order of protection or order of protection and 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 the service of the summons, petition and temporary order of protection or order of protection;

* (e) Notwithstanding any other provision of law, all orders of protection and temporary orders of protection issued pursuant to this act along with any associated papers that may be served simultaneously may, for the purposes of section one hundred sixty-eight of this article, be transmitted by facsimile transmission or electronic means and may be transmitted by facsimile transmission or electronic means for expedited service in accordance with the provisions of this section. For purposes of this section, "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 There are 2 sb (e)'s

* (e) 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.

* NB There are 2 sb (e)'s

§ 153-c. Temporary order of protection. (a) Any person appearing at family court when the court is open requesting a temporary order of protection under any article of this act shall be entitled to file a petition without delay on the same day such person first appears at the family court, and a hearing on that request shall be held on the same day or the next day that the family court is open following the filing of such petition.

(b) As provided in this section, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules to establish and implement a pilot program for the filing of petitions for temporary orders of protection by electronic means and for the issuance of such orders ex parte by audio-visual means in order to accommodate litigants for whom attendance at court to file for, and obtain, emergency relief would constitute an undue hardship or to accommodate litigants, for whom traveling to and appearing in the courthouse to obtain emergency relief, creates a risk of harm to such litigant.

(1) Definitions. As used in this section:

(i) "Electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression.

(ii) "Independent audio-visual system" means an electronic system for the transmission and receiving of audio and visual signals, encompassing encoded signals, frequency domain multiplexing or other suitable means to preclude the unauthorized reception and decoding of the signals by commercially available television receivers, channel converters, or other available receiving devices.

(iii) "Electronic appearance" means an appearance in which one or more of the parties are not present in the court, but in which, by means of an independent audio-visual system, all of the participants are simultaneously able to see and hear reproductions of the voices and images of the judge, counsel, parties, witnesses, if any and other participants.

(2) Development of a pilot program. A plan for a pilot program pursuant to this section shall be developed by the chief administrator of the courts or his or her delegate in consultation with one or more local programs providing assistance to victims of domestic violence, the office for the prevention of domestic violence, and attorneys who represent family offense petitions. The plan shall include, but is not limited to:

(i) identification of one or more family justice centers or organizations or agencies or other sites outside of the local family court that are equipped with, or have access to, an independent audio-visual system and electronic means for filing documents that are compatible with the equipment in the local family court, with consideration given to the location of such site or sites and available resources; and

(ii) identification of one or more licensed and certified organizations, agencies or entities with advocates for victims of domestic violence who are trained, and available to assist petitioners in preparing and filing petitions for temporary orders of protection and in their electronic appearances before the family court to obtain such orders; and

(iii) identification of the existing resources available in local family courts for the implementation and oversight of the pilot program; and

(iv) delineation of procedures for filing of the petitions and documents, if any, by electronic means, swearing in the petitioners and any witnesses, preparation of a verbatim transcription of testimony presented and a record of evidence adduced and prompt transmission of any orders issued to the petitioners; and

(v) a timetable for implementation of the pilot program and plan for informing the public of its availability; and

(vi) a description of data to be collected in order to evaluate and, if necessary, make recommendations for improvements to the pilot program.

(3) Filing by electronic means. In conjunction with an electronic appearance under this section, petitioners for ex parte temporary orders of protection may, with the assistance of trained advocates, commence the proceedings by filing petitions by electronic means.

(i) A petitioner who seeks a temporary order of protection ex parte by use of an electronic appearance must file a petition in advance of such appearance and may do so by electronic means. The petitioner shall set forth the circumstances in which traveling to or appearing in the courthouse would constitute an undue hardship, or create a risk of harm to the petitioner. In granting or denying the relief sought by the petitioner, the court shall state the names of all participants, and whether it is granting or denying an appearance by electronic means and the basis for such determination; provided, however, that nothing in this section shall be construed to compel a party to file a petition or other document by electronic means or to testify by means of an electronic appearance.

(ii) Nothing in this section shall affect or change any existing laws governing the service of process, including requirements for personal service, or the sealing and confidentiality of court records in family court proceedings, or access to court records by the parties to such proceedings.

(4) (i) All electronic appearances by petitioners seeking temporary orders of protection ex parte under this section shall be strictly voluntary and the consent of such petitioners shall be given on the record at the commencement of each appearance.

(ii) Appearances taken through the use of an electronic appearance under this section shall be recorded and preserved for transcription. Documentary evidence, if any, referred to by a party or witness or the court may be transmitted and submitted and introduced by electronic means.

§ 154. State-wide process. (a) The family court may send process or other mandates in any matter in which it has jurisdiction into any county of the state for service or execution in like manner and with the same force and effect as similar process or mandates of county courts as provided by law.

(b) In a proceeding to establish paternity or to establish, modify or enforce support, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules or under section 580-201 of article five-B of the family court act, notwithstanding that such person is not a resident or domiciliary of the state.

(c) In a proceeding arising under article four, five, six, eight or ten of this act in which an order of protection is sought or in which a violation of an order of protection is alleged, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person, subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules, notwithstanding that such person is not a resident or domiciliary of the state, so long as: (1) the act or acts giving rise to the application for issuance or enforcement of the order of protection occurred within the state; and (2) the applicant for the order of protection resides or is domiciled in the state or has substantial contacts in the state, including but not limited to, presence on a regular basis in the state. Upon good cause shown, the court may issue a temporary order of protection in accordance with article four, five, six, eight or ten of this act. Where personal jurisdiction over a non-resident or non-domiciliary respondent would not be obtainable but for this subdivision, the papers to be served shall include a conspicuous notice that the exercise of such jurisdiction is limited to the issue of the order of protection. Where service of a petition and summons upon a non-resident or non-domiciliary respondent is required, such service shall be made at least twenty days before the return date. Where service is effected on an out-of-state respondent and the respondent defaults by failing to appear, the court may on its own motion, or upon application of any party or the attorney for the child, proceed to a hearing with respect to issuance or enforcement of the order of protection. Nothing in this section shall be construed to affect or alter the exercise of personal jurisdiction with respect to issues other than the order of protection.

§ 154-a. Service of petition. In every proceeding in family court, a copy of the petition filed therein shall be served upon the respondent at the time of service of process or, if that is not practicable, at the first court appearance by respondent.

§ 154-b. Order of protection; answer and counter-claims; confidentiality of address. 1. In every proceeding under articles four, five, six and eight of this act in which an order of protection is requested, the respondent may file with the court an answer to the petition and a counter-claim. A counter-claim shall be heard in the same manner as a petition and may be heard on the return date of the petition, provided that the counter-claim is served on the petitioner no later than five days prior to the return date and said counter-claim and proof of service is filed with the court. The petitioner may file and serve a reply to the counter-claim. A denial of the allegations of the counter-claim shall be presumed if the petitioner does not file and serve a reply.

2. (a) Notwithstanding any other provision of law, in any proceeding under article four, five, five-b, six, eight or ten of this act, 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 child's attorney, 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 disclosure of such 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.

(b) Notwithstanding any other provision of law, if a party and 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 such party and of the child and the address of the residential program for victims of domestic violence shall not be revealed.

(c) Upon such authorization, 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 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.

(d) In any case in which such 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 of process or any papers.

§ 154-c. Orders of protection; procedural requirements. 1. Expiration dates. Any order of protection or temporary order of protection issued under articles three, four, five, six, seven, eight, ten and ten-A of this act shall plainly state the date that such order expires.

2. Modifications of orders of protection. Except as provided in subdivision two of section one hundred fifty-four-d of this act, any motion to vacate or modify any order of protection or temporary order of protection issued under this act shall be on notice to the non-moving party and the child's attorney, if any.

3. Pleadings and requisite findings. 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 a petition or counter-claim in accordance with article four, five, six or eight of this act 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. Nothing herein shall be deemed to limit or restrict the authority of the court to issue a temporary order of protection on an ex parte basis.

§ 154-d. Emergency powers; local criminal courts. 1. Issuance of temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis issue a temporary order of protection pending a hearing in family court, provided that a sworn affidavit, certified in accordance with subdivision one of section 100.30 of the criminal procedure law is submitted: (i) alleging that the family court is not in session; (ii) alleging that a family offense, as defined in subdivision one of section eight hundred twelve of this act or subdivision one of section 530.11 of the criminal procedure law, has been committed; (iii) alleging that a family offense petition has been filed or will be filed in family court on the next day the court is in session; and (iv) showing good cause. Upon appearance in a local criminal court, the petitioner shall be advised that he or she may continue with the proceeding either in family court or, upon the filing of a local criminal court accusatory instrument, in criminal court or both. Upon issuance of a temporary order of protection where petitioner requests that it be returnable in family court, the local criminal court shall transfer the matter forthwith to the family court and shall make the matter returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the order. The local criminal court, upon issuing a temporary order of protection returnable in family court pursuant to this subdivision shall immediately forward in a manner designed to ensure arrival before the return date set in the order, a copy of the temporary order of protection and sworn affidavit to the family court and shall provide a copy of such temporary order of protection to the petitioner; provided, however, that if the temporary order of protection and affidavit are transmitted by facsimile or other electronic means, the original order and affidavit shall be forwarded to the family court immediately thereafter. Any temporary order of protection issued pursuant to this subdivision shall be issued to the respondent and copies shall be filed as required in subdivisions six and eight of section 530.12 of the criminal procedure law for orders of protection issued pursuant to such section. Any temporary order of protection issued pursuant to this subdivision shall plainly state the date that such order expires which, in the case of an order returnable in family court, shall be not more than four calendar days after its issuance, unless sooner vacated or modified by the family court. A petitioner requesting a temporary order of protection returnable in family court pursuant to this subdivision in a case in which a family court petition has not been filed shall be informed that such temporary order of protection shall expire as provided for herein, unless the petitioner files a petition pursuant to subdivision one of section eight hundred twenty-one of this act on or before the return date in family court and the family court issues a temporary order of protection as authorized under article eight of this act. Nothing in this subdivision shall limit or restrict the petitioner's right to proceed directly and without court referral in either a criminal or family court, or both, as provided for in section one hundred fifteen of this act and section 100.07 of the criminal procedure law.

2. Modifications of orders of protection or temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis modify a temporary order of protection or order of protection which has been issued under article four, five, six or eight of this act pending a hearing in family court, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of the criminal procedure law, is submitted: (i) alleging that the family court is not in session and (ii) showing good cause, including a showing that the existing order is insufficient for the purposes of protection of the petitioner, the petitioner's child or children or other members of the petitioner's family or household. The local criminal court shall make the matter regarding the modification of the order returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the modified order. The local criminal court shall immediately forward, in a manner designed to ensure arrival before the return date set in the order, a copy of the modified order if any and sworn affidavit to the family court and shall provide a copy of such modified order, if any, and affidavit to the petitioner; provided, however, that if the modified order and affidavit are transmitted to the family court by facsimile or other electronic means, the original copy of such modified order and affidavit shall be forwarded to the family court immediately thereafter. Any modified temporary order of protection or order of protection issued pursuant to this subdivision shall be issued to the respondent, and copies shall be filed as provided in subdivisions six and eight of section 530.12 of the criminal procedure law for orders of protection issued pursuant to such

section.

§ 154-e. 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 under article eight of this act 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.

1. An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if:

a. the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

b. 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

c. 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 given knowing, intelligent and voluntary consent to its issuance.

2. 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 family 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.

§ 155. Arrested adult. 1. If an adult respondent is arrested under this act when the family court is not in session, he or she shall be taken to the most accessible magistrate and arraigned. The production of a warrant issued by the family court, a certificate of warrant, a copy or a certificate of the order of protection or temporary order of protection, an order of protection or temporary order of protection, or a record of such warrant or order from the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law shall be evidence of the filing of an information, petition or sworn affidavit, as provided in section one hundred fifty-four-d of this article. Upon consideration of the bail recommendation, if any, made by the family court and indicated on the warrant or certificate of warrant, the magistrate shall thereupon commit such respondent to the custody of the sheriff, as defined in subdivision thirty-five of section 1.20 of the criminal procedure law, admit to, fix or accept bail, or parole him or her for hearing before the family court, subject to the provisions of subdivision four of section 530.11 of the criminal procedure law concerning arrests upon a violation of an order of protection.

2. If no warrant, order of protection or temporary order of protection has been issued by the family court, whether or not an information or petition has been filed, and an act alleged to be a family offense as defined in section eight hundred twelve of this act is the basis of an

arrest, the magistrate shall permit the filing of an information, accusatory instrument or sworn affidavit as provided for in section one hundred fifty-four-d of this article, verified in accordance with subdivision one of section 100.30 of the criminal procedure law, alleging facts in support of a petition pursuant to article eight of this act. The magistrate shall thereupon commit such respondent to the custody of the sheriff, as defined in subdivision thirty-five of section 1.20 of the criminal procedure law, admit to, fix or accept bail, or parole such respondent for hearing before the family court and/or appropriate criminal court.

3. 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.

§ 155-a. Admission to bail. A desk officer in charge at a police station, county jail or police headquarters, or any of his or her superior officers, may, in such place, take cash bail for his or her appearance before the appropriate court the next morning from any person arrested pursuant to a warrant issued by the family court; provided that such arrest occurs between eleven o'clock in the morning and eight o'clock the next morning, except that in the city of New York bail shall be taken between two o'clock in the afternoon and eight o'clock the next morning. The amount of such cash bail shall be the amount fixed in the warrant of arrest.

§ 156. Contempts. The provisions of the judiciary law relating to civil and criminal contempts shall apply to the family court in any proceeding in which it has jurisdiction under this act or any other law, and a violation of an order of the family court in any such proceeding which directs a party, person, association, agency, institution, partnership or corporation to do an act or refrain from doing an act shall be punishable under such provisions of the judiciary law, unless a specific punishment or other remedy for such violation is provided in this act or any other law.

§ 157. Interpretation of this part. If there is any conflict between the application of any provision of this part to any proceeding under this act and any provision of the article of this act governing the proceeding, the article governing the proceeding controls.

§ 158. Protective custody of material witness; duration. (a) The family court may place in protective custody a person under sixteen years of age who is a material witness, as provided by law.

(b) No order of protective custody under paragraph (a) may extend for a period of more than fourteen days. For good cause shown, the court may renew the order for additional periods of fourteen days, but the total period of protective custody under this part may not exceed forty-two days.

PART 6

GENERAL PROVISIONS CONCERNING HEARINGS

§ 161. Days and hours court open; availability of judge. (a) The days and hours the court is open shall be as provided by rule of court.

(b) For purposes of sections seven hundred twenty-eight and one thousand twenty-two of this act, rules of court may authorize a judge other than a judge of the family court to perform the functions of a family court judge under those sections.

(c) For purposes of subdivision (a) of section four hundred thirty, subdivision (a) of section five hundred fifty, subdivision (a) of section six hundred fifty-five, subdivision (a) of section seven hundred forty, subdivision one of section eight hundred twenty-eight and subdivision (a) of section one thousand twenty-nine of this act, any magistrate is authorized to perform the functions of a family court judge as prescribed in such sections.

§ 162. Waiting room for children. So far as possible a waiting room with a competent person in charge shall be provided for the care of children brought to the family court under this act.

§ 162-a. Use of restraints on children in courtrooms. (a) Use of restraints. Except as otherwise provided in subdivision (b) of this section, restraints on children under the age of twenty-one, including, but not limited to, handcuffs, chains, shackles, irons or straitjackets, are prohibited in the courtroom.

(b) Exception. Permissible physical restraint consisting of handcuffs or footcuffs that shall not be joined to each other may be used in the courtroom during a proceeding before the court only if the court determines on the record, after providing the child with an opportunity to be heard, why such restraint is the least restrictive alternative necessary to prevent:

(1) physical injury to the child or another person by the child;

(2) physically disruptive courtroom behavior by the child, as evidenced by a recent history of behavior that presented a substantial risk of physical harm to the child or another person, where such behavior indicates a substantial likelihood of current physically disruptive courtroom behavior by the child; or

(3) flight from the courtroom by the child, as evidenced by a recent history of absconding from the court.

§ 163. Separate hearing when child appears. Any case under this act in which children are directly involved or appear shall be heard separately and apart from the hearing of cases against adults, and, where practicable, room separate and apart from a regular court room shall be provided for the use of the family court, together with suitable quarters for the use of the judge, probation officers and other employees of the court.

§ 164. Judicial notice of matters of law; proof of statutes, decrees and decisions of another state or county. The provisions of the civil practice law and rules and any rules regulating judicial notice and authentication and proof of records shall, unless otherwise prescribed by this act, apply to proceedings under this act to the extent that they are appropriate to the proceedings involved.

§ 165. Procedure. (a) Where the method of procedure in any proceeding in which the family court has jurisdiction is not prescribed by this act, the procedure shall be in accord with rules adopted by the administrative board of the judicial conference or, if none has been adopted, with the provisions of the civil practice act to the extent they are suitable to the proceeding involved. Upon the effective date of the CPLR, where the method of procedure in any proceeding in which the family court has jurisdiction is not prescribed, the provisions of the civil practice law and rules shall apply to the extent that they are appropriate to the proceedings involved.

(b) In any proceeding commenced pursuant to the provisions of the social services law in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of the social services law.

§ 166. Privacy of records. The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.

§ 167. Effect of personal appearance. Whenever a person, whether adult or child, to whom a summons shall have been directed shall physically appear before the court on the return day of such summons, it shall be conclusively presumed that the summons was duly served upon such person in accordance with the provisions of this act unless such person or some one in his behalf shall on such return day make objection to the manner of service.

§ 168. Notice of order of protection. 1. In any case in which an order of protection or temporary order of protection has been made by the family court, the clerk of the court shall issue a copy of such order to the petitioner and respondent and to any other person affected by the order. The presentation of a copy of an order of protection or temporary order of protection or a warrant or a certificate of warrant to any peace officer, acting pursuant to his special duties, or police officer shall constitute authority for him to arrest a person charged with violating the terms of such order of protection or temporary order of protection and bring such person before the court and, otherwise, so far as lies within his power, to aid in securing the protection such order was intended to afford, provided, however, that any outstanding, unexpired certificate of order of protection or temporary order of protection shall have the same force and effect as a copy of such order or temporary order.

2. A copy of an order of protection or temporary order of protection shall be filed by the clerk of the court with the sheriff's office or police department in the county in which the petitioner resides, or, if the petitioner resides within a city, with the police department of such city. A copy of such order of protection or temporary order of

protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place and school of anyone intended to be protected by such order. A copy of the order of protection or temporary order of protection may also be filed by the petitioner with any appropriate police department or sheriff's office having jursidiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided. Any outstanding, unexpired certificate or order of protection or temporary order of protection shall be filed in the same manner as a copy of an order of protection or temporary order of protection.

3. Any order of protection or temporary order of protection issued by the family court shall bear, in a conspicuous manner, the language, as the case may be, "this order constitutes an order of protection" or "this order constitutes a temporary order of protection", on the front page of said order. The order of protection or temporary 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.

§ 169. 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 issued by the court under article three, four, five, six, seven, eight or ten of this act, 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.

PART 7

PROCEEDING IN COUNTIES OTHER THAN ORIGINAL COUNTY

§ 171. Enforcement or modification of orders in other county. Except for proceedings for enforcement or modification of an order of probation in cases brought under article three or seven of this act, which shall be subject to the terms of subdivision two of section one hundred seventy-six of this part, a lawful order of the family court in any county may be enforced or modified in that county or in the family court in any other county in which the party affected by the order resides or is found.

§ 172. Commencement of enforcement and modification proceedings in other county. An enforcement or modification proceeding commenced in the family court in a county other than that in which the order was made is commenced by a petition alleging that fact in addition to the facts required under this act for enforcement or modification orders. An original or certified copy of the order sought to be enforced or modified shall be attached to the petition.

§ 173. Transfer of papers to other county. If the family court in which an enforcement or modification proceeding is brought under this article does not transfer it under section one hundred seventy-four of this part, it shall advise the family court that issued the order sought to be enforced or modified of the commencement of such proceedings and shall request that court to forward to it by electronic or other means a copy of all or any of the papers with respect to the order sought to be enforced or modified. The requested court shall forthwith comply with the request.

§ 174. Transfer of proceedings to another county. The family court in a county may for good cause transfer a proceeding to a family court in any other county where the proceeding might have been originated and shall transfer a proceeding laying venue in the wrong county to a family court in any county where the proceeding might have been originated.

§ 175. Violation of probation in other county. Except for cases brought under articles three and seven of this act which shall be subject to the terms of subdivision two of section one hundred seventy-six of this part, if an act or omission which constitutes a violation of the terms of probation allegedly occurs in a county other than the one in which the order of probation was made, the family court in either county may hear the allegation of a violation of the terms of probation and proceed in accordance with the provisions of this act.

§ 176. Inter-county probation. 1. Transfer of probation supervision. Where a person placed on probation resides in another jurisdiction within the state at the time of the order of disposition, the family court which placed him or her on probation may, and, in the case of orders of probation issued under article three or seven of this act, shall transfer probation supervision to the probation department in the jurisdiction in which the person resides. Where, after a probation disposition is pronounced, a probationer relocates to another jurisdiction within the state, the family court which placed him or her on probation may, and, in the case of orders of probation issued under article three or seven of this act, shall transfer probation supervision to the probation department in the jurisdiction of the probationer's new residence. Upon completion of a transfer of probation supervision as authorized pursuant to this subdivision, the probation department in the receiving jurisdiction shall assume all powers and duties of the probation department in the jurisdiction of the family court which placed the probationer on probation. Any transfer under this subdivision must be in accordance with rules adopted by the commissioner of the division of criminal justice services.

2. For all cases brought under article three or seven of this act, where probation supervision has been transferred under subdivision one of this section, the family court in the receiving jurisdiction shall hear any proceedings to enforce or modify the order of probation, unless the receiving family court determines that there is good cause to return the proceeding to the sending family court for adjudication, in which case the proceeding shall be returned to the sending family court for adjudication.

3. For the purpose of this section, "jurisdiction" shall mean a county or the city of New York.

ARTICLE 2

ADMINISTRATION, MEDICAL EXAMINATIONS, ATTORNEYS FOR CHILDREN, AUXILIARY SERVICES

PART 1

ADMINISTRATION

§ 211. Administration and operation of family court. The administration and operation of the family court shall be in accord with article seven-a of the judiciary law.

§ 212. Rules of court. (a) The administrative board of the judicial conference shall prepare rules of court when required by this act and may prepare rules of court when authorized by this act. To the extent practicable, any rule of court prepared under this act shall apply uniformly throughout the state of New York.

(b) In exercising its responsibilities under paragraph (a), the administrative board may designate a committee of judges of the family court and of such consultants as it deems appropriate to draft rules for approval by the administrative board.

§ 213. Reports to administrative board, legislature and governor. (a) In addition to any reports required by the administrative board of the judicial conference under article seven-a of the judiciary law, the administrative board shall, as soon as practicable, require the family court in each county to include in its reports to the administrative board and the administrative board shall include in its annual report to the legislature information, by county, showing:

(i) the number of children temporarily removed under section one thousand twenty-two before the filing of a petition, the number of children temporarily removed without court order under section ten hundred twenty-four of this act, and the period of time between such removal and the filing of a petition;

(ii) the number of children temporarily removed under section one thousand twenty-seven after the filing of a petition and the period of time that passed after such removal until its termination;

(iii) the number of placements under section one thousand fifty-two by person, agency or institution in which the placement is made, and the number of orders extending the period of placement;

(iv) the number of children released and the number detained under sections seven hundred twenty-eight and 307.4;

(v) the number of alleged juvenile delinquents released and the number detained under section 320.5 and the number of alleged persons in need of supervision released and detained under section seven hundred thirty-nine, and the duration of the detention in both groups;

(vi) the number of adjudicated juvenile delinquents placed under section 353.3 and the number of adjudicated persons in need of supervision placed under section seven hundred fifty-six by person, agency or institution in which the placement is made, and the number of orders extending the period of placement;

(vii) the number of adjudicated juvenile delinquents put on probation under section 353.2 and the number of adjudicated persons in need of supervision put on probation under section seven hundred fifty-seven and the duration of such probation;

(viii) the number, nature and disposition of cases involving child abuse under article ten of this act, including total number of new cases, their nature, whether heard by the child abuse part, the age and sex of the children involved, the type of petitioner, the number of children temporarily removed both before and after the filing of a petition, the length of time and number of adjournments between the filing of a petition and the fact-finding hearing, the number of cases that are dismissed, withdrawn, sustained and admitted to, the length of time and number of adjournments between the fact-finding hearing and the dispositional hearing, and the final disposition of such cases.

(b) Rules of court shall as soon as practicable implement this section by prescribing appropriate forms for reports and may require such additional information as may be appropriate. The administrative board of the judicial conference may request the state department of corrections and community supervision and the state department of social welfare to assist it in the preparation and processing of reports under this section, and those departments, when so requested, shall render such assistance as is possible.

§ 214. Chief administrator to prescribe forms; electronic filing in family court. (a) The chief administrator of the courts shall promulgate a uniform, statewide petition for adoption and may prescribe such other forms as may be proper for the efficient and just administration of this act, including forms for petitions, summons, warrants, subpoenas, undertakings, and orders authorized by this act.

(b)(i) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means ("e-filing") in the family court for: (1) the origination of proceedings in such court, and (2) the filing and service of papers in pending proceedings.

(ii) Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel unless such party, upon his or her request, chooses to participate.

(c) (i) Where participation in this program is to be voluntary:

(1) filing a petition by electronic means with the court for the

purpose of originating a proceeding shall not require the consent of any other party; nor shall the failure of a party or other person who is entitled to notice of the proceedings to consent to participation bar any other party from filing and serving papers by electronic means upon the court or any other party or person entitled to receive notice of such proceeding who has consented to participation;

(2) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(3) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(4) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program;

(5) upon the filing of a petition with the court by electronic means, a party to the proceeding and any attorney for such person shall be permitted to immediately review and obtain copies of such documents and papers if such person or attorney would have been authorized by law to review or obtain copies of such documents and papers if they had been filed with the court in paper form.

(ii) Where participation in this program is to be required:

(1) such requirement shall not be effective in a court in a county unless the chief administrator shall:

(A) first consult with and obtain the agreement of each authorized presentment agency, child protective agency, the family court bar providing representation to parents, and the family court bar providing representation to children (as represented by the head of each legal services organization representing parents and/or children, the head of each public defender organization, and president of the local bar association as applicable) of such county, provide all persons or organizations, or their representative or representatives, who regularly appear in proceedings in the family court of such county, in which proceedings the requirement of consent is to be eliminated with reasonable notice and an opportunity to submit comments with respect thereto and give due consideration to all such comments, and consult with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (u) of subdivision two of section two hundred twelve of the judiciary law; and

(B) afford all those with whom he or she consults pursuant to clause (A) of this subparagraph with a reasonable opportunity to submit comments with respect to the program, which comments he or she shall consider and shall post for public review on the office of court administration's website; and

(C) consult with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (u) of subdivision two of section two hundred twelve of the judiciary law; and

(2) as provided in subdivision (d) of this section, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

(d) Where the chief administrator eliminates the requirement of consent as provided in subparagraph two of paragraph (ii) of subdivision (b) of this section, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending. Said form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

(i) Where the attorney certifies in good faith that he or she lacks the computer hardware and/or connection to the internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) Where the attorney certifies in good faith that he or she lacks the requisite knowledge in the operation of such computers and/or scanners necessary to participate. For the purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney.

Notwithstanding the foregoing provisions of this paragraph: (A) where a party or a person entitled to notice of the proceedings is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however, the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program; (B) a party who is not represented by counsel who has chosen to participate in the program shall be afforded the opportunity to opt out of the program for any reason via presentation of a prescribed form to be filed with the clerk of the court where the proceeding is pending; and (C) a court may exempt any attorney from being required to participate in the program upon application for such exemption, showing good cause therefor.

(e) For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

(f) Notwithstanding any provision of this chapter, no paper or document that is filed by electronic means in a proceeding in family court shall be available for public inspection on-line. Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action.

(g) Nothing in this section shall affect or change any existing laws governing the sealing and confidentiality of court records in family court proceedings or access to court records by the parties to such proceedings, nor shall this section be construed to compel a party to file a sealed document by electronic means.

(h) Nothing in this section shall affect or change existing laws governing service of process, nor shall this section be construed to abrogate existing personal service requirements as set forth in this act and the civil practice law and rules.

§ 215. Continuance in office of non-judicial personnel. (a) Officers and employees of the domestic relations court of the city of New York shall, to the extent practicable, be transferred to the family court in counties within the city of New York in accord with article seven-a of the judiciary law. To the extent practicable, those assigned to a division of the domestic relations court located in a particular county shall be assigned to the family court in that county.

(b) Officers and employees of the children's court in each county outside the city of New York shall, to the extent practicable, be transferred to the family court in their respective counties in accord with article seven-a of the judiciary law.

§ 216-a. Clerk of court. There shall be a clerk of court for the family court in each county. The clerk of court shall keep the court records and seal and have such other responsibilities as may be provided in accord with article seven-a of the judiciary law.

§ 216-b. Petition forms. The clerk of the court shall give petition forms to any person requesting them.

§ 216-c. Preparation of petitions. (a) Whenever a petitioner is not represented by counsel, any person who assists in the preparation of a petition shall include all allegations presented by the petitioner.

(b) No clerk of the court or probation officer may prevent any person who wishes to file a petition from having such petition filed with the court immediately.

(c) If there is a question regarding whether or not the family court has jurisdiction of the matter, the petition shall be prepared and the clerk shall file the petition and refer the petition to the court for determination of all issues including the jurisdictional question.

(d) This section shall not be applicable to juvenile delinquency proceedings.

§ 217. Orders; filing and service. 1. An order shall be in writing and signed with the judge's signature or initials by the judge who made it.

The form of such order shall be promulgated by the chief administrator of the courts pursuant to section two hundred fourteen of this article.

2. The original of an order of the family court shall be filed with the clerk of the family court in the county in which the family court making the order is located.

3. The court shall file or direct the filing of an order within twenty days of the decision of the court. If the court directs that such order be settled on notice, such twenty day period shall commence on the date on which such order is settled.

4. The court shall direct service of a copy of an order in whatever manner it deems appropriate. If the court makes no direction, the applicable provisions of the civil practice law and rules shall apply. Where the clerk of the court is directed to serve such order, the clerk shall note in the court record the manner and date of service and the person to whom such order was served.

PART 2
SUPPORT BUREAU; DUTIES TO COOPERATE

§ 221. Support collection unit; local probation department. 1. When referred to in this chapter, the support collection unit designated by the appropriate social services district, shall be deemed to refer to any support collection unit established by a social services district pursuant to the provisions of section one hundred eleven-h of the social services law, or to a local public agency, where such agency is responsible for the performance of all the functions of the support collection unit pursuant to an agreement under the provisions of section one hundred eleven-h of the social services law.

2. The local probation department shall be responsible for providing services to the family court, in accordance with the provisions of subdivision six of section two hundred fifty-six of the executive law.

§ 228. Cooperation by banks and other fiduciary institutions. Banks and other fiduciary institutions are authorized and required to report to the court, when so requested, full information relative to any fund therein deposited by a petitioner or respondent in a proceeding under articles four or five of this act.

§ 229. Cooperation by employer. Employers are authorized and required to report to the court, when so requested, full information as to the earnings of a petitioner or respondent in a proceeding under articles four or five of this act.

PART 3

MEDICAL EXAMINATIONS AND TREATMENT

§ 231. Jurisdiction over intellectually disabled children. If it shall appear to the court that any child within its jurisdiction is intellectually disabled, the court may cause such child to be examined as provided in the mental hygiene law and if found to be intellectually disabled as therein defined, may commit such child in accordance with the provisions of such law.

§ 232. Jurisdiction over children with physical disabilities. (a) The family court has jurisdiction over children with physical disabilities.

(b) "Child with physical disabilities" means a person under twenty-one years of age who, by reason of a physical disability, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law, or has a physical disability, as provided in section two thousand five hundred eighty-one of the public health law.

(c) (1) Whenever a parent or other person who has been ordered to contribute to the cost of medical service authorized pursuant to section two thousand five hundred eighty-two of the public health law refuses to or fails to make such contribution, the health commissioner or the medical director of the program for children with physical disabilities, as the case may be, may institute a proceeding in the family court to compel such contribution. In any case where an order has been granted pursuant to section 556-18.0 or section 17-121 of the administrative code of the city of New York the department of health, under the conditions specified in such section, may institute a proceeding in the family court to compel the parents of a child for whom care, treatment, appliances or devices have been ordered pursuant to such section, or other persons legally chargeable with the support of such child, to contribute such portion of the expense of such care, treatment, appliances or devices as may be just, by payments in installments or otherwise.

(2) A parent or other person who has been ordered by the commissioner of health of a county or part-county health district, the medical director of a county program for children with physical disabilities, or the department of health of the city of New York, to contribute to the cost of medical service authorized under section two thousand five hundred eighty-two of the public health law, may petition the family court to review such order and determine the extent, if any, of his financial liability. In any such proceeding, the court may by order require such parent or other person to pay part or all of the expense of such service in a lump sum or in such weekly or monthly installments as

the court may decide.

§ 233. Medical services. Whenever a child within the jurisdiction of the court appears to the court to be in need of medical, surgical, therapeutic, or hospital care or treatment, a suitable order may be made therefor.

§ 234. Compensation and liability for support and care in counties outside the city of New York. (a) Whenever a child is detained, placed or committed under the provisions of this act to an authorized agency, or to any person other than his parent and is retained in accordance with the rules of the state board of social welfare, compensation for his care and maintenance shall be a charge on the county. The compensation paid by the county for care and maintenance of the child may be charged back to a city or town in the county in accordance with and to the extent permitted by the provisions of the social services law. All bills for such care and maintenance to be paid from public funds shall be paid by the county treasurer from moneys appropriated for public assistance and care in the county social services district by warrant of the commissioner of social services.

(b) The court may, after issuance and service of an order to show cause upon the parent or other person having the duty under the law to support such child, adjudge that such parent or other person shall pay to the court such sum as will cover in whole or in part the support of such child, and willful failure to pay such sum may, in the discretion of the court, be punished as for a criminal contempt of court. When a person liable to such payment on order, as herein provided, is before the court in the proceeding relating to the commitment or placement, a formal order to show cause may be dispensed with in the discretion of the court.

(c) (i) The social services district from which the detention, placement or commitment is made shall be entitled to be reimbursed by another social services district for its expenditures for care and maintenance of the child, if, and to the extent that, it would have been entitled to be reimbursed therefor by such other district had the care been provided under and pursuant to the provisions of the social services law. The commissioner of social services of the social services district from which the commitment was made may enforce repayment from the other social services district in accordance with the provisions of the social services law.

(ii) In accordance with the provisions of the social services law and the rules and regulations of the state department of social services relating to state charges, and from funds available to the state department of social services therefor, the state shall reimburse the social services district for the full cost of care and maintenance of the child, in the event the child is a state charge as defined by the social services law.

§ 235. Compensation and liability for support and care in counties within the city of New York. (a) Upon the detention, placement or commitment of a child by the family court in a county within the city of New York to a public or private institution other than a shelter maintained and conducted by a society for the prevention of cruelty to children, the department of social services of the city of New York shall investigate the ability of the parent of the child, or other person legally chargeable, to contribute in whole or in part to the expense incurred by the city of New York on account of the maintenance of such child.

(b) If in the opinion of the department of social services such parent or legal custodian is able to contribute in whole or in part the commissioner of social services shall thereupon institute a proceeding in the family court to compel such parent or person legally chargeable to contribute such portion of such expense on account of maintenance of such child as shall be proper and just.

§ 236. Powers of the family court with regard to certain handicapped children. 1. This section shall apply for: (a) services provided to children with handicapping conditions as defined in subdivision one of section forty-four hundred one of the education law who were not eligible, prior to September first, nineteen hundred eighty-six, for educational services during July and August pursuant to article seventy-three, eighty-five, eighty-seven, eighty-eight or eighty-nine of the education law; (b) for services provided to children with handicapping conditions who meet all the criteria of subdivision one of section forty-four hundred one of the education law except that such children are under the age of five and are not entitled to attend public schools without the payment of tuition pursuant to section thirty-two hundred two of the education law and that such children are also not eligible for educational services pursuant to article seventy-three, eighty-five, eighty-seven, eighty-eight or eighty-nine of the education law; (c) for services provided to children with handicapping conditions who meet all the criteria of subdivision one of section forty-four hundred one of the education law except that such children are five years of age or under and: (i) are first eligible to attend public school in the nineteen hundred eighty-seven--eighty-eight or the nineteen hundred eighty-eight--eighty-nine school year but are not eligible for educational services pursuant to the education law during the months of July and August, nineteen hundred eighty-seven or nineteen hundred eighty-eight, or (ii) are not eligible to commence a state appointment pursuant to article eighty-five, eighty-seven or eighty-eight of the education law during the months of July and August; (d) for services provided during the nineteen hundred eighty-nine--ninety school year, pursuant to the provisions of subdivision six of section forty-four hundred ten of the education law; (e) for services provided prior to July first, nineteen hundred ninety-one to children with handicapping conditions who met the criteria of subdivision one of section forty-four hundred one of the education law except that such children were three years of age or under and (i) were not eligible for services pursuant to section forty-four hundred ten of such law, or (ii) were not eligible for services through a state appointment pursuant to article eighty-five, eighty-seven or eighty-eight of such law; and (f) for services provided on or after July first, nineteen hundred ninety-one to children with handicapping conditions who meet the criteria of subdivision one of section forty-four hundred one of the education law except that such children are three years of age or under and (i) are not eligible for services pursuant to section forty-four hundred ten of such law, or who are first eligible for services pursuant to such section whose parents or persons in parental relationship elect to have them continue to be eligible to receive services pursuant to this section through August thirty-first of the calendar year in which the child turns three or (ii) are not eligible for services through a state appointment pursuant to article eighty-five, eighty-seven or eighty-eight of such law. (f) for services provided to children with handicapping conditions who meet the criteria of subdivision one of section forty-four hundred one of the education law and who, on or before June thirtieth, nineteen hundred ninety-three, are receiving services or who, as of July first, nineteen hundred ninety-three, have petitioned for services pursuant to this section prior to such date and which complete petition has not been denied prior to October first, nineteen hundred ninety-three and whose parent has elected to continue the provision of such services until the child is no longer an eligible child under title II-A of article twenty-five of the public health law or is eligible for services pursuant to section forty-four hundred ten of the education law. (g) Notwithstanding any other provision of this section, this section shall not apply for services to children who were not receiving services prior to July first, nineteen hundred ninety-three, or who, as of July first, nineteen hundred ninety-three, have petitioned for services prior to July first, nineteen hundred ninety-three and whose complete petition has been denied prior to October first, nineteen hundred ninety-three.

2. Whenever such a child within the jurisdiction of the court pursuant to this section appears to the court to be in need of special educational services as provided in section forty-four hundred six of the education law, including transportation, tuition or maintenance, a suitable order may be made for the education of such child in its home, a hospital, or other suitable institution, and the expenses thereof, when approved by the court and duly audited, shall be a charge upon the county or the city of New York thereof wherein the child is domiciled at the time application is made to the court for such order.

3. (a) Every such order for services to be provided after September first, nineteen hundred eighty-six which provides for the transportation of a child shall further require that such transportation shall be

provided by the county or the city of New York, as the case may be, and, that the city of New York may delegate the authority to provide such transportation to the board of education or the city school district of such city.

(b) Such order shall further require that such transportation shall be provided within thirty days of the issuance of such order, and, shall be provided as part of a municipal cooperation agreement, as part of a contract awarded to the lowest responsible bidder in accordance with the provisions of section one hundred three of the general municipal law, or as part of a contract awarded pursuant to an evaluation of proposals to the extent authorized by paragraphs e and f of subdivision fourteen of section three hundred five of the education law and otherwise consistent with the provisions of this subdivision, and that buses and vehicles utilized in the performance of such contract shall meet the minimum requirements for school age children as established by the commissioner of transportation.

PART 4

Attorneys for children

§ 241. Findings and purpose. This act declares that minors who are the subject of family court proceedings or appeals in proceedings originating in the family court should be represented by counsel of their own choosing or by assigned counsel. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition. This part establishes a system of attorneys for children who often require the assistance of counsel to help protect their interests and to help them express their wishes to the court. Nothing in this act is intended to preclude any other interested person from appearing by counsel.

§ 242. Attorney for the child. As used in this act, "attorney for the child" refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to section two hundred forty-nine of this act.

§ 243. Designation. (a) The office of court administration may enter into an agreement with a legal aid society for the society to provide attorneys to represent children in the family court or appeals in proceedings originating in the family court in a county having a legal aid society.

(b) The appellate division of the supreme court for the judicial department in which a county is located may, upon determining that a county panel designated pursuant to subdivision (c) of this section is not sufficient to afford appropriate services of attorneys for children, enter into an agreement, subject to regulations as may be promulgated by the administrative board of the courts, with any qualified attorney or attorneys to serve as attorneys for children for the family court or appeals in proceedings originating in the family court in that county.

(c) The appellate division of the supreme court for the judicial department in which a county is located may designate a panel of attorneys for children for the family court and appeals in proceedings originating in the family court in that county, subject to the approval of the administrative board of the courts. For this purpose, such appellate division may invite a bar association to recommend qualified persons for consideration by the appellate division in making its designation, subject to standards as may be promulgated by such administrative board.

§ 244. Duration of designation. (a) An agreement pursuant to subdivision (a) of section two hundred forty-three of this chapter may be terminated by the office of court administration by serving notice on the society sixty days prior to the effective date of the termination.

(b) No designations pursuant to subdivision (c) of section two hundred forty-three may be for a term of more than one year, but successive designations may be made. The appellate division proceeding pursuant to subdivision (c) of section two hundred forty-three, may at any time increase or decrease the number of attorneys for children designated in any county and may rescind any designation at any time, subject to the approval of the office of court administration.

§ 245. Compensation. (a) If the office of court administration proceeds pursuant to subdivision (a) of section two hundred forty-three of this chapter, the agreement shall provide that the society shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the program for the provision of attorneys for children by the respective legal aid society, approved by the administrative board, and the office of court administration may require such reports as it deems necessary from the society.

(b) If an appellate division proceeds pursuant to subdivision (b) of such section two hundred forty-three, the agreement may provide that the attorney or attorneys shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the program for the provision of attorneys for children by the respective attorney or attorneys, and the appellate division may require such reports as it deems necessary from the attorney or attorneys.

(c) If an appellate division proceeds pursuant to subdivision (c) of such section two hundred forty-three, attorneys for children shall be compensated and allowed expenses and disbursements in the same amounts established by subdivision three of section thirty-five of the judiciary law.

§ 246. Supervision by administrative board. The administrative board of the judicial conference may prescribe standards for the exercise of the powers granted to the appellate divisions under this part and may require such reports as it deems desirable.

§ 248. Appropriations. The costs of attorneys for children under section two hundred forty-five shall be payable by the state of New York within the amounts appropriated therefor.

§ 249. Appointment of attorney for child. * (a) In a proceeding under article three, seven, ten, ten-A or ten-C of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act or in any proceeding where a minor is detained under or governed by the interstate compact for juveniles established pursuant to section five hundred one-e of the executive law, the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of people with developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by assigned counsel. In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

* NB Effective until September 1, 2030

* (a) In a proceeding under article three, seven, ten, ten-A or ten-C of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of the office for people with developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by assigned counsel. In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

* NB Effective September 1, 2030

(b) In making an appointment of an attorney for a child pursuant to this section, the court shall, to the extent practicable and appropriate, appoint the same attorney who has previously represented the child. Notwithstanding any other provision of law, in a proceeding under article three of this act following an order of removal made pursuant to article seven hundred twenty-five of the criminal procedure law, the court shall, wherever practicable, appoint the same counsel who represented the juvenile offender in the criminal proceedings.

(c) In any proceeding under subdivision eleven of section 355.5 of this act, subdivision (j) of section seven hundred fifty-six-a of this act, section one thousand fifteen-a of this act, subdivision (d) of section one thousand eighty-eight of this act, clause (C-1) of subparagraph (viii) of paragraph two of subdivision (d) of section one thousand eighty-nine of this act, and/or paragraph (c) of subdivision two-a of section three hundred fifty-eight-a of the social services law, the court shall appoint an attorney to represent a youth who was formerly in foster care and is seeking to enforce an order made on their behalf before their twenty-first birthday while they were still in foster care, if independent legal representation is not available to such youth. Such representation shall continue for all further proceedings thereon, including all motions and any related appeals.

*** § 249-a. Waiver of counsel.** A minor who is a subject of a juvenile delinquency or person in need of supervision proceeding or in any proceeding where a minor is detained under or governed by the interstate compact for juveniles established pursuant to section five hundred one-e of the executive law shall be presumed to lack the requisite knowledge and maturity to waive the appointment of an attorney. This presumption may be rebutted only after an attorney has been appointed and the court determines after a hearing at which the attorney appears and participates and upon clear and convincing evidence that (a) the minor understands the nature of the charges, the possible dispositional alternatives and the possible defenses to the charges, (b) the minor possesses the maturity, knowledge and intelligence necessary to conduct his or her own defense, and (c) waiver is in the best interest of the minor.

* NB Effective until September 1, 2030

* § 249-a. Waiver of counsel. A minor who is a subject of a juvenile delinquency or person in need of supervision proceeding shall be presumed to lack the requisite knowledge and maturity to waive the appointment of an attorney. This presumption may be rebutted only after an attorney has been appointed and the court determines after a hearing at which the attorney appears and participates and upon clear and convincing evidence that (a) the minor understands the nature of the charges, the possible dispositional alternatives and the possible defenses to the charges, (b) the minor possesses the maturity, knowledge and intelligence necessary to conduct his or her own defense, and (c) waiver is in the best interest of the minor.

* NB Effective September 1, 2030

§ 249-b. Rules of court. (a) The chief administrator of the courts, pursuant to paragraph (e) of subdivision two of section two hundred twelve of the judiciary law, shall promulgate court rules for attorneys for children. Such court rules shall:

1. prescribe workload standards for attorneys for children, including maximum numbers of children who can be represented at any given time, in order to ensure that children receive effective assistance of counsel comporting with legal and ethical mandates, the complexity of the proceedings affecting each client to which the attorney is assigned, and the nature of the court appearance likely to be required for each individual client; and

2. provide for the development of training programs with the input of and in consultation with the state office for the prevention of domestic violence. Such training programs must include the dynamics of domestic violence and its effect on victims and on children, and the relationship between such dynamics and the issues considered by the court, including, but not limited to, custody, visitation and child support. Such training programs along with the providers of such training must be approved by the office of court administration following consultation with and input from the state office for the prevention of domestic violence; and

3. require that all attorneys for children, including new and veteran attorneys, receive initial and ongoing training as provided for in this section.

(b) Appointments of attorneys for children under section two hundred forty-nine of this part shall be in conformity with the rules.

PART 5

AUXILIARY SERVICES

§ 251. Medical examinations. (a) After the filing of a petition under this act over which the family court appears to have jurisdiction, the court may order any person within its jurisdiction and the parent or other person legally responsible for the care of any child within its jurisdiction to be examined by a physician, psychiatrist or psychologist appointed or designated for that purpose by the court when such an examination will serve the purposes of this act, the court may remand any such person for physical or psychiatric examination to, or direct such person to appear for such examination at:

(1) the department of health of the city of New York, if the court is located in a county within the city of New York, or

(2) a hospital maintained by the county in which the court is located, if the court is in a county outside the city of New York, or

(3) a hospital maintained by the state of New York, or

(4) a qualified private institution approved for such purpose by the

local social services department.

Provided, however, that, outside of the city of New York, if the court shall order a psychiatric examination of any such person, the court may direct the director of an institution in the department of mental hygiene serving the institutional district in which the court is located to cause such examination to be made. Such director shall be afforded an opportunity to be heard before the court makes any such direction. The director may designate a member of the staff of the institution or any psychiatrist in the state to make the examination. The psychiatrist shall forthwith examine such person. The examination may be made in the place where the person may be or the court may remand such person to, or otherwise direct that such person appear at, such institution or to a hospital or other place for such examination. During the time such person is at such institution for examination, the director may administer or cause to be administered to such person such psychiatric, medical or other therapeutic treatment as in the director's discretion should be administered. The chief administrator of the courts shall prescribe the form of an order for examination. Upon completion of the examination, the director shall transmit to the court the report of the psychiatrist who conducted the examination.

(b) Except for examinations conducted pursuant to section 322.1 of this act where the family court determines that an inpatient examination is necessary, or those ordered after a fact-finding hearing has been completed under article three or seven of this act and the court determines according to the criteria in subdivision three of section 320.5 or subdivision (a) of section seven hundred thirty-nine of this act that the child should be detained pending disposition, or unless otherwise consented to by the adult to be examined or by the attorney representing the respondent, all examinations pursuant to this section shall be conducted on an outpatient basis. An order for remand after a fact-finding hearing under article three or seven of this act shall include findings on the record supporting the need for examination in a residential facility and a determination that it is the most appropriate facility. Remands for examinations shall be for a period determined by the facility, which shall not exceed thirty days, except that, upon motion by the person detained on its own motion, the court may, for good cause shown, terminate the remand at any time.

(c) Nothing in this section shall preclude the issuance of an order by the family court pursuant to section 9.43 of the mental hygiene law for emergency admission for immediate care, observation and treatment of a person before the court or pursuant to section twenty-one hundred twenty of the public health law for commitment for care and maintenance of a person before the court.

§ 252. Probation service. (a) The family court in each county shall have a probation service. This service may include volunteer probation officers when necessary, provided they have the qualifications required of salaried officers, but no such volunteer probation officer shall be a chief probation officer or receive pay from public funds for his services.

(b) The methods, organization, and responsibilities of the probation service shall be defined by rule of court, which shall not be inconsistent with any provision of law.

(c) When there is a sufficient number of probation officers of the same religious faith as that of a child to be placed on probation, the child shall be placed on probation with a probation officer of the same religious faith as that of the child.

(d) The probation service shall be available to assist the court and participate in all proceedings under this act, including supervision of the family or individual family members pending final disposition of a child protection proceeding under article ten.

*** § 252-a. Fees.** (a) Notwithstanding any other provision of law, every county, including the city of New York, may adopt a local law authorizing its probation department which is ordered to conduct an investigation pursuant to section six hundred fifty-three of this act, to be entitled to a fee of not less than fifty dollars and not more than five hundred dollars from the parties in such proceeding for performing such investigation. Such fee shall be based on the party's ability to pay the fee and the schedule for payment shall be fixed by the court issuing the order for investigation, pursuant to the guidelines issued by the office of probation and correctional alternatives, and may in the discretion of the court be waived when the parties lack sufficient means to pay the fee. The court shall apportion the fee between the parties based upon the respective financial circumstances of the parties and the equities of the case.

(b) Fees pursuant to this section shall be paid directly to the local probation department to be retained and utilized for local probation services, and shall not be considered by the office of probation and correctional alternatives when determining state aid pursuant to section two hundred forty-six of the executive law.

* NB Expires September 1, 2027

§ 253. Auxiliary services. The family court in any county shall have such other auxiliary services as will serve the purposes of this act and as are within its authorized appropriation.

§ 254. Presentation by corporation counsel, county attorney or district attorney. (a) The family court or the appropriate appellate division of the supreme court may request the corporation counsel of the city of New York or the appropriate county attorney to present the case in support of the petition when, in the opinion of the family court or appellate division such presentation will serve the purposes of the act. When so requested, the corporation counsel or county attorney shall present the case in support of the petition and assist in all stages of the proceedings, including appeals in connection therewith. Nothing herein shall be deemed to affect the provisions of section five hundred thirty-five of this chapter.

(b) In all cases involving abuse, the corporation counsel of the city of New York and outside the city of New York, the appropriate district attorney shall be a necessary party to the proceeding.

§ 254-a. Procedure for district attorney presentation. 1. The county attorney and the district attorney of a county, and the corporation counsel of the city of New York and the district attorney of any county in such city, may enter into an agreement whereby the district attorney shall present the case in support of the petition in which a designated felony act has been alleged.

2. Where such agreement has been entered into, in the case of a respondent who is alleged to have done two or more acts which, if done by an adult, would constitute joinable offenses pursuant to subdivision two of section 200.20 of the criminal procedure law, the district attorney shall present the juvenile delinquency petition with respect to all such acts, notwithstanding less than all of such acts constitute designated felony acts.

3. Where such agreement has been entered into, the district attorney shall also present petitions which have been filed against all respondents who are accused of participating, in concert, in the commission of a designated felony act, notwithstanding less than all of such respondents are charged with having committed a designated felony act. Such petition shall be adjudicated in a single fact-finding hearing, unless the court orders separate fact-finding hearings for good cause shown.

4. When presenting cases the district attorney shall have the same powers under this act as the corporation counsel or county attorney and shall assist in all stages of the proceedings including appeals in connection therewith.

5. Such agreement shall be subject to the approval in the city of New York of its mayor, and outside the city of the respective county executive, if there be one, otherwise, the board of supervisors.

6. The district attorney may elect to present the petition against a respondent, who was the defendant in a criminal proceeding removed to the family court pursuant to article seven hundred twenty-five of the criminal procedure law, when a proceeding under article three is commenced as a result of the order of removal.

§ 255. Cooperation of officials and organizations. (a) It is hereby made the duty of, and the family court or a judge thereof may order, any state, county, municipal and school district officer and employee to render such assistance and cooperation as shall be within their legal authority, as may be required, to further the objects of this act provided, however, that with respect to a school district an order made pursuant to this section shall be limited to requiring the performance of the duties imposed upon the school district and board of education or trustees thereof pursuant to sections four thousand five, forty-four hundred two and forty-four hundred four of the education law, to review, evaluate, recommend, and determine the appropriate special services or programs necessary to meet the needs of a handicapped child, but shall not require the provisions of a specific special service or program, and such order shall be made only where it appears to the court or judge that adequate administrative procedure to require the performance of such duties is not available. It is hereby made the duty of and the family court or judge thereof may order, any agency or other institution to render such information, assistance and cooperation as shall be within its legal authority concerning a child who is or shall be under its care, treatment, supervision or custody as may be required to further the objects of this act. The court is authorized to seek the cooperation of, and may use, within its authorized appropriation therefor, the services of all societies or organizations, public or private, having for their object the protection or aid of children or families, including family counselling services, to the end that the court may be assisted in every reasonable way to give the children and families within its jurisdiction such care, protection and assistance as will best enhance their welfare.

(b) An order of the family court or a judge thereof directing a social services district and/or social services official, as defined in section two of the social services law, to perform an action for the purpose of assisting a youth placed in foster care, shall remain enforceable after such youth is discharged from foster care pursuant to subdivision (d) of section one thousand eighty-eight of this act.

§ 256. Visitation, inspection and supervision by state department of

social services or board of social welfare. Any child placed or committed under order of the court shall be subject to such visitation, inspection and supervision as the state board of social welfare or department of social services shall provide for or require.

PART 6

COUNSEL FOR INDIGENT ADULTS IN FAMILY COURT PROCEEDINGS

§ 261. Legislative findings and purpose. Persons involved in certain family court proceedings may face the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges, and therefore have a constitutional right to counsel in such proceedings. Counsel is often indispensable to a practical realization of due process of law and may be helpful to the court in making reasoned determinations of fact and proper orders of disposition. The purpose of this part is to provide a means for implementing the right to assigned counsel for indigent persons in proceedings under this act.

§ 262. Assignment of counsel for indigent persons. (a) Each of the persons described below in this subdivision has the right to the assistance of counsel. When such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel of his or her own choosing, of the right to have an adjournment to confer with counsel, and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same:

(i) the respondent in any proceeding under article ten or ten-A of this act and the petitioner in any proceeding under part eight of article ten of this act;

(ii) the petitioner and the respondent in any proceeding under article eight of this act;

(iii) the respondent in any proceeding under part three of article six of this act;

(iv) the parent or person legally responsible, foster parent, or other person having physical or legal custody of the child in any proceeding under article ten or ten-A of this act or section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-b of the social services law, and a non-custodial parent or grandparent served with notice pursuant to paragraph (e) of subdivision two of section three hundred eighty-four-a of the social services law;

(v) the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding before the court in which the court has jurisdiction to determine such custody;

(vi) any person in any proceeding before the court in which an order or other determination is being sought to hold such person in contempt of the court or in willful violation of a previous order of the court, except for a contempt which may be punished summarily under section seven hundred fifty-five of the judiciary law;

(vii) the parent of a child in any adoption proceeding who opposes the adoption of such child.

(viii) the respondent in any proceeding under article five of this act in relation to the establishment of paternity.

(ix) in a proceeding under article ten-C of this act:

(1) a parent or caretaker as such terms are defined in section one thousand ninety-two of this act;

(2) an interested adult as such term is defined in section one thousand ninety-two of this act provided that:

(A) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act was removed from the care of such interested adult;

(B) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act resides with the interested adult; or

(C) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act resided with such interested adult immediately prior to the filing of the petition under article ten-C of this act;

(3) any interested adult as such term is defined in section one thousand ninety-two of this act or any person made a party to the article ten-C proceeding pursuant to subdivision (c) of section one thousand ninety-four of this act for whom the court orders counsel appointed pursuant to subdivision (d) of section one thousand ninety-four of this act.

(b) Assignment of counsel in other cases. In addition to the cases listed in subdivision (a) of this section, a judge may assign counsel to represent any adult in a proceeding under this act if he determines that such assignment of counsel is mandated by the constitution of the state of New York or of the United States, and includes such determination in the order assigning counsel;

(c) Implementation. Any order for the assignment of counsel issued under this part shall be implemented as provided in article eighteen-B of the county law.

ARTICLE 3

JUVENILE DELINQUENCY

PART 1

JURISDICTION AND PRELIMINARY PROCEDURES

§ 301.1. Purpose. The purpose of this article is to establish procedures in accordance with due process of law (a) to determine whether a person is a juvenile delinquent and (b) to issue an appropriate order of disposition for any person who is adjudged a juvenile delinquent. In any proceeding under this article, the court shall consider the needs and best interests of the respondent as well as the need for protection of the community.

§ 301.2. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Juvenile delinquent" means:

(a)(i) a person at least twelve and less than eighteen years of age, having committed an act that would constitute a crime if committed by an adult; or

(ii) a person over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, having committed an act that would constitute a violation as defined by subdivision three of section 10.00 of the penal law if committed by an adult, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act; or

(iii) a person over the age of seven and less than twelve years of age having committed an act that would constitute one of the following crimes, if committed by an adult: (A) aggravated criminally negligent homicide as defined in section 125.11 of the penal law; (B) vehicular manslaughter in the second degree as defined in section 125.12 of the penal law; (C) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law; (D) aggravated vehicular homicide as defined in section 125.14 of the penal law; (E) manslaughter in the second degree as defined in section 125.15 of the penal law; (F) manslaughter in the first degree as defined in section 125.20 of the penal law; (G) aggravated manslaughter in the second degree as defined in section 125.21 of the penal law; (H) aggravated manslaughter in the first degree as defined in section 125.22 of the penal law; (I) murder in the second degree as defined in section 125.25 of the penal law; (J) aggravated murder as defined in section 125.26 of the penal law; and (K) murder in the first degree as defined in section 125.27 of the penal law; and

(b) who is:

(i) not criminally responsible for such conduct by reason of infancy; or

(ii) the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.

2. "Respondent" means the person against whom a juvenile delinquency petition is filed pursuant to section 310.1. Provided, however, that any act of the respondent required or authorized under this article may be performed by his or her attorney unless expressly provided otherwise.

3. "Detention" means the temporary care and maintenance of children away from their own homes, as defined in section five hundred two of the executive law. Detention of a person alleged to be or adjudicated as a juvenile delinquent shall be authorized only in a facility certified by the division for youth as a detention facility pursuant to section five hundred three of the executive law.

4. "Secure detention facility" means a facility characterized by physically restricting construction, hardware and procedures.

5. "Non-secure detention facility" means a facility characterized by the absence of physically restricting construction, hardware and procedures.

6. "Fact-finding hearing" means a hearing to determine whether the respondent or respondents committed the crime or crimes alleged in the petition or petitions.

7. "Dispositional hearing" means a hearing to determine whether the respondent requires supervision, treatment or confinement.

8. "Designated felony act" means an act which, if done by an adult, would be a crime: (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the

first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen, fifteen, sixteen or seventeen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; (vi) other than a misdemeanor committed by a person at least twelve but less than eighteen years of age, but only where there have been two prior findings by the court that such person has committed a prior act which, if committed by an adult, would be a felony.

9. "Designated class A felony act" means a designated felony act that would constitute a class A felony if committed by an adult.

10. "Secure facility" means a residential facility in which the respondent may be placed under this article, which is characterized by physically restricting construction, hardware and procedures, and is designated as a secure facility by the division for youth.

11. "Restrictive placement" means a placement pursuant to section 353.5.

12. "Presentment agency" means the agency or authority which pursuant to section two hundred fifty-four or two hundred fifty-four-a is responsible for presenting a juvenile delinquency petition.

13. "Incapacitated person" means a respondent who, as a result of mental illness, or intellectual or developmental disability as defined in subdivisions twenty and twenty-two of section 1.03 of the mental hygiene law, lacks capacity to understand the proceedings against him or her or to assist in his or her own defense.

14. Any reference in this article to the commission of a crime includes any act which, if done by an adult, would constitute a crime.

15. "Aggravated circumstances" shall have the same meaning as the definition of such term in subdivision (j) of section one thousand twelve of this act.

16. "Permanency hearing" means an initial hearing or subsequent hearing held in accordance with the provisions of this article for the purpose of reviewing the foster care status of the respondent and the appropriateness of the permanency plan developed by the commissioner of social services or the office of children and family services.

17. "Designated educational official" shall mean (a) an employee or representative of a school district who is designated by the school district or (b) an employee or representative of a charter school or private elementary or secondary school who is designated by such school to receive records pursuant to this article and to coordinate the student's participation in programs which may exist in the school district or community, including: non-violent conflict resolution programs, peer mediation programs and youth courts, extended day programs and other school violence prevention and intervention programs which may exist in the school district or community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

§ 301.3. Applicability of article to actions and matters occurring before and after effective date. 1. The provisions of this article apply exclusively to:

(a) all juvenile delinquency actions and proceedings commenced upon or after the effective date thereof and all appeals and other post-judgment proceedings relating or attaching thereto; and

(b) all matters of juvenile delinquency procedure prescribed in this article which do not constitute a part of any particular action or case, occurring upon or after such effective date.

2. The provisions of this article apply to:

(a) all juvenile delinquency actions and proceedings commenced prior to the effective date thereof but still pending on such date; and

(b) all appeals and other post-judgment proceedings commenced upon or after such effective date which relate or attach to juvenile delinquency actions and proceedings commenced or concluded prior to such effective date provided that, if application of such provisions in any particular case would not be feasible or would work injustice, the provisions of article seven pertaining to juvenile delinquency actions apply thereto, as such article seven read immediately prior to the effective date of this article.

3. The provisions of this article do not impair or render ineffectual any proceedings or procedural matters which occurred prior to the effective date thereof.

§ 301.4. Separability clause. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 302.1. Jurisdiction. 1. The family court has exclusive original jurisdiction over any proceeding to determine whether a person is a juvenile delinquent.

2. In determining the jurisdiction of the court the age of such person at the time the delinquent act allegedly was committed is controlling.

3. With respect to a youth over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, whenever a crime and a violation arise out of the same transaction or occurrence, a charge alleging both offenses shall be made returnable before the court having jurisdiction over the crime. Nothing herein provided shall be construed to prevent a court, having jurisdiction over a violation relating to a criminal act from lawfully entering an order in accordance with section 345.1 of this article where such order is not based upon the count or counts of the petition alleging such criminal act.

4. Where a proceeding had been commenced in the youth part of a superior court for an act alleged to have been committed prior to his or her eighteenth birthday and then had been removed to family court, the family court shall exercise jurisdiction under this article, notwithstanding the fact that the respondent may be over the age of eighteen prior to the proceeding having commenced in the family court.

§ 302.2. Statute of limitations. A juvenile delinquency proceeding must be commenced within the period of limitation prescribed in section 30.10 of the criminal procedure law or, unless the alleged act is a designated felony as defined in subdivision eight of section 301.2 of this part or is an act allegedly committed when the respondent was aged sixteen years or older, commenced before the respondent's eighteenth birthday, whichever occurs earlier, provided however, that consistent with subdivision four of section 302.1 of this part, a proceeding commenced for an act allegedly committed when the respondent was aged sixteen years or older shall be considered timely if it is commenced within such period of limitation prescribed in section 30.10 of the criminal procedure law or prior to the respondent's twentieth birthday, whichever occurs earlier, regardless of whether the action had originally been commenced prior to the respondent's eighteenth birthday in a youth part of a superior court. When the alleged act constitutes a designated felony as defined in subdivision eight of section 301.2 of this part or is an act allegedly committed when the respondent was aged sixteen years or older, such proceeding must be commenced within such period of limitation or before the respondent's twentieth birthday, whichever occurs earlier.

§ 302.3. Venue. 1. Juvenile delinquency proceedings shall be originated in the county in which the act or acts referred to in the petition allegedly occurred. For purposes of determining venue, article twenty of the criminal procedure law shall apply.

2. Upon motion of the respondent or the appropriate presentment agency the family court in which the proceedings have been originated may

order, for good cause shown, that the proceeding be transferred to another county. If the order is issued after motion by the presentment agency, the court may impose such conditions as it deems equitable and appropriate to ensure that the transfer does not subject the respondent to an unreasonable burden in making his defense.

3. Any motion made pursuant to subdivision two by the respondent shall be made within the time prescribed by section 332.2. Any such motion by a presentment agency must be based upon papers stating the ground therefor and must be made within thirty days from the date that the action was originated unless such time is extended for good cause shown.

4. Except for designated felony act petitions, after entering a finding pursuant to subdivision one of section 345.1, and prior to the commencement of the dispositional hearing the court may, in its discretion and for good cause shown, order that the proceeding be transferred to the county in which the respondent resides. The court shall not order such a transfer, however, unless it grants the respondent and the presentment agency an opportunity to state on the record whether each approves or disapproves of such a transfer and the reasons therefor. The court shall take into consideration the provisions of subdivisions two and three of section 340.2 in determining such transfer.

§ 303.1. Criminal procedure law. 1. The provisions of the criminal procedure law shall not apply to proceedings under this article unless the applicability of such provisions are specifically prescribed by this act.

2. A court may, however, consider judicial interpretations of appropriate provisions of the criminal procedure law to the extent that such interpretations may assist the court in interpreting similar provisions of this article.

§ 303.2. Double jeopardy. The provisions of article forty of the criminal procedure law concerning double jeopardy shall apply to juvenile delinquency proceedings.

§ 303.3. Defenses. The provisions of articles twenty-five, thirty-five and forty and section 30.05 of the penal law shall be applicable to juvenile delinquency proceedings.

§ 304.1. Detention. 1. A facility certified by the office of children and family services as a juvenile detention facility must be operated in conformity with the regulations of the office of children and family services.

2. No child to whom the provisions of this article may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of crime or under arrest and charged with crime without the approval of the office of children and family services in the case of each child and the statement of its reasons therefor. The office of children and family services shall promulgate and publish the rules which it shall apply in determining whether approval should be granted pursuant to this subdivision.

3. The detention of a child under thirteen years of age in a secure detention facility shall not be directed, unless such child is at least ten years old and is considered a juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of this article, nor shall the detention of a child adjudicated solely for an act that would constitute a violation as defined in subdivision three of section 10.00 of the penal law, be directed under any of the provisions of this article.

4. A detention facility which receives a child under subdivision four of section 305.2 of this part shall immediately notify the child's parent or other person legally responsible for his or her care or, if such legally responsible person is unavailable the person with whom the child resides, that he or she has been placed in detention.

§ 304.2. Temporary order of protection. (1) Upon application by the presentment agency, the court may issue a temporary order of protection against a respondent for good cause shown, ex parte or upon notice, at any time after a juvenile is taken into custody, pursuant to section 305.1 or 305.2 or upon the issuance of an appearance ticket pursuant to section 307.1 or upon the filing of a petition pursuant to section 310.1.

(2) A temporary order of protection may contain any of the provisions authorized on the making of an order of protection under section 352.3.

(3) A temporary order of protection is not a finding of wrongdoing.

(4) A temporary order of protection issued or extended after the filing of a petition under this article shall contain an expiration date and may remain in effect until an order of disposition is entered.

a. A temporary order of protection issued prior to the filing of a petition under this article may remain in effect for an initial period of up to thirty days and may be extended by the court for an additional period of up to thirty days upon good cause or, where the juvenile's case is being adjusted pursuant to section 308.1 of this article, for a period coinciding with such adjustment. If the juvenile successfully completes adjustment prior to the expiration of the order, the probation service, presentment agency or attorney for the child may move to vacate such temporary order of protection upon such successful completion.

b. A temporary order of protection issued under this section may be extended for one additional period of up to thirty days upon a finding by the court of a compelling reason. Where the case is not being adjusted or where efforts to adjust the case have been terminated unsuccessfully, the court must also determine whether the presentment agency has made diligent efforts to file the petition and the reasons for any delay.

c. Any application for an extension of a temporary order of protection under this section shall be on notice to the juvenile, who shall have an opportunity to be heard and shall have a right to counsel pursuant to section two hundred forty-nine of this act.

§ 305.1. Custody by a private person. 1. A private person may take a child who may be subject to the provisions of this article for committing an act that would be a crime if committed by an adult into custody in cases in which such private person may arrest an adult for a crime under section 140.30 of the criminal procedure law.

2. Before taking such child under the age of sixteen into custody, a private person must inform the child of the cause thereof and require him to submit, except when he is taken into custody on pursuit immediately after the commission of a crime.

3. After taking such child into custody, a private person must take the child, without unnecessary delay, to the child's home, to a family court, or to a police officer or peace officer.

§ 305.2. Custody by a peace officer or a police officer without a warrant. 1. For purposes of this section, the word "officer" means a peace officer or a police officer.

2. An officer may take a child who may be subject to the provisions of this article for committing an act that would be a crime if committed by an adult into custody without a warrant in cases in which the officer may arrest a person for a crime under article one hundred forty of the criminal procedure law.

3. If an officer takes such child into custody or if a child is delivered to him under section 305.1, he shall immediately notify the parent or other person legally responsible for the child's care, or if such legally responsible person is unavailable the person with whom the child resides, that the child has been taken into custody.

4. After making every reasonable effort to give notice under subdivision three, the officer shall:

(a) release the child to the custody of his parents or other person legally responsible for his care upon the issuance in accordance with section 307.1 of a family court appearance ticket to the child and the person to whose custody the child is released; or

(b) forthwith and with all reasonable speed take the child directly, and without his first being taken to the police station house, to the family court located in the county in which the act occasioning the taking into custody allegedly was committed, or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department to conduct a hearing under section 307.4 of this part, unless the officer determines that it is necessary to question the child, in which case he or she may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the child, to the child's residence and there question him or her for a reasonable period of time; or

(c) take the child to a place certified by the office of children and family services as a juvenile detention facility for the reception of children; or

(d) take the child who such officer has decided to take into custody in accordance with this section or section 305.1 of this part for violating the provisions of section 230.00 of the penal law, to an available short-term safe house as defined in subdivision two of section four hundred forty-seven-a of the social services law; or

(e) take the child, if it appears that such child is a sexually exploited child as defined in paragraph (a), (c) or (d) of subdivision one of section four hundred forty-seven-a of the social services law, to an available short-term safe house, but only if the child consents to be taken.

5. If such child has allegedly committed a designated felony act as defined in subdivision eight of section 301.2, and the family court in the county is in session, the officer shall forthwith take the child directly to such family court, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four. If such child has not allegedly committed a designated felony act

and such family court is in session, the officer shall either forthwith take the child directly to such family court, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four or release the child in accordance with paragraph (a) of subdivision four.

5-a. Where a child is subject to interrogation at a facility designated by the chief administrator of the courts as a suitable place for the questioning of juveniles pursuant to subdivision four of this section, the entire interrogation, including the giving of any required notice to the child as to his or her rights and the child's waiver of any rights, shall be video recorded in a manner consistent with standards established by rule of the division of criminal justice services pursuant to paragraph (e) of subdivision three of section 60.45 of the criminal procedure law. The interrogation shall be recorded in a manner such that the persons in the recording are identifiable and the speech is intelligible. A copy of the recording shall be subject to discovery pursuant to section 331.2 of this article.

6. In all other cases, and in the absence of special circumstances, the officer shall release the child in accordance with paragraph (a) of subdivision four.

7. A child shall not be questioned pursuant to this section unless he and a person required to be notified pursuant to subdivision three if present, have been advised:

(a) of the child's right to remain silent;

(b) that the statements made by the child may be used in a court of law;

(c) of the child's right to have an attorney present at such questioning; and

(d) of the child's right to have an attorney provided for him without charge if he is indigent.

8. In determining the suitability of questioning and determining the reasonable period of time for questioning such a child, the child's age, the presence or absence of his or her parents or other persons legally

responsible for his or her care, notification pursuant to subdivision three and, where the child has been interrogated at a facility designated by the chief administrator of the courts as a suitable place for the questioning of juveniles, whether the interrogation was in compliance with the video-recording and disclosure requirements of subdivision five-a of this section shall be included among relevant considerations.

§ 306.1. Fingerprinting of certain alleged juvenile delinquents. 1. Following the arrest of a child alleged to be a juvenile delinquent, or the filing of a delinquency petition involving a child who has not been arrested, the arresting officer or other appropriate police officer or agency shall take or cause to be taken fingerprints of such child if:

(a) the child is at least twelve years of age and the crime which is the subject of the arrest or which is charged in the petition constitutes a class A or B felony; or

(b) the child is thirteen years of age or older and the crime which is the subject of the arrest or which is charged in the petition constitutes a class C, D or E felony.

2. Whenever fingerprints are required to be taken pursuant to subdivision one, the photograph and palmprints of the arrested child may also be taken.

3. The taking of fingerprints, palmprints, photographs, and related information concerning the child and the facts and circumstances of the acts charged in the juvenile delinquency proceeding shall be in accordance with standards established by the commissioner of the division of criminal justice services and by applicable provisions of this article.

4. Upon the taking of fingerprints pursuant to subdivision one the appropriate officer or agency shall, without unnecessary delay, forward such fingerprints to the division of criminal justice services and shall not retain such fingerprints or any copy thereof. Copies of photographs and palmprints taken pursuant to this section shall be kept confidential

and only in the exclusive possession of such law enforcement agency, separate and apart from files of adults.

§ 306.2. Fingerprinting; duties of the division of criminal justice services. 1. Upon receipt of fingerprints taken pursuant to section 306.1, the division of criminal justice services shall retain such fingerprints distinctly identifiable from adult criminal records except as provided in section 354.1, and shall not release such fingerprints to a federal depository or to any person except as authorized by this act. The division shall promulgate regulations to protect the confidentiality of such fingerprints and related information and to prevent access thereto, by, and the distribution thereof to, persons not authorized by law.

2. Upon receipt of such fingerprints, the division of criminal justice services shall classify them and search its records for information concerning an adjudication or pending matter involving the person arrested. The division shall promptly transmit to such forwarding officer or agency a report containing any information on file with respect to such person's previous adjudications and pending matters or a report stating that the person arrested has no previous record according to its files. Notwithstanding the foregoing, where the division has not received disposition information within two years of an arrest, the division shall, until such information or up-to-date status information is received, withhold the record of that arrest and any related activity in disseminating criminal history information.

3. Upon receipt of a report of the division of criminal justice services pursuant to this section, the recipient office or agency must promptly transmit two copies of such report to the family court in which the proceeding may be originated and two copies thereof to the presentment agency who shall furnish a copy thereof to counsel for the respondent.

§ 307.1. Family court appearance ticket. 1. A family court appearance ticket is a written notice issued and subscribed by a peace officer or police officer, a probation service director or his designee or the administrator responsible for operating a detention facility or his designee, directing a child and his parent or other person legally responsible for his care to appear, without security, at a designated probation service on a specified return date in connection with the child's alleged commission of the crime or crimes specified on such appearance ticket. The form of a family court appearance ticket shall be prescribed by rules of the chief administrator of the courts.

2. If the crime alleged to have been committed by the child is a designated felony as defined by subdivision eight of section 301.2, the return date shall be no later than seventy-two hours excluding Saturdays, Sundays and public holidays after issuance of such family court appearance ticket. If the crime alleged to have been committed by such child is not a designated felony, the return date shall be no later than fourteen days after the issuance of such appearance ticket.

3. A copy of the family court appearance ticket shall be forwarded by the issuing person or agency to the complainant, respondent, respondent's parent, and appropriate probation service within twenty-four hours after its issuance.

§ 307.2. Appearance ticket procedures. 1. If a child fails to appear on the return date specified on a family court appearance ticket, the probation service may refer the matter forthwith to the appropriate presentment agency or may, in its discretion, attempt to secure the attendance of the child. Upon exercise of its discretion, probation services shall take appropriate action under law including, but not limited to, written notification to the child and parent or other person legally responsible for his care or telephone communications with the child and parent or other person legally responsible for his care. Efforts to secure the attendance of the child shall not extend beyond seven days subsequent to such return date and the probation service must refer the matter to the appropriate presentment agency within such period. Upon referral, the presentment agency may take whatever action it deems appropriate, including the filing of a petition pursuant to section 311.1.

2. If the complainant fails to appear on the return date specified on such appearance ticket, the probation service may, in its discretion, attempt to secure his voluntary attendance. Upon exercise of its discretion, probation services may take appropriate action under law including, but not limited to, written notification to the complainant or telephone communications with the complainant. Efforts to secure the voluntary attendance of such person shall not extend beyond seven days subsequent to such return date and the probation service shall refer the matter to the appropriate presentment agency within such period. Upon referral, the presentment agency may take whatever action it deems appropriate, including the issuance of a subpoena or the filing of a petition pursuant to section 311.1.

3. If a petition is filed subsequent to the issuance of an appearance ticket the appearance ticket shall be made part of the probation service file.

§ 307.3. Rules of court authorizing release before filing of petition. 1. The agency responsible for operating a detention facility pursuant to section two hundred eighteen-a of the county law, five hundred ten-a of the executive law or other applicable provisions of law, shall release a child in custody before the filing of a petition to the custody of his parents or other person legally responsible for his care, or if such legally responsible person is unavailable, to a person with whom he resides, when the events occasioning the taking into custody do not appear to involve allegations that the child committed a delinquent act.

2. When practicable such agency may release a child before the filing of a petition to the custody of his parents or other person legally responsible for his care, or if such legally responsible person is unavailable, to a person with whom he resides, when the events occasioning the taking into custody appear to involve allegations that the child committed a delinquent act.

3. If a child is released under this section, the child and the person legally responsible for his care shall be issued a family court appearance ticket in accordance with section 307.1.

4. If the agency for any reason does not release a child under this section, such child shall be brought before the appropriate family court, or when such family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department; provided, however, that if such family court is not in session and if a magistrate is not available, such youth shall be brought before such family court within seventy-two hours or the next day the court is in session, whichever is sooner. Such agency shall thereupon file an application for an order pursuant to section 307.4 of this part and shall forthwith serve a copy of the application upon the appropriate presentment agency. Nothing in this subdivision shall preclude the adjustment of suitable cases pursuant to section 308.1.

§ 307.4. Hearing following detention. 1. If a child in custody is brought before a judge of the family court before a petition is filed upon a written application pursuant to subdivision four of section 307.3, the judge shall hold a hearing for the purpose of making a preliminary determination of whether the court appears to have jurisdiction over the child.

2. At such hearing the court must appoint an attorney to represent the child pursuant to the provisions of section two hundred forty-nine if independent legal representation is not available to such child.

3. The provisions of sections 320.3 and 341.2 shall apply at such hearing.

4. After such hearing, the judge shall order the release of the child to the custody of his parent or other person legally responsible for his care if:

(a) the court does not appear to have jurisdiction, or

(b) the events occasioning the taking into custody do not appear to involve allegations that the child committed a delinquent act, or

(c) the events occasioning the taking into custody appear to involve acts which constitute juvenile delinquency, unless the court finds and states facts and reasons which would support a detention order pursuant to section 320.5.

5. Such hearing shall be held within seventy-two hours of the time detention commenced or the next day the court is in session, whichever is sooner.

6. The appropriate presentment agency shall present the application at a hearing pursuant to this section.

7. A petition shall be filed and a probable-cause hearing held under section 325.1 within four days of the conclusion of a hearing under this section. If a petition is not filed within four days the child shall be released.

8. Upon a finding of facts and reasons which support a detention order pursuant to section 320.5 of this chapter, the court shall also determine and state in any order directing detention:

(a) whether the continuation of the child in the child's home would be contrary to the best interests of the child based upon, and limited to, the facts and circumstances available to the court at the time of the hearing held in accordance with this section; and

(b) where appropriate and consistent with the need for protection of the community, whether reasonable efforts were made prior to the date of the court hearing that resulted in the detention order issued in accordance with this section to prevent or eliminate the need for removal of the child from his or her home or, if the child had been removed from his or her home prior to the initial appearance, where appropriate and consistent with the need for protection of the community, whether reasonable efforts were made to make it possible for the child to safely return home.

§ 308.1. Rules of court for preliminary procedure. 1. Rules of court shall authorize and determine the circumstances under which the probation service may confer with any person seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons concerning the advisability of requesting that a petition be filed.

2. Except as provided in subdivisions three and four of this section, the probation service may, in accordance with rules of court, adjust suitable cases before a petition is filed. The inability of the respondent or his or her family to make restitution shall not be a factor in a decision to adjust a case or in a recommendation to the presentment agency pursuant to subdivision six of this section. Nothing in this section shall prohibit the probation service or the court from directing a respondent to obtain employment and to make restitution from the earnings from such employment. Nothing in this section shall prohibit the probation service or the court from directing an eligible person to complete an education reform program in accordance with section four hundred fifty-eight-l of the social services law.

3. The probation service shall not adjust a case in which the child has allegedly committed a designated felony act unless it has received the written approval of the court.

4. The probation service shall not adjust a case in which the child has allegedly committed a delinquent act which would be a crime defined in section 120.25, (reckless endangerment in the first degree), subdivision one of section 125.15, (manslaughter in the second degree), subdivisions one, two and three of section 130.25, (rape in the third degree), subdivision one of former section 130.40, subdivision one or two of section 130.65, (sexual abuse in the first degree), section 135.65, (coercion in the first degree), section 140.20, (burglary in the third degree), section 150.10, (arson in the third degree), section 160.05, (robbery in the third degree), subdivision two, three or four of section 265.02, (criminal possession of a weapon in the third degree), section 265.03, (criminal possession of a weapon in the second degree),

or section 265.04, (criminal possession of a dangerous weapon in the first degree) of the penal law where the child has previously had one or more adjustments of a case in which such child allegedly committed an act which would be a crime specified in this subdivision unless it has received written approval from the court and the appropriate presentment agency.

5. The fact that a child is detained prior to the filing of a petition shall not preclude the probation service from adjusting a case; upon adjusting such a case the probation service shall notify the detention facility to release the child.

6. The probation service shall not transmit or otherwise communicate to the presentment agency any statement made by the child to a probation officer. However, the probation service may make a recommendation regarding adjustment of the case to the presentment agency and provide such information, including any report made by the arresting officer and record of previous adjustments and arrests, as it shall deem relevant.

7. No statement made to the probation service prior to the filing of a petition may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.

8. The probation service shall consider the views of the complainant and the impact of the alleged act or acts of juvenile delinquency upon the complainant and upon the community in determining whether adjustment under this section would be suitable.

9. Efforts at adjustment pursuant to rules of court under this section may not extend for a period of more than three months without leave of the court, which may extend the period for an additional two months.

10. If a case is not adjusted by the probation service, such service shall notify the appropriate presentment agency of that fact within forty-eight hours or the next court day, whichever occurs later.

11. The probation service may not be authorized under this section to compel any person to appear at any conference, produce any papers, or visit any place.

12. The probation service shall certify to the division of criminal justice services and to the appropriate police department or law enforcement agency whenever it adjusts a case in which the potential respondent's fingerprints were taken pursuant to section 306.1 in any manner other than the filing of a petition for juvenile delinquency for an act which, if committed by an adult, would constitute a felony, provided, however, in the case of a child twelve years of age, such certification shall be made only if the act would constitute a class A or B felony.

13. The provisions of this section shall not apply where the petition is an order of removal to the family court pursuant to article seven hundred twenty-five of the criminal procedure law against a juvenile offender as defined in subdivision eighteen of section 10.00 of the penal law.

14. Notwithstanding subdivisions three, four and thirteen of this section, the probation service may adjust a proceeding where the court has referred a case to the probation service in accordance with section 320.6 of this article in conjunction with or subsequent to the issuance of an order pursuant to subdivision one of section 345.1 of this article where such order does not include a fact-finding for an act which would constitute a juvenile offense, designated felony or offense listed in subdivision four of this section. Where a proceeding has been referred to the probation service in which an order issued pursuant to section 345.1 of this article consists solely of a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, the probation service shall adjust the matter unless good cause is shown and is documented in its records.

§ 309.1. Community based treatment referrals. 1. A youth who is released prior to the filing of a petition shall be made aware of and referred to community based organizations offering counseling, treatment, employment, educational, or vocational services in which they may voluntarily enroll or participate. Such services shall be separate from and in addition to any adjustment services provided under section 308.1 of this part, where applicable.

2. The youth shall be advised that the service referrals are being made as a resource and participation in them is voluntary and that refusal to participate will not negatively impact any aspect of their pending case. Provided, however, nothing shall preclude the youth from voluntarily providing information, after consulting with their attorney, demonstrating successful enrollment, participation, and completion, where applicable, of any such services. The court shall consider any information provided by the youth regarding such participation in the case proceedings including but not limited to dispositional or placement determinations. The court may require supporting documentation for any such consideration that the youth requests, provided however, that such information shall be maintained as confidential in accordance with any applicable state or federal law.

3. No statements made to probation when discussing any service referrals under this section shall be admissible in a fact-finding hearing.

§ 310.1. Originating a juvenile delinquency proceeding. 1. A proceeding to adjudicate a person a juvenile delinquent is originated by the filing of a petition.

2. Only a presentment agency may originate a juvenile delinquency proceeding.

3. If the appropriate agency does not originate a proceeding within thirty days of receipt of notice from the probation service pursuant to subdivision ten of section 308.1, it shall notify in writing the

complainant of that fact.

§ 310.2. Speedy trial. After a petition has been filed, or upon the signing of an order of removal pursuant to section 725.05 of the criminal procedure law, the respondent is entitled to a speedy fact-finding hearing.

§ 311.1. The petition; definition and contents. 1. A petition originating a juvenile delinquency proceeding is a written accusation by an authorized presentment agency.

2. A petition shall charge at least one crime and may, in addition, charge in separate counts one or more other crimes, provided that all such crimes are joinable in accord with section 311.6.

3. A petition must contain:
(a) the name of the family court in which it is filed;
(b) the title of the action;
(c) the fact that the respondent is a person of the necessary age to be a juvenile delinquent at the time of the alleged act or acts;
(d) a separate accusation or count addressed to each crime charged, if there be more than one;
(e) the precise crime or crimes charged;
(f) a statement in each count that the crime charged was committed in a designated county;
(g) a statement in each count that the crime charged therein was committed on, or on or about, a designated date, or during a designated period of time;
(h) a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the crime charged and the respondent's commission thereof with sufficient precision to clearly apprise the respondent of the conduct which is the subject of the accusation;
(i) the name or names, if known, of other persons who are charged as co-respondents in the family court or as adults in a criminal court

proceeding in the commission of the crime or crimes charged;

(j) a statement that the respondent requires supervision, treatment or confinement; and

(k) the signature of the appropriate presentment attorney.

4. A petition shall be verified in accordance with the civil practice law and rules and shall conform to the provisions of section 311.2.

5. If the petition alleges that the respondent committed a designated felony act, it shall so state, and the term "designated felony act petition" shall be prominently marked thereon. Certified copies of prior delinquency findings shall constitute sufficient proof of such findings for the purpose of filing a designated felony petition. If all the allegations of a designated felony act are dismissed or withdrawn or the respondent is found to have committed crimes which are not designated felony acts, the term "designated felony act petition" shall be stricken from the petition.

6. The form of petition shall be prescribed by the chief administrator of the courts. A petition shall be entitled "In the Matter of", followed by the name of the respondent.

7. When an order of removal pursuant to article seven hundred twenty-five of the criminal procedure law is filed with the clerk of the court, such order and those pleadings and proceedings, other than the minutes of any hearing inquiry or trial, grand jury proceeding, or of any plea accepted or entered, held in this action that has not yet been transcribed shall be transferred with it and shall be deemed to be a petition filed pursuant to subdivision one of section 310.1 containing all of the allegations required by this section notwithstanding that such allegations may not be set forth in the manner therein prescribed. Where the order or the grand jury request annexed to the order specifies an act that is a designated felony act, the clerk shall annex to the order a sufficient statement and marking to make it a designated felony act petition. The date such order is filed with the clerk of the court shall be deemed the date a petition was filed under this article. For purposes of service in accord with section 312.1, however, only the

order of removal shall be deemed the petition. All minutes of any hearing inquiry or trial held in this action, the minutes of any grand jury proceeding and the minutes of any plea accepted and entered shall be transferred to the family court within thirty days.

§ 311.2. Sufficiency of petition. A petition, or a count thereof, is sufficient on its face when:

1. it substantially conforms to the requirements prescribed in section 311.1; and

2. the allegations of the factual part of the petition, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the respondent committed the crime or crimes charged; and

3. non-hearsay allegations of the factual part of the petition or of any supporting depositions establish, if true, every element of each crime charged and the respondent's commission thereof.

§ 311.3. Petition; fact-finding hearings. 1. When two or more respondents are charged in separate petitions with the same crime or crimes the court shall conduct a single or consolidated fact-finding hearing. The court, however, upon motion of a respondent or the presentment agency, may, in its discretion and for good cause shown, order that any respondent be granted a fact-finding hearing separate from the other respondents. Such motion must be made within the period prescribed in section 332.2.

2. If such petitions, in addition to charging the same crime or crimes against the different respondents, charge other crimes not common to all, the court may nevertheless conduct a single fact-finding hearing for the crime or crimes common to all.

§ 311.4. Substitution of petition or finding. 1. At any time in the proceedings the court, upon motion of a respondent or its own motion, may, with the consent of the presentment agency and with the consent of the respondent, substitute a petition alleging that the respondent is in need of supervision for a petition alleging that the respondent is a juvenile delinquent.

2. At the conclusion of the dispositional hearing the court, upon motion of the respondent or its own motion, may in its discretion and with the consent of the respondent, substitute a finding that the respondent is a person in need of supervision for a finding that the respondent is a juvenile delinquent.

3. In any proceeding under this article based upon an arrest for an act of prostitution, there is a presumption that the respondent meets the criteria as a victim of a severe form of trafficking as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection Act of 2000). Upon the motion of the respondent, without the consent of the presentment agency, a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition. If, however, the respondent has been previously adjudicated as a juvenile delinquent under this article for an act which would be a crime pursuant to article two hundred thirty of the penal law, if the respondent was an adult, or expresses a current unwillingness to cooperate with specialized services for sexually exploited youth, continuing with the delinquency proceeding shall be within the court's discretion. The necessary findings of fact to support the continuation of the delinquency proceeding shall be reduced to writing and made part of the court record. If, subsequent to issuance of a substitution order under this subdivision and prior to the conclusion of the fact finding hearing on the petition alleging that the respondent is a person in need of supervision, the respondent is not in substantial compliance with a lawful order of the court, the court may, in its discretion, substitute the original petition alleging that the respondent is a juvenile delinquent for the petition alleging that the respondent is in need of supervision.

§ 311.5. Amendment of the petition. 1. At any time before or during the fact-finding hearing, the court may, upon application of the presentment agency and with notice to the respondent and an opportunity to be heard, order the amendment of a petition with respect to defects, errors or variances from the proof relating to matters of form, time, place, names of persons and the like, when such amendment does not tend to prejudice the respondent on the merits. Upon permitting such an amendment, the court must, upon application of the respondent, order any adjournment which may be necessary to accord the respondent an adequate opportunity to prepare his defense.

2. A petition may not be amended for the purpose of curing:
(a) a failure to charge or state a crime; or
(b) legal insufficiency of the factual allegations; or
(c) a misjoinder of crimes.

§ 311.6. Joinder, severance and consolidation. 1. Two crimes are joinable and may be included as separate counts in the same petition when:
(a) they are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two; or
(b) even though based upon different criminal transactions, such crimes, or the criminal transactions underlying them, are of such nature that either proof of the first crime would be material and admissible as evidence in chief upon a fact-finding hearing of the second, or proof of the second would be material and admissible as evidence in chief upon a fact-finding hearing of the first; or
(c) even though based upon different criminal transactions, and even though not joinable pursuant to paragraph (b), such crimes are defined by the same or similar statutory provisions and consequently are the same or similar in law.

2. "Criminal transaction" means conduct which establishes at least one crime, and which is comprised of two or more or a group of acts either:
(a) so closely related and connected in point of time and circumstance

of commission as to constitute a single criminal incident; or

(b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.

3. In any case where two or more crimes or groups of crimes charged in a petition are based upon different criminal transactions, and where their joinability rests solely upon the fact that such crimes, or as the case may be at least one offense of each group, are the same or similar in law, as prescribed in paragraph (c) of subdivision one, the court, in the interest of justice and for good cause shown, may upon application of either the respondent or the presentment agency order that any one of such crimes or groups of crimes be tried separately from the other or others, or that two or more thereof be tried together but separately from two or more others thereof. Such application must be made within the period prescribed in section 332.2.

4. When two or more petitions against the same respondent charge different crimes of a kind that are joinable in a single petition pursuant to subdivision one, the court may, upon application of either the presentment agency or respondent order that such petitions be consolidated and treated as a single petition for trial purposes. Such application must be made within the period prescribed in section 332.2. If the respondent requests consolidation with respect to crimes which are, pursuant to paragraph (a) of subdivision one, of a kind that are joinable in a single petition by reason of being based upon the same act or criminal transaction, the court must order such consolidation unless good cause to the contrary be shown.

§ 312.1. Issuance and service of summons. 1. After a petition has been filed, the court may cause a copy thereof and a summons to be issued, requiring the respondent personally and his parent or other person legally responsible for his care, or, if such legally responsible person is not available, a person with whom he resides, to appear for the initial appearance as defined by section 320.1 at a time and place named. The summons shall be signed by a judge or by the clerk of the court.

2. Service of a summons and petition shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance.

3. If after reasonable effort, personal service as provided in subdivision two is not made, the court may at any stage in the proceedings make an order providing for service in any manner the court directs.

§ 312.2. Issuance of a warrant. 1. The court may issue a warrant, directing that the respondent personally or other person legally responsible for his or her care or, if such legally responsible person is not available, a person with whom he or she resides, be brought before the court, when a petition has been filed and it appears that:

(a) a summons cannot be served; or

(b) such person has refused to obey a summons or family court appearance ticket; or

(c) the respondent or other person is likely to leave the jurisdiction; or

(d) a summons, in the court's opinion, would be ineffectual; or

(e) a respondent has failed to appear.

2. Upon issuance of a warrant due to the respondent's failure to appear for a scheduled court date, the court shall adjourn the matter to a date certain within thirty days for a report on the efforts made to secure the respondent's appearance in court. The court may order that the person legally responsible for the respondent's care or, if such legally responsible person is not available, a person with whom the respondent resides, appear on the adjourned date. Upon receiving the report, for good cause, the court may order further reports and may require further appearances of the person legally responsible for the respondent's care or, if such person legally responsible is not available, a person with whom the respondent resides. Upon receiving the initial or any subsequent report, the court shall set forth in writing its findings of fact as to the efforts, if any, made up to that date to

secure the respondent's appearance in court.

3. A juvenile who is arrested pursuant to a warrant issued under this section must forthwith and with all reasonable speed be taken directly to the family court located in the county in which the warrant had been issued, or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department. If a juvenile is brought before an accessible magistrate, the magistrate shall set a date for the juvenile to appear in the family court in the county in which the warrant had been issued, which shall be no later than the next day the court is in session if the magistrate orders the juvenile to be detained and within ten court days if the magistrate orders the juvenile to be released. In determining whether the juvenile should be released, with or without conditions, or detained, the magistrate shall apply the criterion and issue the findings required by section 320.5 of this article. The magistrate shall transmit its order to the family court forthwith.

§ 315.1. Motion to dismiss; defective petition. 1. A petition or a count thereof is defective when:

(a) it does not substantially conform to the requirements stated in sections 311.1 and 311.2; provided that a petition may not be dismissed as defective, but must instead be amended when the defect or irregularity is of a kind that may be cured by amendment pursuant to section 311.5, and where the presentment agency moves to so amend; or

(b) the allegations demonstrate that the court does not have jurisdiction of the crime charged; or

(c) the statute defining the crime charged is unconstitutional or otherwise invalid.

2. An order dismissing a petition as defective may be issued upon motion of the respondent or of the court itself.

3. A motion to dismiss under this section must be made within the time provided for in section 332.2.

§ 315.2. Motion to dismiss in furtherance of justice. 1. A petition or any part or count thereof may at any time be dismissed in furtherance of justice when, even though there may be no basis for dismissal as a matter of law, such dismissal is required as a matter of judicial discretion by the existence of some compelling further consideration or circumstances clearly demonstrating that a finding of delinquency or continued proceedings would constitute or result in injustice. In determining whether such compelling further consideration or circumstances exist, the court shall, to the extent applicable, examine and consider, individually and collectively, the following:

(a) the seriousness and circumstances of the crime;

(b) the extent of harm caused by the crime;

(c) any exceptionally serious misconduct of law enforcement personnel in the investigation and arrest of the respondent or in the presentment of the petition;

(d) the history, character and condition of the respondent;

(e) the needs and best interest of the respondent;

(f) the need for protection of the community; and

(g) any other relevant fact indicating that a finding would serve no useful purpose.

2. An order dismissing a petition in the interest of justice may be issued upon motion of the presentment agency, the court itself or of the respondent. Upon issuing such an order, the court must set forth its reasons therefor upon the record.

3. Such a motion brought by the presentment agency or the respondent must be in writing and may be filed at any time subsequent to the filing of the petition. Notice of the motion shall be served upon the opposing party not less than eight days prior to the return date of the motion. Answering affidavits shall be served at least two days prior to the return date of such motion.

§ 315.3. Adjournment in contemplation of dismissal. 1. Except where the petition alleges that the respondent has committed a designated felony act, the court may at any time prior to the entering of a finding under section 352.1 and with the consent of the respondent order that the proceeding be "adjourned in contemplation of dismissal". An adjournment in contemplation of dismissal is an adjournment of the proceeding, for a period not to exceed six months, with a view to ultimate dismissal of the petition in furtherance of justice. Upon issuing such an order, providing such terms and conditions as the court deems appropriate, the court must release the respondent. The court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the consumption of alcohol may have been a contributing factor, require the respondent to attend and complete an alcohol awareness program established pursuant to of subdivision (a) of section 19.07 of the mental hygiene law. The court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the respondent is an eligible person as defined in section four hundred fifty-eight-l of the social services law and has allegedly committed an eligible offense as defined in such section, direct the respondent to attend and complete an education reform program established pursuant to section four hundred fifty-eight-l of the social services law. Upon ex parte motion by the presentment agency, or upon the court's own motion, made at the time the order is issued or at any time during its duration, the court may restore the matter to the calendar. If the proceeding is not restored, the petition is, at the expiration of the order, deemed to have been dismissed by the court in furtherance of justice.

2. Rules of court shall define the permissible terms and conditions which may be included in an order that the proceeding be adjourned in contemplation of dismissal; such permissible terms and conditions may include supervision by the probation service, a requirement that the respondent cooperate with a mental health, social services or other appropriate community facility or agency to which the respondent may be referred and a requirement that the respondent comply with such other reasonable conditions as the court shall determine to be necessary or appropriate to ameliorate the conduct which gave rise to the filing of the petition or to prevent placement with the commissioner of social

services or the division for youth.

3. An order adjourning a petition in contemplation of dismissal may be issued upon motion of the presentment agency, the court itself, or the respondent. Upon issuing such an order, the court must set forth its reasons therefor upon the record.

4. Where an order of fact-finding that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, has been entered pursuant to section 345.1 of this article, there shall be a rebuttable presumption that the court shall adjourn the case in contemplation of dismissal pursuant to this section, refer the case to the probation service for adjustment services pursuant to section 320.6 of this article or dismiss the case pursuant to subdivision two of section 352.1 of this article.

PART 2
INITIAL APPEARANCE AND PROBABLE CAUSE HEARING

325.3. The probable-cause hearing; determination.

§ 320.1. The initial appearance; definition. When used in this article "initial appearance" means the proceeding on the date the respondent first appears before the court after a petition has been filed and any adjournments thereof, for the purposes specified in section 320.4.

§ 320.2. The initial appearance; timing; adjournment and appointment of counsel. 1. If the respondent is detained, the initial appearance shall be held no later than seventy-two hours after a petition is filed or the next day the court is in session, whichever is sooner. If the respondent is not detained, the initial appearance shall be held as soon as practicable and, absent good cause shown, within ten days after a petition is filed. If a warrant for the respondent's arrest has been issued pursuant to section 312.2 of this article due to the respondent's failure to appear for an initial appearance of which he or she had notice, computation of the time within which the initial appearance must be held shall exclude the period extending from the date the court issues the warrant to the date the respondent is returned pursuant to the warrant or appears voluntarily; provided, however, no period of time may be excluded hereunder unless the respondent's location cannot be determined by the exercise of due diligence or, if the respondent's location is known, his or her presence in court cannot be obtained by the exercise of due diligence. In determining whether due diligence has been exercised, the court shall consider, among other factors, the report presented to the court pursuant to subdivision two of section 312.2 of this article.

2. At the initial appearance the court must appoint an attorney to represent the respondent pursuant to the provisions of section two hundred forty-nine if independent legal representation is not available to such respondent.

3. The initial appearance may be adjourned for no longer than seventy-two hours or until the next court day, whichever is sooner, to

enable an attorney for the respondent to appear before the court.

4. The clerk of the court shall notify the presentment agency and any attorney for the respondent of the initial appearance date.

§ 320.3. Notice of rights. At the time the respondent first appears before the court, the respondent and his or her parent or other person legally responsible for his or her care shall be advised of the respondent's right to remain silent and of his or her right to be represented by counsel chosen by him or her or by an attorney assigned by the court. Provided, however, that in the event of the failure of the respondent's parent or other person legally responsible for his care to appear, after reasonable and substantial effort has been made to notify such parent or responsible person of the commencement of the proceeding and such initial appearance, the court shall appoint an attorney for the respondent.

§ 320.4. The initial appearance; procedures. 1. At the initial appearance the court must inform the respondent, or cause him to be informed in its presence, of the charge or charges contained in the petition, and the presentment agency must cause the respondent and his or her counsel to be furnished with a copy of the petition.

2. At the initial appearance the court shall determine:
(a) whether detention is necessary pursuant to section 320.5; and
(b) whether the case should be referred to the probation service pursuant to section 320.6; and
(c) if the child is detained, the date of the probable-cause hearing pursuant to section 325.1 unless such hearing has already been held; and
(d) the date of the fact-finding hearing; and
(e) such other issues as may be properly before it.

§ 320.5. The initial appearance; release or detention. 1. At the initial appearance, the court in its discretion may release the respondent or direct his detention.

2. Rules of court shall define permissible terms and conditions of release. The court may in its discretion release the respondent upon such terms and conditions as it deems appropriate. The respondent shall be given a written copy of any such terms and conditions. The court may modify or enlarge such terms and conditions at any time prior to the expiration of the respondent's release.

3. (a) The court shall not direct detention unless available alternatives to detention, including conditional release, would not be appropriate, and the court finds that unless the respondent is detained:

(i) there is a substantial probability that he or she will not appear in court on the return date; or

(ii) there is a serious risk that he or she may before the return date commit an act which if committed by an adult would constitute a crime.

(b) Any finding directing detention pursuant to paragraph (a) of this subdivision made by the court shall state the facts, the level of risk the youth was assessed pursuant to a detention risk assessment instrument approved by the office of children and family services, and the reasons for such finding including, if a determination is made to place a youth in detention who was assessed at a low or medium risk on such a risk assessment instrument, the particular reasons why detention was determined to be necessary.

(c) If the court makes a finding that detention is necessary pursuant to subparagraphs (i) and (ii) of paragraph (a) of this subdivision, the court may consider, where applicable, as a condition of release, electronic monitoring of the respondent, if such electronic monitoring would significantly reduce the substantial probability that the respondent would not return to court on the return date, or the serious risk that the respondent may before the return date commit an act that if committed by an adult would constitute a crime.

(d) If the respondent may be a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, the court may direct the respondent to an available short-term safe house as a condition of release.

4. At the initial appearance the presentment agency may introduce the respondent's previous delinquency findings entered by a family court. If the respondent has been fingerprinted for the current charge pursuant to section 306.1, the presentment agency may also introduce the fingerprint records maintained by the division of criminal justice services. The clerk of court and the probation service shall cooperate with the presentment agency in making available the appropriate records. At the conclusion of the initial appearance such fingerprint records shall be returned to the presentment agency and shall not be made a part of the court record.

5. Upon a finding of facts and reasons which support a detention order pursuant to subdivision three of this section, the court shall also determine and state in any order directing detention:

(a) whether the continuation of the respondent in the respondent's home would be contrary to the best interests of the respondent based upon, and limited to, the facts and circumstances available to the court at the time of the initial appearance; and

(b) where appropriate and consistent with the need for protection of the community, whether reasonable efforts were made prior to the date of the court appearance that resulted in the detention order issued in accordance with this section to prevent or eliminate the need for removal of the respondent from his or her home or, if the respondent had been removed from his or her home prior to the initial appearance, where appropriate and consistent with the need for protection of the community, whether reasonable efforts were made to make it possible for the respondent to safely return home.

§ 320.6. The initial appearance; referral to the probation service. 1. If the petition alleges the commission of a designated felony act or the commission of a crime enumerated in subdivision four of section 308.1, the probation service shall make a recommendation to the court at the initial appearance regarding the suitability of adjusting the case pursuant to section 308.1.

2. At the initial appearance or at any subsequent appearance, the

court may refer a case to the probation service for adjustment services. The probation service shall consider the views of the complainant and the impact of the alleged act or acts of juvenile delinquency upon the complainant and upon the community in determining whether adjustment under this section would be suitable. In the case of a designated felony petition, the consent of the presentment agency shall be required to refer a case to the probation service for adjustment services. Where an order of fact-finding that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, has been entered pursuant to section 345.1 of this article, there shall be a rebuttable presumption that the court shall refer the case to the probation service for adjustment services in accordance with this subdivision, dismiss the case pursuant to subdivision two of section 352.1 of this article or adjourn the case in contemplation of dismissal pursuant to section 315.3 of this article.

3. If the court refers a case to the probation service pursuant to this section and the probation service adjusts the case, the petition shall be dismissed.

4. If such case is referred to the probation service, the provisions of section 308.1, except subdivision thirteen thereof, shall apply.

§ 321.1. Entry of an admission or a denial. 1. At the initial appearance the respondent shall admit or deny each charge contained in the petition unless the petition is dismissed or the proceeding otherwise terminated.

2. If the respondent refuses to admit or deny each such charge or remains mute, the court must enter a denial in his behalf as to any charge neither admitted nor denied.

§ 321.2. Admissions to part of a petition; admissions concerning other

petitions.

1. A respondent may as a matter of right enter an admission to those allegations in the petition which are determinable at the fact-finding hearing.

2. Where the petition charges but one crime, a respondent may, with the consent of the court and the appropriate presentment agency, enter an admission of a lesser included crime as defined in section 1.20 of the criminal procedure law.

3. Where the petition charges more than one crime in separate counts a respondent may, with the consent of the court and the appropriate presentment agency, enter an admission to part of the petition or a lesser included crime upon the condition that such admission constitutes a complete disposition of these allegations in the petition which are determinable at the fact-finding hearing.

§ 321.3. Acceptance of an admission. 1. The court shall not consent to the entry of an admission unless it has advised the respondent of his right to a fact-finding hearing. The court shall also ascertain through allocution of the respondent and his parent or other person legally responsible for his care, if present, that (a) he committed the act or acts to which he is entering an admission, (b) he is voluntarily waiving his right to a fact-finding hearing, and (c) he is aware of the possible specific dispositional orders. The provisions of this subdivision shall not be waived.

2. Upon consenting to the entry of an admission pursuant to this section, the court must state the reasons for granting such consent.

3. Upon the entry of an admission pursuant to this section the court shall enter an appropriate order pursuant to section 345.1 and schedule a dispositional hearing pursuant to section 350.1.

§ 321.4. Withdrawal of an admission or denial. 1. A respondent who has entered a denial of a petition may as a matter of right withdraw such denial at any time before the conclusion of the fact-finding hearing and enter an admission to the entire petition.

2. At any time prior to the entry of a finding under section 352.1 the court in its discretion may permit a respondent who has entered an admission to the entire petition or to part of the petition to withdraw such admission, and in such event the entire petition as it existed at the time of the admission shall be restored.

§ 322.1. Incapacitated person; examination reports. 1. At any proceeding under this article, the court must issue an order that the respondent be examined as provided herein when it is of the opinion that the respondent may be an incapacitated person. Notwithstanding the provisions of this or any other law, the court may direct that the examination be conducted on an outpatient basis. If the respondent is in custody at the time the court issues an order of examination, the examination may be conducted at the place where the respondent is being held in custody so long as no reasonable alternative outpatient setting is available. The court shall order that two qualified psychiatric examiners as defined in subdivision seven of section 730.10 of the criminal procedure law examine the respondent to determine if he or she may be diagnosed as a person with mental illness or an intellectual or developmental disability.

2. If an order of examination has been issued pursuant to subdivision one, the proceedings shall be adjourned until the examination reports have been filed with the court. Every such report shall be filed within ten days after entry of such order. Upon a showing of special circumstances and a finding that a longer period is necessary to complete the examination and report, the court may extend the time for filing the examination report.

3. Each report shall state the examiner's opinion as to whether the respondent is or is not an incapacitated person, the nature and extent

of his examination and, if he finds the respondent is an incapacitated person, his diagnosis and prognosis and a detailed statement of the reasons for his opinion by making particular reference to those aspects of the proceedings wherein the respondent lacks capacity to understand or to assist in his own defense. The chief administrator of the courts shall prescribe the form for the examination report.

§ 322.2. Proceedings to determine capacity. 1. Upon the receipt of examination reports ordered under section 322.1 of this act, the court shall conduct a hearing to determine whether the respondent is an incapacitated person. The respondent, the counsel for the respondent, the presentment agency and the commissioner of mental health or the commissioner of developmental disabilities, as appropriate, shall be notified of such hearing at least five days prior to the date thereof and afforded an opportunity to be heard.

2. If the court finds that the respondent is not an incapacitated person, it shall continue the delinquency proceedings.

3. If the court finds that the respondent is an incapacitated person, the court shall schedule a hearing to determine whether there is probable cause to believe that the respondent committed a crime. The order of proceeding at such hearing shall conform to section 325.2.

4. If the court finds that there is probable cause to believe that the respondent committed a misdemeanor, the respondent shall be committed to the custody of the appropriate commissioner for a reasonable period not to exceed ninety days. Unless the court specifies that such commitment shall be in a residential facility, such commissioner having custody may arrange for treatment in an appropriate facility or program, including an outpatient program, in accordance with subdivision (e) of section 7.09 or subdivision (c-1) of section 13.09 respectively, of the mental hygiene law. The court shall dismiss the petition on the issuance of the order of commitment and such dismissal shall constitute a bar to further prosecution of the charge or charges contained in the petition.

5. (a) If the court finds that there is probable cause to believe that the respondent committed a felony, it shall order the respondent committed to the custody of the commissioner of mental health or the commissioner of the office for people with developmental disabilities for an initial period not to exceed one year from the date of such order. Unless the court specifies that such commitment shall be in a residential facility, such commissioner having custody may arrange for treatment in an appropriate facility or program, including an outpatient program, in accordance with subdivision (e) of section 7.09 or subdivision (c-1) of section 13.09 respectively, of the mental hygiene law. Such period may be extended annually upon further application to the court by the commissioner having custody or his or her designee. Such application must be made not more than sixty days prior to the expiration of such period on forms that have been prescribed by the chief administrator of the courts. At that time, the commissioner must give written notice of the application to the respondent, the counsel representing the respondent and the mental hygiene legal service if the respondent is at a residential facility. Upon receipt of such application, the court must conduct a hearing to determine the issue of capacity. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court finds that the respondent is no longer incapacitated, he or she shall be returned to the family court for further proceedings pursuant to this article. If the court is satisfied that the respondent continues to be incapacitated, the court shall authorize continued custody of the respondent by the commissioner in a facility or program for a period not to exceed one year. Such extensions shall not continue beyond a reasonable period of time necessary to determine whether the respondent will attain the capacity to proceed to a fact finding hearing in the foreseeable future but in no event shall continue beyond the respondent's eighteenth birthday or, if the respondent was at least sixteen years of age when the act was committed, beyond the respondent's twenty-first birthday.

(b) If a respondent is in the custody of the commissioner upon the respondent's eighteenth birthday, or if the respondent was at least sixteen years of age when the act resulting in the respondent's placement was committed, beyond the respondent's twenty-first birthday, the commissioner shall notify the clerk of the court that the respondent was in his custody on such date and the court shall dismiss the petition.

(c) If the court finds that there is probable cause to believe that the respondent has committed a designated felony act, the court shall require that treatment be provided in a residential facility within the appropriate office of the department of mental hygiene or in an outpatient facility if the commissioner having custody of the child petitions the court pursuant to subdivision seven of this section and such court approves.

(d) The commissioner shall review the condition of the respondent within forty-five days after the respondent is committed to the custody of the commissioner. He or she shall make a second review within ninety days after the respondent is committed to his or her custody. Thereafter, he or she shall review the condition of the respondent every ninety days. The respondent and the counsel for the respondent, shall be notified of any such review and afforded an opportunity to be heard. The commissioner having custody shall apply to the court for an order dismissing the petition whenever he or she determines that there is a substantial probability that the respondent will continue to be incapacitated for the foreseeable future. At the time of such application the commissioner must give written notice of the application to the respondent, the presentment agency and the mental hygiene legal service if the respondent is at a residential facility. Upon receipt of such application, the court may on its own motion conduct a hearing to determine whether there is substantial probability that the respondent will continue to be incapacitated for the foreseeable future, and it must conduct such hearing if a demand therefor is made by the respondent or the mental hygiene legal service within ten days from the date that notice of the application was given to them. The respondent may apply to the court for an order of dismissal on the same ground.

6. Any order pursuant to this section dismissing a petition shall not preclude an application for voluntary or involuntary care and treatment in a facility or program of the appropriate office of the department of mental hygiene pursuant to the provisions of the mental hygiene law. Unless the respondent is admitted pursuant to such an application he or she shall be released.

7. If the commissioner having custody of a child committed to a residential facility pursuant to subdivision four or paragraph (a) of subdivision five of this section determines at any time that such child may be more appropriately treated in a non-residential facility or on an outpatient basis, he or she may arrange for such treatment. If the commissioner having custody of a child committed to a residential facility pursuant to paragraph (c) of subdivision five of this section determines at any time that such child may be more appropriately treated in a non-residential facility or on an outpatient basis, he or she may petition the family court for a hearing. If the court finds after a hearing that treatment in a non-residential facility or on an outpatient basis would be more appropriate for such child, the court shall modify its order of commitment to direct the commissioner to transfer the child to a non-residential facility or arrange outpatient treatment. Application for a hearing to determine whether any child committed to a residential facility under subdivisions four or five of this section may be more appropriately treated in a non-residential facility or on an outpatient basis may be made by the respondent.

8. If the commissioner having custody of the child determines at any time that such child is not an incapacitated person, he shall petition the court for a hearing. The respondent and the presentment agency shall be notified of such hearing within twenty-four hours of the scheduling of such hearing and afforded an opportunity to be heard. Application for such a hearing may be made by the respondent. If the court finds after the hearing that the child is no longer incapacitated, he shall be returned to the family court for further proceedings pursuant to this article.

9. Time spent by the respondent in the custody of a commissioner of an office within the department of mental hygiene or in a local hospital or detention facility pending transfer to the custody of the commissioner after a finding of incapacity, shall be credited and applied towards the period of placement specified in a dispositional order on the original petition.

§ 325.1. The probable-cause hearing; time. 1. At the initial appearance, if the respondent denies a charge contained in the petition and the court determines that the respondent shall be detained for more than three days pending a fact-finding hearing, the court shall schedule a probable-cause hearing to determine the issues specified in section 325.3 of this part.

2. Such probable-cause hearing shall be held within three days following the initial appearance or within four days following the filing of a petition, whichever occurs sooner.

3. For good cause shown, the court may adjourn the hearing for no more than an additional three court days.

4. The respondent may waive the probable-cause hearing, but the fact that the respondent is not ready for a fact-finding hearing shall not be deemed such a waiver.

5. Where the petition consists of an order of removal pursuant to article seven hundred twenty-five of the criminal procedure law, unless the removal was pursuant to subdivision three of section 725.05 of such law and the respondent was not afforded a probable cause hearing pursuant to subdivision three of section 722.20 of such law, the petition shall be deemed to be based upon a determination that probable cause exists to believe the respondent is a juvenile delinquent and the respondent shall not be entitled to any further inquiry on the subject of whether probable cause exists. After the filing of any such petition the court must, however, exercise independent, de novo discretion with respect to release or detention as set forth in section 320.5 of this part.

§ 325.2. The probable-cause hearing; order of proceeding. 1. The order of a probable-cause hearing held pursuant to section 325.1 or 322.2 shall be as follows:

(a) the presentment agency must call and examine witnesses and offer evidence in support of the charge;

(b) the respondent may, as a matter of right, testify in his own behalf; if the respondent so testifies, his testimony may not be introduced against him in any future proceeding, except to impeach his testimony at such future proceeding as inconsistent prior testimony;

(c) upon request of the respondent, the court shall, except for good cause shown, permit him to call and examine other witnesses or to produce other evidence in his behalf.

2. Each witness, whether called by the presentment agency or by the respondent, must, unless he would be authorized to give unsworn evidence at a fact-finding hearing, testify under oath. Each witness, including any respondent testifying in his own behalf, may be cross-examined.

3. Only non-hearsay evidence shall be admissible to demonstrate reasonable cause to believe that the respondent committed a crime; except that reports of experts and technicians in professional and scientific fields and sworn statements of the kinds admissible at a hearing upon a felony complaint in a criminal court may be admitted, unless the court determines, upon application of the respondent, that such hearsay evidence is, under the particular circumstances of the case, not sufficiently reliable, in which case the court shall require that the witness testify in person and be subject to cross-examination.

4. Such hearing should be completed at one session. In the interest of justice, however, it may be adjourned by the court, but no such adjournment may be for more than one court day.

§ 325.3. The probable-cause hearing; determination. 1. At the conclusion of a probable-cause hearing held pursuant to section 325.1 the court shall determine in accordance with the evidentiary standards applicable to a hearing on a felony complaint in a criminal court:

(a) whether it is reasonable to believe that a crime was committed; and

(b) whether it is reasonable to believe that the respondent committed such crime.

2. The court shall state on the record the section or sections of the penal law or other law which it is reasonable to believe the respondent violated.

3. If the court finds that there is reasonable cause pursuant to subdivision one, it shall further determine whether continued detention is necessary pursuant to section 320.5.

4. If the court does not find that there is reasonable cause to believe that a crime was committed and that the respondent committed it, the case shall be adjourned and the respondent released from detention. If the court or the presentment agency cannot hold a probable cause hearing within the limits of subdivision two of section 325.1, the court may dismiss the petition without prejudice or for good cause shown adjourn the hearing and release the respondent pursuant to section 320.5.

PART 3
DISCOVERY

§ 330.1. Bill of particulars. 1. Definitions. (a) "Bill of particulars" is a written statement by the presentment agency specifying, as required by this section, items of factual information which are not recited in the petition and which pertain to the offense charged and including the substance of each respondent's conduct encompassed by the charge which the presentment agency intends to prove at a fact-finding hearing on its direct case, and whether the presentment agency intends to prove that the respondent acted as principal or accomplice or both. However, the presentment agency shall not be required to include in the bill of particulars matters of evidence relating to how the presentment agency intends to prove the elements of the offense charged or how the presentment agency intends to prove any item of factual information included in the bill of particulars.

(b) "Request for a bill of particulars" is a written request served by respondent upon the presentment agency, without leave of the court, requesting a bill of particulars, specifying the items of factual information desired, and alleging that respondent cannot adequately prepare or conduct his defense without the information requested.

2. Bill of particulars upon request. Upon a timely request for a bill of particulars by a respondent against whom a petition is pending, the presentment agency shall within fifteen days of the service of the request or as soon thereafter as is practicable, serve upon the respondent or his or her attorney and file with the court, the bill of particulars, except to the extent the presentment agency shall have refused to comply with the request pursuant to subdivision four of this section. If the respondent is detained, the court shall direct the filing of the bill of particulars on an expedited basis and prior to the commencement of the fact-finding hearing.

3. Timeliness of request. A request for a bill of particulars shall be timely if made within thirty days after the conclusion of the initial appearance and before commencement of the fact-finding hearing. If the respondent is not represented by counsel, and has requested an adjournment to retain counsel or to have counsel appointed, the thirty-day period shall commence, for the purposes of a request for a

bill of particulars by the respondent, on the date counsel initially appeared on respondent's behalf. However, the court may direct compliance with a request for a bill of particulars that, for good cause shown, could not have been made within the time specified.

4. Request refused. The presentment agency may refuse to comply with the request for a bill of particulars or any portion of the request for a bill of particulars to the extent it reasonably believes that the item of factual information requested is not authorized to be included in a bill of particulars, or that such information is not necessary to enable the respondent adequately to prepare or conduct his defense, or that a protective order would be warranted or that the demand is untimely. Such refusal shall be made in a writing, which shall set forth the grounds of such belief as fully as possible, consistent with the reason for the refusal. Within fifteen days of the request or as soon thereafter as practicable, the refusal shall be served upon the respondent and a copy shall be filed with the court.

5. Court ordered bill of particulars. Where a presentment agency has timely served a written refusal pursuant to subdivision four of this section and upon motion, made in writing, of a respondent, who has made a request for a bill of particulars and whose request has not been complied with in whole or in part, the court must, to the extent a protective order is not warranted, order the presentment agency to comply with the request if it is satisfied that the items of factual information requested are authorized to be included in a bill of particulars, and that such information is necessary to enable the respondent adequately to prepare or conduct his defense and, if the request was untimely, a finding of good cause for the delay. Where a presentment agency has not timely served a written refusal pursuant to subdivision four of this section the court must, unless it is satisfied that the presentment agency has shown good cause why such an order should not be issued, issue an order requiring the presentment agency to comply or providing for any other order authorized by subdivision one of section 331.6.

6. Motion procedure. A motion for a bill of particulars shall be made

as prescribed in section 332.1. Upon an order granting a motion pursuant to this section, the presentment agency must file with the court a bill of particulars, reciting every item of information designated in the order, and serve a copy thereof upon the respondent. Pending such filing and service, the fact-finding hearing is stayed.

7. Protective order. (a) The court may, upon motion of the presentment agency, or of any affected person, or upon determination of a motion of respondent for a court-ordered bill of particulars, or upon its own initiative, issue a protective order denying, limiting, conditioning, delaying or regulating the bill of particulars for good cause, including constitutional limitations, danger to the integrity of physical evidence or a substantial risk of physical harm, intimidation, economic reprisal, bribery or unjustified annoyance or embarrassment to any person or an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, or any other factor or set of factors which outweighs the need for the bill of particulars.

(b) An order limiting, conditioning, delaying or regulating the bill of particulars may, among other things, require that any material copied or derived therefrom be maintained in the exclusive possession of the attorney for the respondent and be used for the exclusive purpose of preparing for the defense of the juvenile delinquency proceeding.

8. Amendment. At any time before commencement of the fact-finding hearing, the presentment agency may, without leave of the court, serve upon respondent and file with the court an amended bill of particulars. At any time during the fact-finding hearing, upon application of the presentment agency and with notice to the respondent and an opportunity for him to be heard, the court must, upon finding that no undue prejudice will accrue to respondent and that the presentment agency has acted in good faith, permit the presentment agency to amend the bill of particulars. Upon any amendment of the bill of particulars, the court must, upon application of respondent, order an adjournment of the fact-finding hearing or any other action it deems appropriate which may, by reason of the amendment, be necessary to accord the respondent an adequate opportunity to defend.

§ 330.2. Suppression of evidence. 1. A respondent in a juvenile delinquency proceeding may make a motion to suppress evidence in accordance with sections 710.20 and 710.60 of the criminal procedure law.

2. Whenever the presentment agency intends to offer at a fact-finding hearing evidence described in section 710.20 or subdivision one of section 710.30 of the criminal procedure law, such agency must serve upon respondent notice of such intention. Such notice must be served within fifteen days after the conclusion of the initial appearance or before the fact-finding hearing, whichever occurs first, unless the court, for good cause shown, permits later service and accords the respondent a reasonable opportunity to make a suppression motion thereafter. If the respondent is detained, the court shall direct that such notice be served on an expedited basis.

3. When a motion to suppress evidence is made before the commencement of the fact-finding hearing, the fact-finding hearing shall not be held until the determination of the motion.

4. After the pre-trial determination and denial of the motion, if the court is satisfied, upon a showing by the respondent, that additional pertinent facts have been discovered by the respondent which could not have been discovered by the respondent with reasonable diligence before determination of the motion, it may permit him to renew. Such motion to renew shall be made prior to the commencement of the fact-finding hearing, unless the additional pertinent facts were discovered during the fact-finding hearing.

5. Upon granting a motion to suppress evidence, the court must order that the evidence in question be excluded. When the order excludes tangible property unlawfully taken from the respondent's possession, and when such property is not otherwise subject to lawful retention, the court may, upon request of the respondent, further order that such property be restored to him.

6. An order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing finding of delinquency, notwithstanding the fact that such finding is entered upon an admission made by the respondent, unless the respondent, upon an admission, expressly waives his right to appeal.

7. A motion to suppress evidence is the exclusive method of challenging the admissibility of evidence upon the grounds specified in this section, and a respondent who does not make such a motion waives his right to judicial determination of any such contention.

8. In the absence of service of notice upon a respondent as prescribed in this section, no evidence of a kind specified in subdivision two may be received against him at the fact-finding hearing unless he has, despite the lack of such notice, moved to suppress such evidence and such motion has been denied.

9. An order granting a motion to suppress evidence shall be deemed an order of disposition appealable under section eleven hundred twelve. In taking such an appeal the presentment agency must file, in addition to a notice of appeal, a statement alleging that the deprivation of the use of the evidence ordered suppressed has rendered the sum of the proof available to the presentment agency either: (a) insufficient as a matter of law, or (b) so weak in its entirety that any reasonable possibility of proving the allegations contained in the petition has been effectively destroyed. If the respondent is in detention he shall be released pending such appeal unless the court, upon conducting a hearing, enters an order continuing detention. An order continuing detention under this subdivision may be stayed by the appropriate appellate division.

10. The taking of an appeal by the presentment agency pursuant to subdivision nine constitutes a bar to the presentment of the petition involving the evidence ordered suppressed, unless and until such suppression is reversed upon appeal and vacated.

§ 331.1. Discovery; definition of terms. The following definitions are applicable to this section and sections 331.2 through 331.7.

1. "Demand to produce" means a written notice served by and on a party, without leave of the court, demanding to inspect property pursuant to section 331.2 or 331.3 and giving reasonable notice of the time at which the demanding party wishes to inspect the property designated.

2. "Attorneys' work product" means property to the extent that it contains the opinions, theories or conclusions of the presentment agency, counsel for the respondent or members of their staffs.

3. "Property" means any existing tangible personal or real property, including but not limited to, books, records, reports, memoranda, papers, photographs, tapes or other electronic recordings, articles of clothing, fingerprints, blood samples, fingernail scrapings or handwriting specimens, but excluding attorneys' work product.

4. "Co-respondent" means a person whose name appears in the petition pursuant to paragraph (i) of subdivision three of section 311.1.

§ 331.2. Discovery; upon demand of a party. 1. Except to the extent protected by court order, upon a demand to produce by a respondent, the presentment agency shall disclose to the respondent and make available for inspection, photography, copying or testing, the following property:

(a) any written, recorded or oral statement of the respondent, or by a co-respondent, made, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him;

(b) any transcript of testimony relating to the proceeding pending against the respondent, given by the respondent, or by a co-respondent, before any grand jury;

(c) any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to the proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the presentment agency intends to call as a witness at a hearing, or which the presentment agency intends to introduce at a hearing;

(d) any photograph or drawing relating to the proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the presentment agency intends to call as a witness at a hearing, or which the presentment agency intends to introduce at a hearing;

(e) any other property obtained from the respondent or a co-respondent;

(f) any tapes or other electronic recordings which the presentment agency intends to introduce at the fact-finding hearing, irrespective of whether such recording was made during the course of the criminal transaction;

(g) anything required to be disclosed, prior to the fact-finding hearing, to the respondent by the presentment agency, pursuant to the constitution of this state or of the United States; and

(h) the approximate date, time and place of the offense charged and of respondent's arrest.

2. (a) The presentment agency shall make a diligent, good faith effort to ascertain the existence of property demanded pursuant to subdivision one and to cause such property to be made available for discovery where it exists but is not within the presentment agency's possession, custody or control; provided, that the presentment agency shall not be required to obtain by subpoena duces tecum demanded material which the respondent may thereby obtain.

(b) In any case in which the property includes grand jury testimony, the presentment agency shall forthwith request that the district attorney provide a transcript of such testimony; upon receiving such a request, the district attorney shall promptly apply to the appropriate criminal court, with written notice to the presentment agency and the respondent, for a written order pursuant to section three hundred twenty-five of the judiciary law releasing a transcript of testimony to the presentment agency.

3. Except to the extent protected by court order, upon demand to produce by the presentment agency, the respondent shall disclose and make available for inspection, photography, copying or testing, subject to constitutional limitations:

(a) any written report or document, or portion thereof, concerning a physical examination, or scientific test, experiment, or comparison, made by or at the request or direction of, the respondent, if the respondent intends to introduce such report or document at a hearing, or if the respondent has filed a notice of defense of mental disease or defect pursuant to section 335.1 and such report or document relates thereto, or if such report or document was made by a person, other than respondent, whom respondent intends to call as a witness at a hearing; and

(b) any photograph, drawing, tape or other electronic recording which the respondent intends to introduce at a hearing.

4. Except to the extent protected by court order, upon demand to produce by the presentment agency, a respondent who has served a written notice, under section 335.1, of intention to rely upon the defense of mental disease or defect shall disclose and make available for inspection, photography, copying or testing, subject to constitutional limitations, any written report or document, or portion thereof, concerning a mental examination made by or at the request or direction of the respondent.

5. The respondent shall make a diligent good faith effort to make such property available for discovery pursuant to subdivisions three and four where it exists but the property is not within his possession, custody or control, provided that the respondent shall not be required to obtain by subpoena duces tecum demanded material that the presentment agency may thereby obtain.

6. Notwithstanding the provisions of subdivisions one through five, the presentment agency or the respondent, as the case may be, may refuse to disclose any information which he reasonably believes is not discoverable by a demand to produce, or for which he reasonably believes a protective order pursuant to section 331.5 would be warranted. Such

refusal shall be made in writing, which shall set forth the grounds of such belief as fully as possible, consistent with the objective of the refusal. The writing shall be served upon the demanding party and a copy shall be filed with the court.

§ 331.3. Discovery; upon court order. 1. Upon motion of respondent the court, (a) must order discovery as to any material not disclosed upon a demand pursuant to section 331.2, if it finds that the presentment agency's refusal to disclose such material is not justified; (b) must, unless it is satisfied that the presentment agency has shown good cause why such an order should not be issued, order discovery or any other order authorized by subdivision one of section 331.6 as to any material not disclosed upon demand pursuant to section 331.2 where the presentment agency has failed to serve a timely written refusal pursuant to subdivision six of section 331.2; and (c) may order discovery with respect to any other property which the presentment agency intends to introduce at the fact-finding hearing, upon a showing by the respondent that discovery with respect to such property is material to the preparation of his defense, and that the request is reasonable. Upon granting the motion pursuant to paragraph (c) hereof, the court shall, upon motion of the presentment agency showing such to be material to the preparation of its case and that the request is reasonable, condition its order of discovery by further directing discovery by the presentment agency of property, of the same kind or character as that authorized to be inspected by the respondent which he intends to introduce at the fact-finding hearing.

2. Upon motion of the presentment agency, and subject to constitutional limitation, the court; (a) must order discovery as to any property not disclosed upon a demand pursuant to section 331.2, if it finds that the respondent's refusal to disclose such material is not justified; and (b) may order the respondent to provide non-testimonial evidence. Such order may, among other things, require the respondent to:

(i) appear in a line-up;

(ii) speak for identification by witness or potential witness;

(iii) be fingerprinted, provided that the respondent is subject to fingerprinting pursuant to this article;

(iv) pose for photographs not involving reenactment of an event, provided the respondent is subject to fingerprinting pursuant to this article;

(v) permit the taking of samples of blood, hair or other materials from his body in a manner not involving an unreasonable intrusion thereof or a risk of serious physical injury thereto;

(vi) provide specimens of his handwriting; and

(vii) submit to a reasonable physical or medical inspection of his body.

This subdivision shall not be construed to limit, expand, or otherwise affect the issuance of a similar court order, as may be authorized by law, before the filing of a petition consistent with such rights as the respondent may derive from this article, the constitution of this state or of the United States.

3. An order pursuant to this section may be denied, limited or conditioned as provided in section 331.5.

§ 331.4. Discovery; of prior statements and history of witnesses. 1. At the commencement of the fact-finding hearing, the presentment agency shall, subject to a protective order, make available to the respondent:

(a) any written or recorded statement, including any testimony before a grand jury and any examination videotaped pursuant to section 190.32 of the criminal procedure law, made by a person whom the presentment agency intends to call as a witness at the fact-finding hearing, and which relates to the subject matter of the witness's testimony. When such a statement includes grand jury testimony, the presentment agency shall request that the district attorney provide a transcript of testimony prior to the commencement of the fact-finding hearing; upon receiving such a request, the district attorney shall promptly apply to the appropriate criminal court, with written notice to the presentment agency and the respondent, for a written order pursuant to section three hundred twenty-five of the judiciary law releasing a transcript of testimony to the presentment agency;

(b) a record of judgment of conviction of a witness the presentment agency intends to call at the fact-finding hearing if such record is known by the presentment agency to exist;

(c) the existence of any pending criminal action against a witness the presentment agency intends to call at the fact-finding hearing, if the pending criminal action is known by the presentment agency to exist.

The provisions of paragraphs (b) and (c) shall not be construed to require the presentment agency to fingerprint a witness or otherwise cause the division of criminal justice services or other law enforcement agency or court to issue a report concerning a witness.

2. At the conclusion of the presentment agency's direct case and before the commencement of the respondent's direct case, the respondent shall, subject to a protective order, make available to the presentment agency (a) any written or recorded statement made by a person other than the respondent whom the respondent intends to call as a witness at the fact-finding hearing and which relates to the subject matter of the witness's testimony; (b) a record of judgment of conviction of a witness, other than the respondent, the respondent intends to call at a hearing if the record of conviction is known by the respondent to exist; and (c) the existence of any pending criminal action against a witness, other than the respondent, the respondent intends to call at a hearing, if the pending criminal action is known by the respondent to exist.

3. Subject to a protective order, at a pre-fact-finding hearing held upon a motion pursuant to section 330.2, at which a witness is called to testify, each party at the conclusion of the direct examination of each of its witnesses, shall, upon request of the other party, make available to that party to the extent not previously disclosed:

(a) any written or recorded statement, including any testimony before a grand jury, made by such witness other than the respondent, which relates to the subject matter of the witness's testimony. When such a statement includes grand jury testimony, the presentment agency shall request that the district attorney provide a transcript of testimony prior to the commencement of the pre-fact-finding hearing; upon receiving such a request, the district attorney shall promptly apply to the appropriate criminal court, with written notice to the presentment agency and the respondent, for a written order pursuant to section three hundred twenty-five of the judiciary law releasing a transcript of testimony to the presentment agency;

(b) a record of a judgment of conviction of such witness other than the respondent if the record of conviction is known by the presentment agency or respondent, as the case may be, to exist; and

(c) the existence of any pending criminal action against such witness other than the respondent, if the pending criminal action is known by the presentment agency or respondent, as the case may be, to exist.

§ 331.5. Discovery; protective orders, continuing duty to disclose. 1. The court may, upon motion of either party, or of any affected person, or upon determination of a motion of either party for an order of discovery, or upon its own initiative, issue a protective order denying, limiting, conditioning, delaying or regulating discovery for good cause, including constitutional limitations, danger to the integrity of physical evidence or a substantial risk of physical harm, intimidation, economic reprisal, bribery or unjustified annoyance or embarrassment to any person or an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, or any other factor or set of factors which outweighs the usefulness of the discovery.

2. An order limiting, conditioning, delaying or regulating discovery may, among other things, require that any material copied or derived therefrom be maintained in the exclusive possession of the attorney for the discovering party and be used for the exclusive purpose of preparing for the defense or presentment of the action.

3. A motion for a protective order shall suspend discovery of the particular matter in dispute.

4. If, after complying with the provisions of sections 331.2 through 331.7 or an order pursuant thereto, a party finds, either before or during the fact-finding hearing, additional material subject to

discovery or covered by such order, he shall promptly comply with the demand or order, refuse to comply with the demand where refusal is authorized, or apply for a protective order pursuant to this section.

§ 331.6. Discovery; sanctions. 1. If, during the course of discovery proceedings, the court finds that a party has failed to comply with any of the provisions of sections 331.2 through 331.7, the court may order such party to permit discovery of the property not previously disclosed, grant a continuance, issue a protective order, prohibit the introduction of certain evidence or the calling of certain witnesses or take any other appropriate action.

2. The failure of the presentment agency to call as a witness a person specified in subdivision one of section 331.2 or any party to introduce disclosed material at the fact-finding hearing shall not, by itself constitute grounds for any sanction or for adverse comment thereupon by any party.

§ 331.7. Discovery; demand and motion procedure. 1. If the respondent is in detention:

(a) a demand to produce shall be made within seven days after the conclusion of the initial appearance or prior to the commencement of the fact-finding hearing, whichever occurs sooner, unless the court grants an extension for good cause shown;

(b) a refusal to comply with a demand to produce shall be made within five days of the service of the demand to produce, but for good cause may be made thereafter;

(c) absent a refusal to comply with a demand to produce, compliance with such demand shall be made within seven days of the service of the demand or as soon thereafter as practicable. The court, however, may order compliance within a shorter period of time.

2. If the respondent is not in detention:

(a) a demand to produce shall be made within fifteen days after the conclusion of the initial appearance unless extended for good cause shown, but in no event later than the commencement of the fact-finding hearing;

(b) a refusal to comply with a demand to produce shall be made within fifteen days of the service of the demand to produce, but for good cause may be made thereafter;

(c) absent a refusal to comply with a demand to produce, compliance with such demand shall be made within fifteen days of the service of the demand or as soon thereafter as practicable.

3. If the respondent is not in detention, a motion by the presentment agency for discovery shall be made within thirty days after the conclusion of the initial appearance, but for good cause shown may be made at any time before commencement of the fact-finding hearing. If the respondent is in detention such motion shall be made within fourteen days after the conclusion of the initial appearance or prior to the commencement of the fact-finding hearing, whichever occurs sooner.

4. A motion by a respondent for discovery shall be made as prescribed in section 332.2.

5. Where the interests of justice so require, the court may permit a party to a motion for an order of discovery or a protective order, or other affected person, to submit papers or to testify ex parte or in camera. Any such papers and transcripts of such testimony shall be sealed, but shall constitute a part of the record on appeal. If practical, a judge who receives papers or testimony in camera shall refer the case to a different judge of the same court to preside at the fact-finding hearing.

§ 332.1. Pre-trial motions; definition. "Pre-trial motion" as used in this article means any motion by a respondent which seeks an order of the court:

1. transferring a proceeding pursuant to section 302.3; or

2. granting a separate fact-finding hearing pursuant to section 311.3;

or

3. granting separate fact-finding hearings or consolidating petitions pursuant to section 311.6; or

4. dismissing a petition pursuant to section 315.1; or

5. granting a bill of particulars pursuant to section 330.1; or

6. granting discovery pursuant to section 331.3; or

7. suppressing the use at the fact-finding hearing of any evidence pursuant to section 330.2; or

8. dismissing a petition, or any count thereof, on the ground that the respondent has been denied a speedy fact-finding hearing contrary to section 310.2; or

9. dismissing a petition, or any count thereof, on the ground that the proceeding is untimely, pursuant to section 302.2; or

10. dismissing a petition, or any count thereof, on the ground that the proceeding is barred in accordance with the laws applicable pursuant to section 303.2.

§ 332.2. Pre-trial motions; procedure. 1. Except as otherwise expressly provided in this article, all pre-trial motions shall be filed within thirty days after the conclusion of the initial appearance and before commencement of the fact-finding hearing, or within such additional times as the court may fix upon application of the respondent made prior to entering a finding pursuant to section 345.1. If the respondent is not represented by counsel and has requested an adjournment to retain counsel or to have counsel appointed, such thirty-day period shall commence on the date counsel initially appears on the respondent's behalf. A motion made pursuant to subdivision eight of section 332.1 must be made prior to the commencement of a fact-finding hearing or the entry of an admission.

2. All pre-trial motions with supporting affidavits, exhibits and memoranda of law, if any, shall be included within the same set of motion papers wherever practicable, and shall be made returnable on the same date, unless the respondent shows that it would be prejudicial to the defense were a single judge to consider all such motions. Where one motion seeks to provide the basis for making another motion, it shall be deemed impracticable to include both motions in the same set of motion papers.

3. Notwithstanding the provisions of subdivisions one and two, the court must entertain and decide on its merits, at any time before the conclusion of the fact-finding hearing, any appropriate motion based upon grounds of which the respondent could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have raised within the period specified in subdivision one. Any other pre-trial motions made after such thirty day period may be summarily denied, but the court, in the interest of justice and for good cause shown may, in its discretion, at any time before a finding is entered, entertain and dispose of the motion on the merits.

4. If the respondent is detained, the court shall hear and determine pre-trial motions on an expedited basis.

§ 335.1. Notice of defense of mental disease or defect. Evidence of mental disease or defect of the respondent excluding his responsibility under this article is not admissible at the fact-finding hearing unless the respondent serves upon the presentment agency and files with the court a written notice of intention to rely upon such defense. Such notice must be served and filed before the fact-finding hearing and not more than thirty days after the conclusion of the initial appearance, whichever is sooner. In the interest of justice and for good cause shown, however, the court may permit such service and filing to be made at any later time prior to the conclusion of the fact-finding hearing.

§ 335.2. Notice of alibi. 1. At any time not more than fifteen days after the conclusion of the initial appearance and before the fact-finding hearing the presentment agency may serve upon the respondent and file a copy thereof with the court, a demand that if the respondent intends to offer a defense that at the time of the commission of the crime charged he was at some place or places other than the scene of the crime, and to call witnesses in support of such defense, he must within ten days of service of such demand, serve upon such agency, and file a copy thereof with the court, a "notice of alibi", reciting; (a) the place or places where the respondent claims to have been at the time in question, and (b) the names, the residential addresses, the places of employment and the addresses thereof of every such alibi witness upon whom he intends to rely. For good cause shown, the court may extend the period for service of the notice.

2. Within a reasonable time after receipt of the respondent's witness list but not later than ten days before the fact-finding hearing, the presentment agency must serve upon the respondent and file a copy thereof with the court, a list of witnesses such agency proposes to offer in rebuttal to discredit the respondent's alibi at the trial together with the residential addresses, the places of employment and the addresses thereof of any such rebuttal witnesses. A witness who will testify that the respondent was at the scene of the crime is not such an alibi rebuttal witness. For good cause shown, the court may extend the period for service.

3. If at the trial the respondent calls such an alibi witness without having served the demanded notice of alibi, or if having served such a notice he calls a witness not specified therein, the court may exclude any testimony of such witness relating to the alibi defense. The court may in its discretion receive such testimony, but before doing so, it must, upon application of the presentment agency, grant a reasonable adjournment.

4. Similarly, if the presentment agency fails to serve and file a list of any rebuttal witnesses, the provisions of subdivision three shall

reciprocally apply.

5. Both the respondent and the presentment agency shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses which come to the attention of either party subsequent to filing his witness list as provided in this section.

PART 4

THE FACT-FINDING HEARING

§ 340.1. Time of fact-finding hearing. 1. If the respondent is in detention and the highest count in the petition charges the commission of a class A, B, or C felony, the fact-finding hearing shall commence not more than fourteen days after the conclusion of the initial appearance except as provided in subdivision four. If the respondent is in detention and the highest count in such petition is less than a class C felony the fact-finding hearing shall commence no more than three days after the conclusion of the initial appearance except as provided in subdivision four.

2. If the respondent is not in detention the fact-finding hearing shall commence not more than sixty days after the conclusion of the initial appearance except as provided in subdivision four.

3. For the purposes of this section, in any case where a proceeding has been removed to the family court pursuant to an order issued pursuant to section 725.05 of the criminal procedure law, the date specified in such order for the defendant's appearance in the family court shall constitute the date of the initial appearance.

4. The court may adjourn a fact-finding hearing:

(a) on its own motion or on motion of the presentment agency for good cause shown for not more than three days if the respondent is in detention and not more than thirty days if the respondent is not in detention; provided, however, that if there is probable cause to believe the respondent committed a homicide or a crime which resulted in a person being incapacitated from attending court, the court may adjourn the hearing for a reasonable length of time; or

(b) on motion by the respondent for good cause shown for not more than thirty days; or

(c) on its own motion for not more than six months if the proceeding has been adjourned in contemplation of dismissal pursuant to section 315.3.

5. The court shall state on the record the reason for any adjournment of the fact-finding hearing.

6. Successive motions to adjourn a fact-finding hearing shall not be granted in the absence of a showing, on the record, of special circumstances; such circumstances shall not include calendar congestion or the status of the court's docket or backlog.

7. For purposes of this section, if a warrant for the respondent's arrest has been issued pursuant to section 312.2 of this article due to the respondent's failure to appear for a scheduled fact-finding hearing, computation of the time within which such hearing must take place shall exclude the period extending from the date of issuance of the bench warrant for respondent's arrest because of his or her failure to appear to the date the respondent subsequently appears in court pursuant to a bench warrant or appears voluntarily; provided, however, no period of time may be excluded hereunder unless the respondent's location cannot be determined by the exercise of due diligence or, if the respondent's location is known, his or her presence in court cannot be obtained by the exercise of due diligence. In determining whether due diligence has been exercised, the court shall consider, among other factors, the report presented to the court pursuant to subdivision two of section 312.2 of this article.

§ 340.2. Presiding judge. 1. The judge who presides at the commencement of the fact-finding hearing shall continue to preside until such hearing is concluded and an order entered pursuant to section 345.1 unless a mistrial is declared.

2. The judge who presides at the fact-finding hearing or accepts an admission pursuant to section 321.3 shall preside at any other subsequent hearing in the proceeding, including but not limited to the dispositional hearing.

3. Notwithstanding the provisions of subdivision two, the rules of the family court shall provide for the assignment of the proceeding to another judge of the court when the appropriate judge cannot preside:

(a) by reason of illness, disability, vacation or no longer being a judge of the court in that county; or

(b) by reason of removal from the proceeding due to bias, prejudice or similar grounds; or

(c) because it is not practicable for the judge to preside.

4. The provisions of this section shall not be waived.

§ 341.1. Exclusion of general public. The general public may be excluded from any proceeding under this article and only such persons and the representatives of authorized agencies as have a direct interest in the case shall be admitted thereto.

§ 341.2. Presence of respondent and his or her parent. 1. The respondent and his or her counsel shall be personally present at any hearing under this article and at the initial appearance.

2. If a respondent conducts himself or herself in so disorderly and disruptive a manner that the hearing cannot be carried on with the respondent in the courtroom, the court may order a recess for the purpose of enabling the respondent's parent or other person responsible for his or her care and the respondent's counsel to exercise full efforts to assist the respondent to conduct himself or herself so as to permit the proceedings to resume in an orderly manner. If such efforts fail, the respondent may be removed from the courtroom if, after he or she is warned by the court that he or she will be removed, he or she continues such disorderly and disruptive conduct. Such time shall not extend beyond the minimum period necessary to restore order.

3. The respondent's parent or other person responsible for his or her care shall be present at any hearing under this article and at the initial appearance. However, the court shall not be prevented from proceeding by the absence of such parent or person if reasonable and substantial effort has been made to notify such parent or other person and if the respondent and his or her counsel are present.

§ 342.1. The fact-finding hearing; order of procedure. The order of the fact-finding hearing shall be as follows:

1. The court shall permit the parties to deliver opening addresses. If both parties deliver opening addresses, the presentment agency's address shall be delivered first.

2. The presentment agency must offer evidence in support of the petition.

3. The respondent may offer evidence in his defense.

4. The presentment agency may offer evidence in rebuttal of the respondent's evidence, and the respondent may then offer evidence in rebuttal of the presentment agency's evidence. The court may in its discretion permit the parties to offer further rebuttal or surrebuttal evidence in this pattern. In the interest of justice, the court may permit either party to offer evidence upon rebuttal which is not technically of a rebuttal nature but more properly a part of the offering party's original case.

5. At the conclusion of the evidence, the respondent shall have the right to deliver a summation.

6. The presentment agency shall then have the right to deliver a summation.

7. The court must then consider the case and enter a finding.

§ 342.2. Evidence in fact-finding hearings; required quantum. 1. Only evidence that is competent, material and relevant may be admitted at a fact-finding hearing.

2. Any determination at the conclusion of a fact-finding hearing that a respondent committed an act or acts which if committed by an adult

would be a crime must be based on proof beyond a reasonable doubt.

3. An order of removal pursuant to a direction authorized by sections 220.10, 310.85 and 330.25 of the criminal procedure law constitutes proof beyond a reasonable doubt and a determination that the respondent did the act or acts specified therein in accordance with section 725.05 of the criminal procedure law.

§ 343.1. Rules of evidence; testimony given by children. 1. Any person may be a witness in a delinquency proceeding unless the court finds that, by reason of infancy or mental disease or defect, he does not possess sufficient intelligence or capacity to justify reception of his evidence.

2. Every witness more than nine years old may testify only under oath unless the court is satisfied that such witness cannot, as a result of mental disease or defect, understand the nature of an oath. A witness less than nine years old may not testify under oath unless the court is satisfied that he or she understands the nature of an oath. If under either of the above provisions, a witness is deemed to be ineligible to testify under oath, the witness may nevertheless be permitted to give unsworn evidence if the court is satisfied that the witness possesses sufficient intelligence and capacity to justify the reception thereof.

3. A respondent may not be found to be delinquent solely upon the unsworn evidence given pursuant to subdivision two.

* 4. A child witness may give testimony in accordance with the provisions of article sixty-five of the criminal procedure law, provided such child is declared vulnerable in accordance with subdivision one of section 65.10 of such law. A child witness means a person fourteen years old or less who is or will be called to testify in any proceeding concerning an act defined in article one hundred thirty of the penal law or section 255.25, 255.26 or 255.27 of such law, which act would constitute a crime if committed by an adult. The provisions of this subdivision shall expire and be deemed repealed on the same date as article sixty-five of the criminal procedure law expires and is deemed

repealed pursuant to section five of chapter five hundred five of the laws of nineteen hundred eighty-five, as from time to time, amended.

* NB Repealed September 1, 2027

§ 343.2. Rules of evidence; corroboration of accomplice testimony. 1. A respondent may not be found to be delinquent upon the testimony of an accomplice unsupported by corroborative evidence tending to connect the respondent with the commission of the crime or crimes charged in the petition.

2. An "accomplice" means a witness in a juvenile delinquency proceeding who, according to evidence adduced in such proceeding, may reasonably be considered to have participated in:

(a) the crime charged; or

(b) a crime based on the same or some of the same facts or conduct which constitutes the crime charged in the petition.

3. A witness who is an accomplice as defined in subdivision two is no less such because a proceeding, conviction or finding of delinquency against him would be barred or precluded by some defense or exemption such as infancy, immunity or previous prosecution amounting to a collateral impediment to such proceeding, conviction or finding, not affecting the conclusion that such witness engaged in the conduct constituting the crime with the mental state required for the commission thereof.

§ 343.3. Rules of evidence; identification by means of previous recognition in absence of present identification. 1. In any juvenile delinquency proceeding in which the respondent's commission of a crime is in issue, testimony as provided in subdivision two may be given by a witness when:

(a) such witness testifies that:

(i) he or she observed the person claimed by the presentment agency to be the respondent either at the time and place of the commission of the crime or upon some other occasion relevant to the case; and

(ii) on a subsequent occasion he or she observed, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, a person, or, where the observation is made pursuant to a blind or blinded procedure as defined herein, a pictorial, photographic, electronic, filmed or video recorded reproduction of a person whom he or she recognized as the same person whom he or she had observed on the first incriminating occasion; and

(iii) he or she is unable at the proceeding to state, on the basis of present recollection, whether or not the respondent is the person in question; and

(b) it is established that the respondent is in fact the person whom the witness observed and recognized or whose pictorial, photographic, electronic, filmed or video recorded reproduction the witness observed and recognized on the second occasion. Such fact may be established by testimony of another person or persons to whom the witness promptly declared his or her recognition on such occasion and by such pictorial, photographic, electronic, filmed or video recorded reproduction.

(c) For purposes of this section, a "blind or blinded procedure" is one in which the witness identifies a person in an array of pictorial, photographic, electronic, filmed or video recorded reproductions under circumstances where, at the time the identification is made, the public servant administering such procedure: (i) does not know which person in the array is the suspect, or (ii) does not know where the suspect is in the array viewed by the witness. The failure of a public servant to follow such a procedure shall be assessed solely for purposes of this article and shall result in the preclusion of testimony regarding the identification procedure as evidence in chief, but shall not constitute a legal basis to suppress evidence made pursuant to subdivision six of section 710.20 of the criminal procedure law. This article neither limits not expands subdivision six of section 710.20 of the criminal procedure law.

2. Under circumstances prescribed in subdivision one, such witness may testify at the proceeding that the person whom he or she observed and recognized or whose pictorial, photographic, electronic, filmed or video recorded reproduction he or she observed and recognized on the second

occasion is the same person whom he or she observed on the first or incriminating occasion. Such testimony, together with the evidence that the respondent is in fact the person whom the witness observed and recognized or whose pictorial, photographic, electronic, filmed or video recorded reproduction he or she observed and recognized on the second occasion, constitutes evidence in chief.

§ 343.4. Rules of evidence; identification by means of previous recognition, in addition to present identification. In any juvenile delinquency proceeding in which the respondent's commission of a crime is in issue, a witness who testifies that: (a) he or she observed the person claimed by the presentment agency to be the respondent either at the time and place of the commission of the crime or upon some other occasion relevant to the case, and (b) on the basis of present recollection, the respondent is the person in question, and (c) on a subsequent occasion he or she observed the respondent, or, where the observation is made pursuant to a blind or blinded procedure, a pictorial, photographic, electronic, filmed or video recorded reproduction of the respondent under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, and then also recognized him or her or the pictorial, photographic, electronic, filmed or video recorded reproduction of him or her as the same person whom he or she had observed on the first or incriminating occasion, may, in addition to making an identification of the respondent at the delinquency proceeding on the basis of present recollection as the person whom he or she observed on the first or incriminating occasion, also describe his or her previous recognition of the respondent and testify that the person whom he or she observed or whose pictorial, photographic, electronic, filmed or video recorded reproduction he or she observed on such second occasion is the same person whom he or she had observed on the first or incriminating occasion. Such testimony and such pictorial, photographic, electronic, filmed or video recorded reproduction constitutes evidence in chief. For purposes of this section, a "blind or blinded procedure" shall be as defined in paragraph (c) of subdivision one of section 343.3 of this part.

§ 343.5. Rules of evidence; impeachment of own witness by proof of prior contradictory statement. 1. When, upon examination by the party who called him, a witness in a delinquency proceeding gives testimony upon a material issue of the case which tends to disprove the position of such party, such party may introduce evidence that such witness has previously made either a written statement signed by him or an oral statement under oath contradictory to such testimony.

2. Evidence concerning a prior contradictory statement introduced pursuant to subdivision one may be received only for the purpose of impeaching the credibility of the witness with respect to his testimony upon the subject, and does not constitute evidence in chief.

3. When a witness has made a prior signed or sworn statement contradictory to his testimony in a delinquency proceeding upon a material issue of the case, but his testimony does not tend to disprove the position of the party who called him and elicited such testimony, evidence that the witness made such prior statement is not admissible, and such party may not use such prior statement for the purpose of refreshing the recollection of the witness in a manner that discloses its contents to the court.

§ 344.1. Rules of evidence; proof of previous conviction or delinquency finding. 1. If in the course of a juvenile delinquency proceeding, any witness, including a respondent, is properly asked whether he was previously convicted of a specified offense and answers in the negative or in an equivocal manner, the party adverse to the one who called him may independently prove such conviction. If in response to proper inquiry whether he has ever been convicted of any offense the witness answers in the negative or in an equivocal manner, the adverse party may independently prove any previous conviction.

2. If a respondent in a juvenile delinquency proceeding, through the testimony of a witness other than respondent called by him, offers

evidence of his good character, the presentment agency may independently prove any previous finding of delinquency of the respondent for a crime the commission of which would tend to negate any character trait or quality attributed to the respondent in such witness' testimony.

§ 344.2. Rules of evidence; statements of respondent; corroboration.

1. Evidence of a written or oral confession, admission, or other statement made by a respondent with respect to his participation or lack of participation in the crime charged, may not be received in evidence against him in a juvenile delinquency proceeding if such statement was involuntarily made.

2. A confession, admission or other statement is "involuntarily made" by a respondent when it is obtained from him:

(a) by any person by the use or threatened use of physical force upon the respondent or another person, or by means of any other improper conduct or undue pressure which impaired the respondent's physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement; or

(b) by a public servant engaged in law enforcement activity or by a person then acting under his direction or in cooperation with him:

(i) by means of any promise or statement of fact, which promise or statement creates a substantial risk that the respondent might falsely incriminate himself; or

(ii) in violation of such rights as the respondent may derive from the constitution of this state or of the United States; or

(iii) in violation of section 305.2.

3. Where a respondent is subject to interrogation by a public servant at a facility specified in subdivision four of section 305.2 of this article, the entire custodial interrogation, including the giving of any required advice of the rights of the individual being questioned, and the waiver of any rights by the individual, shall be recorded and governed in a manner consistent with standards established by rule of the division of criminal justice services pursuant to paragraph (e) of subdivision three of section 60.45 of the criminal procedure law. The

interrogation shall be recorded in a manner such that the persons in the recording are identifiable and the speech is intelligible. A copy of the recording shall be subject to discovery pursuant to section 331.2 of this article.

4. A child may not be found to be delinquent based on the commission of any crime solely upon evidence of a confession or admission made by him without additional proof that the crime charged has been committed.

§ 344.3. Rules of evidence; psychiatric testimony in certain cases. When, in connection with a defense of mental disease or defect, a psychiatrist or licensed psychologist who has examined the respondent testifies at the fact-finding hearing concerning the respondent's mental condition at the time of the conduct charged to constitute a crime, he must be permitted to make a statement as to the nature of the examination, the diagnosis of the mental condition of the respondent and his opinion as to the extent, if any, to which the capacity of the respondent to know or appreciate the nature and consequences of such conduct, or its wrongfulness, was impaired as a result of mental disease or defect at that time. The psychiatrist must be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion, and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

§ 344.4. Rules of evidence; admissibility of evidence of victim's sexual conduct in sex offense cases. Evidence of a victim's sexual conduct shall not be admissible in a juvenile delinquency proceeding for a crime or an attempt to commit a crime defined in article one hundred thirty of the penal law unless such evidence:

1. proves or tends to prove specific instances of the victim's prior sexual conduct with the accused; or

2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 of the penal law within three years prior

to the sex offense which is the subject of the juvenile delinquency proceeding; or

3. rebuts evidence introduced by the presentment agency of the victim's failure to engage in vaginal sexual contact, oral sexual contact, anal sexual contact or sexual contact during a given period of time; or

4. rebuts evidence introduced by the presentment agency which proves or tends to prove that the accused is the cause of pregnancy or disease of the victim, or the source of semen found in the victim; or

5. is determined by the court after an offer of proof by the accused, or such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination, to be relevant and admissible in the interests of justice.

§ 345.1. Orders. 1. If the allegations of a petition or specific counts of a petition concerning the commission of a crime or crimes are established, the court shall enter an appropriate order and schedule a dispositional hearing pursuant to section 350.1. The order shall specify the count or counts of the petition upon which such order is based and the section or sections of the penal law or other law under which the act or acts so stated would constitute a crime if committed by an adult. If the respondent or respondents are found to have committed a designated felony act, the order shall so state.

2. If the allegations of a petition or specific counts of a petition under this article are not established, the court shall enter an order dismissing the petition or specific counts therein.

3. Where an order of fact-finding that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, has been entered pursuant to subdivision one of this section, there shall be a rebuttable presumption

that the court shall refer the case to the probation service for adjustment services in accordance with section 320.6 of this article, dismiss the case pursuant to subdivision two of section 352.1 of this article or adjourn the case in contemplation of dismissal pursuant to section 315.3 of this article.

§ 346.1. Fact-finding hearing; removal. Where the proceeding was commenced by the filing of an order of removal pursuant to a direction authorized by section 220.10, 310.85 or 330.25 of the criminal procedure law, the requirements of a fact-finding hearing shall be deemed to have been satisfied upon the filing of the order and no further fact-finding hearing need be held; provided, however, that where any specification required by subdivision five of section 725.05 of the criminal procedure law is not clear, the court may examine such records or hold such hearing as it deems necessary to clarify said specification.

§ 347.1. Required testing of the respondent in certain proceedings. 1. (a) In any proceeding where the respondent is found pursuant to section 345.1 or 346.1 of this article, to have committed a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, for which an act of "vaginal sexual contact", "oral sexual contact" or "anal sexual contact", as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the respondent submit to human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the respondent and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law.

(b) For the purposes of this section, the term "victim" means the person with whom the respondent engaged in an act of "vaginal sexual contact", "oral sexual contact" or "anal sexual contact", as those terms are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for the court's finding that the respondent committed acts constituting one or more of the offenses specified in paragraph (a) of this subdivision.

2. Any request made by the victim pursuant to this section must be in writing, filed with the court and provided by the court to the defendant and his or her counsel. The request must be filed with the court prior to or within ten days after the filing of an order in accordance with section 345.1 or 346.1 of this article, provided that, for good cause shown, the court may permit such request to be filed at any time prior to the entry of an order of disposition.

3. Any requests, related papers and orders made or filed pursuant to this section, together with any papers or proceedings related thereto, shall be sealed by the court and not made available for any purpose, except as may be necessary for the conduct of judicial proceedings directly related to the provisions of this section. All proceedings on such requests shall be held in camera.

4. The application for an order to compel a respondent to undergo an HIV related test may be made by the victim but, if the victim is an infant or incompetent person, the application may also be made by a representative as defined in section twelve hundred one of the civil practice law and rules. The application must state that (a) the applicant was the victim of the offense, enumerated in paragraph (a) of subdivision one of this section, which the court found the defendant to have committed; and (b) the applicant has been offered counseling by a public health officer and been advised of (i) the limitations on the information to be obtained through an HIV test on the proposed subject; (ii) current scientific assessments of the risk of transmission of HIV from the exposure he or she may have experienced; and (iii) the need for the applicant to undergo HIV related testing to definitively determine his or her HIV status.

5. The court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense the respondent was found to have committed. The court ordered test must be performed within fifteen

days of the date on which the court ordered the test, provided however that whenever the respondent is not tested within the period prescribed by the court, the court must again order that the respondent undergo an HIV related test.

6. (a) Test results shall be disclosed subject to the following limitations, which shall be specified in any order issued pursuant to this section:

(i) disclosure of confidential HIV related information shall be limited to that information which is necessary to fulfill the purpose for which the order is granted;

(ii) disclosure of confidential HIV related information shall be limited to the person making the application; redisclosure shall be permitted only to the victim, the victim's immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk of HIV transmission and shall not be permitted to any other person or the court.

(b) Unless inconsistent with this section, the court's order shall direct compliance with and conform to the provisions of article twenty-seven-F of the public health law. Such order shall include measures to protect against disclosure to others of the identity and HIV status of the applicant and of the person tested and may include such other measures as the court deems necessary to protect confidential information.

7. Any failure to comply with the provisions of this section or section twenty-seven hundred eighty-five-a of the public health law shall not impair the validity of any order of disposition entered by the court.

8. No information obtained as a result of a consent, hearing or court order for testing issued pursuant to this section nor any information derived therefrom may be used as evidence in any criminal or civil proceeding against the respondent which relates to events that were the basis for the respondent's conviction, provided however that nothing herein shall prevent prosecution of a witness testifying in any court

hearing held pursuant to this section for perjury pursuant to article two hundred ten of the penal law.

PART 5

THE DISPOSITIONAL HEARING

§ 350.1. Time of dispositional hearing. 1. If the respondent is detained and has not been found to have committed a designated felony act the dispositional hearing shall commence not more than ten days after the entry of an order pursuant to subdivision one of section 345.1

of this article, except as provided in subdivision three of this section; provided, however, that if the respondent has been found to have committed solely a violation as defined in subdivision three of section 10.00 of the penal law, the respondent shall not be detained pending disposition.

2. In all other cases, the dispositional hearing shall commence not more than fifty days after entry of an order pursuant to subdivision one of section 345.1, except as provided in subdivision three.

3. The court may adjourn the dispositional hearing:
(a) on its own motion or on motion of the presentment agency for good cause shown for not more than ten days; or
(b) on motion by the respondent for good cause shown for not more than thirty days.

4. The court shall state on the record the reason for any adjournment of the dispositional hearing.

5. Successive motions to adjourn a dispositional hearing beyond the limits enumerated in subdivision one or two shall not be granted in the absence of a showing, on the record, of special circumstances; special circumstances shall not include calendar congestion or the status of the court's docket or backlog.

§ 350.2. Order of removal. 1. Where the proceeding has been commenced by the filing of an order of removal pursuant to a direction authorized by sections 220.10, 310.85 and 330.25 of the criminal procedure law, the date of filing in the family court shall be deemed for purposes of section 350.1 to be the date of the entry of an order pursuant to subdivision one of section 345.1.

2. The clerk of court shall calendar an appearance to be held within seven days from the date the order of removal was filed. At such appearance the court shall schedule a dispositional hearing in accordance with section 350.1 and determine such other issues as may

properly be before it.

§ 350.3. Dispositional hearings; evidence and required quantum of proof - appearance of presentment agency. 1. Only evidence that is material and relevant may be admitted during a dispositional hearing.

2. An adjudication at the conclusion of a dispositional hearing must be based on a preponderance of the evidence.

3. The presentment agency shall appear at the dispositional hearing.

4. The victim has the right to make a statement with regard to any matter relevant to the question of disposition. If the victim chooses to make a statement, such individual shall notify the court at least ten days prior to the date of the dispositional hearing. The court shall notify the respondent no less than seven days prior to the dispositional hearing of the victim's intent to make a statement. The victim shall not be made aware of the final disposition of the case.

§ 350.4. Order of procedure. The order of the dispositional hearing shall be as follows:

1. The court, with the consent of the parties, may direct the probation service to summarize its investigation report if one has been prepared and, in its discretion, deliver any further statement concerning the advisability of specific dispositional alternatives.

2. The court may in its discretion call witnesses, including the preparer of probation reports or diagnostic studies, to offer evidence concerning the advisability of specific dispositional alternatives. Such witnesses may be cross-examined by the presentment agency and the respondent.

3. The presentment agency may call witnesses to offer such evidence, including the preparer of a probation report or a diagnostic study.

4. The respondent may call witnesses, to offer such evidence, including the preparer of a probation report or a diagnostic study.

5. The court may permit the presentment agency or respondent to offer such rebuttal or surrebuttal evidence as it may deem appropriate.

5-a. The victim shall be allowed to make an oral or written statement.

6. The presentment agency may deliver a statement concerning the advisability of specific dispositional alternatives.

7. The respondent may deliver such a statement.

8. The court shall then permit rebuttal statements by both the presentment agency and the respondent.

9. The court shall then consider the case and enter a dispositional order.

§ 351.1. Probation, investigation and diagnostic assessment. 1. Following a determination that a respondent has committed a designated felony act and prior to the dispositional hearing, the judge shall order a probation investigation and a diagnostic assessment. For the purposes of this article, the probation investigation shall include, but not be limited to, the history of the juvenile including previous conduct, the family situation, any previous psychological and psychiatric reports, school adjustment, previous social assistance provided by voluntary or public agencies and the response of the juvenile to such assistance. For the purposes of this article, the diagnostic assessment shall include, but not be limited to, psychological tests and psychiatric interviews to determine mental capacity and achievement, emotional stability and mental disabilities. It shall include a clinical assessment of the situational factors that may have contributed to the act or acts. When feasible, expert opinion shall be rendered as to the risk presented by the juvenile to others or himself, with a recommendation as to the need for a restrictive placement.

2. Following a determination that a respondent committed a crime and prior to the dispositional hearing, the court shall order a probation investigation and may order a diagnostic assessment.

* 2-a. (a) In a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, the local probation department shall develop and submit to the office of children and family services for prior approval a validated pre-dispositional risk assessment instrument and any risk assessment process. The office shall share a copy of any such instrument and process with the office of probation and correctional alternatives and any expert consulting with the office pursuant to this section. Such department shall periodically revalidate any approved pre-dispositional risk assessment instrument. The department shall conspicuously post information about the instrument on its website, including but not limited to, the name of the instrument; the name and contact information of the person, institution or company that developed such instrument; what the instrument is intended to measure; the types of factors and information the instrument takes into consideration; the process by which the instrument is used in both the pre-disposition investigation and dispositional phase of a hearing; the purpose for the instrument and how the instrument informs the recommendation in the pre-dispositional investigation report; links to independent research and studies about the instrument as well as its own validation analysis relating to the instrument, when available; the most recent date the instrument was validated and the date the next re-validation process is anticipated to begin. The department shall confer with appropriate stakeholders, including but not limited to, attorneys for children, presentment agencies and the family court, prior to revising any validated pre-dispositional risk assessment instrument or process. Such department shall provide any approved pre-dispositional risk assessment instrument and process to the temporary president of the senate and the speaker of the assembly. Any revised pre-dispositional risk assessment instrument shall be subject to periodic empirical validation and to the approval of the office of children and family services. The office of children and family services shall consult with

individuals with professional research experience and expertise in criminal justice; social work; juvenile justice; and applied mathematics, psychometrics and/or statistics to assist the office in determining the methods it will use to: approve the department's validated and revalidated pre-dispositional risk assessment instrument and process; and analyze the effectiveness of the use of such instrument and process in accomplishing their intended goals; and analyze, to the greatest extent possible, any disparate impact on dispositional outcomes for juveniles based on race, sex, national origin, economic status, and any other constitutionally protected class, regarding the use of such instrument. The office shall consult with such individuals regarding whether it is appropriate to attempt to analyze whether there is any such disparate impact based on sexual orientation and, if so, the best methods to conduct such analysis. The office shall take into consideration any recommendations given by such individuals involving improvements that could be made to such instrument and process. The department shall provide training on the approved instrument and any approved process to the applicable family courts, presentment agency, and court appointed attorneys for respondents.

(b) Once an initial validated risk assessment instrument and any risk assessment process have been approved by the office of children and family services in consultation with the office of probation and correctional alternatives, the local probation department shall provide the applicable supervising family court judge with a copy of the validated risk assessment instrument and any such process along with the letter from the office of children and family services approving the instrument and process, if applicable, and indicating the date the instrument and any such process shall be effective, provided that such effective date shall be at least thirty days after such notification.

(c) Commencing on the effective date of a validated pre-dispositional risk assessment instrument and any approved process and thereafter, each probation investigation ordered under subdivision two of this section shall include the results of the validated risk assessment of the respondent and process, if any; and a respondent shall not be placed in accordance with section 353.3 or 353.5 of this part unless the court has received and given due consideration to the results of such validated risk assessment and any approved process and made the findings required pursuant to paragraph (f) of subdivision two of section 352.2 of this part.

(d) Notwithstanding any other provision of law to the contrary, data necessary for completion of a pre-dispositional risk assessment instrument may be shared among law enforcement, probation, courts, detention administrations, detention providers, presentment agencies, and the attorney for the child upon retention or appointment solely for the purpose of accurate completion of such risk assessment instrument. A copy of the completed pre-dispositional risk assessment instrument shall be made available to the attorney for the respondent and the applicable court.

(e) The local probation department shall provide the office of probation and correctional alternatives with information regarding the use of the pre-dispositional risk assessment instrument and any risk assessment process in the time and manner required by the office. The office may require that such data be submitted to the office electronically. The office shall not commingle any such information with any criminal history database. The office shall share such information with the office of children and family services. The office of children and family services shall use and share such information only for the purposes of this section and in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(f) The family courts shall provide the office of children and family services with such information, in the time and manner required by the office, as is necessary for the office to determine the validity and efficacy of any pre-dispositional risk assessment instrument and process submitted to the office for approval under this subdivision and to analyze any disparate impact on dispositional outcomes for juveniles in accordance with paragraph (a) of this subdivision. The office shall use and share such information only for the purposes of this section and in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(g) The office of probation and correctional alternatives shall promulgate regulations, in consultation with the office of children and family services, regarding the role of local probation departments in the completion and use of the pre-dispositional risk assessment instrument and in the risk assessment process.

* NB Repealed March 31, 2028

* 2-b. The office of children and family services shall develop a validated pre-dispositional risk assessment instrument and any risk assessment process for juvenile delinquents. The office shall periodically revalidate any approved pre-dispositional risk assessment instrument. The office shall conspicuously post any approved pre-dispositional risk assessment instrument and any risk assessment process on its website and shall confer with appropriate stakeholders, including but not limited to, attorneys for children, presentment agencies and the family court, prior to revising any validated pre-dispositional risk assessment instrument or process. Any such revised pre-dispositional risk assessment instrument shall be subject to periodic empirical validation. The office of children and family services shall consult with individuals with professional research experience and expertise in criminal justice; social work; juvenile justice; and applied mathematics, psychometrics and/or statistics to assist the office in determining the method it will use to: develop, validate and revalidate such pre-dispositional risk assessment instrument; develop the risk assessment process; and analyze the effectiveness of the use of such pre-dispositional risk assessment instrument and process in accomplishing their intended goals; and analyze, to the greatest extent possible, any disparate impact on dispositional outcomes for juveniles based on race, sex, national origin, economic status, and any other constitutionally protected class, regarding the use of such instrument. The office shall consult with such individuals regarding whether it is appropriate to attempt to analyze whether there is any such disparate impact based on sexual orientation and, if so, the best methods to conduct such analysis. The office shall take into consideration any recommendations given by such individuals

involving improvements that could be made to such instrument and process. The office also shall consult with local probation departments in the development of the validated pre-dispositional risk assessment instrument and the revalidation of such instrument. The office of children and family services shall provide training on the instrument and any process to the family courts, local probation departments, presentment agencies and court appointed attorneys for respondents. The office may determine that a pre-dispositional risk assessment instrument and any process in use pursuant to subdivision two-a of section 351.1 of this part may continue to be used pursuant to such subdivision instead of requiring the use of any instrument or process developed pursuant to this subdivision.

(a) Once an initial validated risk assessment instrument and risk assessment process have been developed, the office of children and family services shall provide the supervising family court judges and local probation departments with copies of the validated risk assessment instrument and process and notify them of the effective date of the instrument and process, which shall be at least six months after such notification.

(b) Commencing on the effective date of a validated risk assessment instrument and any risk assessment process and thereafter, each probation investigation ordered under subdivision two of this section shall include the results of the validated risk assessment of the respondent and process, if any; and a respondent shall not be placed in accordance with section 353.3 or 353.5 of this part unless the court has received and given due consideration to the results of such validated risk assessment and any process and made the findings required pursuant to paragraph (g) of subdivision two of section 352.2 of this part.

(c) Notwithstanding any other provision of law to the contrary, data necessary for completion of a pre-dispositional risk assessment instrument may be shared among law enforcement, probation, courts, detention administrations, detention providers, presentment agencies and the attorney for the child upon retention or appointment solely for the purpose of accurate completion of such risk assessment instrument, and a copy of the completed pre-dispositional risk assessment instrument shall be made available to the attorney for the respondent and applicable court.

(d) Local probation departments shall provide the office of probation and correctional alternatives with information regarding use of the pre-dispositional risk assessment instrument and any risk assessment process in the time and manner required by the office. The office may require that such data be submitted to the office electronically. The office shall not commingle any such information with any criminal history database. The office shall share such information with the office of children and family services. The office of children and family services shall use and share such information only for the purposes of this section and in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(e) Law enforcement and the family courts shall provide the office of children and family services with such information, in the time and manner required by the office, as is necessary for the office to develop, validate and revalidate any such pre-dispositional risk assessment instrument and process and to analyze any disparate impact on dispositional outcomes for juveniles in accordance with this section. The office shall use and share such information only for the purposes of this section and share it in accordance with this section. Such information shall be shared and received in a manner that protects the confidentiality of such information. The sharing, use, disclosure and redisclosure of such information to any person, office, or other entity not specifically authorized to receive it pursuant to this section or any other law is prohibited.

(f) The office of probation and correctional alternatives shall promulgate regulations, in consultation with the office of children and family services, regarding the role of local probation departments in the completion and use of the pre-dispositional risk assessment instrument and in the risk assessment process.

* NB Repealed March 31, 2028

3. A child shall not be placed in accord with section 353.3 unless the court has ordered a probation investigation prior to the dispositional

hearing; a child shall not be placed in accord with section 353.4 unless the court has ordered a diagnostic assessment prior to such hearing.

4. Each investigation report prepared pursuant to this section shall afford the victim the right to make a statement. Such victim impact statement shall include an analysis of the victim's version of the offense, the extent of injury or economic loss and the actual out-of-pocket loss or damage to the victim, including the amount of unreimbursed medical expenses, if any, and the views of the victim relating to disposition including the amount of restitution sought by the victim, subject to availability of such information. In the case where the victim is unable to assist in the preparation of the victim impact statement, the information may be acquired from the victim's family. Nothing contained in this section shall be interpreted to require that a victim or his or her family supply information for the preparation of an investigation report or that the dispositional hearing should be delayed in order to obtain such information.

5. (a) All diagnostic assessments and probation investigation reports shall be submitted to the court and made available by the court for inspection and copying by the presentment agency and the respondent at least five court days prior to the commencement of the dispositional hearing. All such reports shall be made available by the court for inspection and copying by the presentment agency and the respondent in connection with any appeal in the case.

(b) The victim impact statement shall be made available to the victim or the victim's family by the presentment agency prior to sentencing.

6. All reports or memoranda prepared or obtained by the probation service for the purpose of a dispositional hearing shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided under section 320.5 such reports or memoranda shall not be furnished to the court prior to the entry of an order pursuant to section 345.1.

7. The probation services which prepare the investigation reports

shall be responsible for the collection and transmission to the office of probation and correctional alternatives, of data on the number of victim impact statements prepared. Such information shall be transmitted annually to the office of victim services and included in the office's biennial report pursuant to subdivision twenty-one of section six hundred twenty-three of the executive law.

§ 352.1. Findings. 1. If, upon the conclusion of the dispositional hearing, the court determines that the respondent requires supervision, treatment or confinement, the court shall enter a finding that such respondent is a juvenile delinquent and order an appropriate disposition pursuant to section 352.2.

2. If, upon the conclusion of the dispositional hearing, the court determines that the respondent does not require supervision, treatment or confinement, the petition shall be dismissed.

§ 352.2. Order of disposition. 1. Upon the conclusion of the dispositional hearing, the court shall enter an order of disposition:

(a) conditionally discharging the respondent in accord with section 353.1; or

(b) putting the respondent on probation in accord with section 353.2; or

(c) continuing the proceeding and placing the respondent in accord with section 353.3; or

(d) placing the respondent in accord with section 353.4; or

(e) continuing the proceeding and placing the respondent under a restrictive placement in accord with section 353.5.

2. (a) In determining an appropriate order the court shall consider the needs and best interests of the respondent as well as the need for protection of the community. If the respondent has committed a designated felony act the court shall determine the appropriate disposition in accord with section 353.5. In all other cases the court shall order the least restrictive available alternative enumerated in

subdivision one which is consistent with the needs and best interests of the respondent and the need for protection of the community.

(b) In an order of disposition entered pursuant to section 353.3 or 353.4 of this chapter, or where the court has determined pursuant to section 353.5 of this chapter that restrictive placement is not required, which order places the respondent with the commissioner of social services or with the office of children and family services for placement with an authorized agency or class of authorized agencies or in such facilities designated by the office of children and family services as are eligible for federal reimbursement pursuant to title IV-E of the social security act, the court in its order shall determine (i) that continuation in the respondent's home would be contrary to the best interests of the respondent; or in the case of a respondent for whom the court has determined that continuation in his or her home would not be contrary to the best interests of the respondent, that continuation in the respondent's home would be contrary to the need for protection of the community; (ii) that where appropriate, and where consistent with the need for protection of the community, reasonable efforts were made prior to the date of the dispositional hearing to prevent or eliminate the need for removal of the respondent from his or her home, or if the child was removed from his or her home prior to the dispositional hearing, where appropriate and where consistent with the need for safety of the community, whether reasonable efforts were made to make it possible for the child to safely return home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, or consistent with the need for protection of the community, or both, the court order shall include such a finding; and (iii) in the case of a child who has attained the age of sixteen, the services needed, if any, to assist the child to make the transition from foster care to independent living.

(c) For the purpose of this section, when an order is entered pursuant to section 353.3 or 353.4 of this article, reasonable efforts to prevent or eliminate the need for removing the respondent from the home of the respondent or to make it possible for the respondent to return safely to the home of the respondent shall not be required where the court determines that:

(1) the parent of such respondent has subjected the respondent to aggravated circumstances, as defined in subdivision fifteen of section 301.2 of this article;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such respondent has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the respondent or another child of the parent;

(5) the parent of such respondent has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph two, three or four of this paragraph, and the victim of such offense was the respondent or another child of the parent; or

(6) the parental rights of the parent to a sibling of such respondent have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held pursuant to section 355.5 of this article within thirty days of the finding of the court that such efforts are not required. The social services official or the office of children and family services, where the respondent was placed with such office, shall subsequent to the permanency hearing make reasonable efforts to place the respondent in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the respondent as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

(d) For the purposes of this section, in determining reasonable efforts to be made with respect to the respondent, and in making such reasonable efforts, the respondent's health and safety shall be the paramount concern.

(e) For the purpose of this section, a sibling shall include a half-sibling.

* (f)(1) In a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, upon the effective date of a risk assessment instrument and any risk assessment process that have been approved by the office of children and family services pursuant to subdivision two-a of section 351.1 of this part, the court shall give due consideration to the results of the validated risk assessment and any such process provided to the court pursuant to such subdivision when determining the appropriate disposition for the respondent.

(2) Any order of the court directing the placement of a respondent into a residential program shall state:

(i) the level of risk the youth was assessed at pursuant to the validated risk assessment instrument; and

(ii) if a determination is made to place a youth in a higher level of placement than appears warranted based on such risk assessment instrument and any approved risk assessment process, the particular reasons why such placement was determined to be necessary for the protection of the community and to be consistent with the needs and best interests of the respondent; and

(iii) that a less restrictive alternative that would be consistent with the needs and best interests of the respondent and the need for protection of the community is not available.

* NB Repealed March 31, 2028

* (g)(i) Once a validated risk assessment instrument and any risk assessment process is a required part of each probation investigation ordered under subdivision two of section 351.1 of this part and provided to the court in accordance with subdivision two-b of such section, the court shall give due consideration to the results of such validated risk assessment and any such process when determining the appropriate disposition for the respondent.

(ii) Any order of the court directing the placement of a respondent into a residential program shall state:

(A) the level of risk the youth was assessed pursuant to the validated risk assessment instrument; and

(B) if a determination is made to place a youth in a higher level of placement than appears warranted based on such risk assessment instrument and any risk assessment process, the particular reasons why such placement was determined to be necessary for the protection of the community and to be consistent with the needs and best interests of the respondent; and

(C) that a less restrictive alternative that would be consistent with the needs and best interests of the respondent and the need for protection of the community is not available.

* NB Repealed March 31, 2028

3. The order shall state the court's reasons for the particular disposition, including, in the case of a restrictive placement pursuant to section 353.5, the specific findings of fact required in such section.

4. Where a youth receives a juvenile delinquency adjudication for conduct committed when the youth was sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, that

would solely constitute a violation as defined in subdivision three of section 10.00 of the penal law and if the presumption pursuant to subdivision three of section 345.1 of this article has been rebutted, the court shall have the power to enter an order of disposition in accordance with paragraph (a) of subdivision one of this section. The court shall not order detention, probation or placement of a youth solely adjudicated under this subdivision.

§ 352.3. Order of protection. (1) Upon the issuance of an order pursuant to section 315.3 or the entry of an order of disposition pursuant to section 352.2, a court may enter an order of protection against any respondent for good cause shown. The order may require that the respondent: (a) stay away from the home, school, business or place of employment of the victims of the alleged offense; or (b) refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the alleged offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such order; or (c) 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; or (d) refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order. "Companion animal", as used in this subdivision, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law. "Connected device", as used in this subdivision, 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.

(1-a) Upon the issuance of an order pursuant to section 315.3 or the entry of an order of disposition pursuant to section 352.2, a court may, for good cause shown, enter an order of protection against any respondent requiring that the respondent refrain from engaging in conduct, against any designated witness specifically named by the court in such order, that would constitute intimidation of a witness pursuant to section 215.15, 215.16 or 215.17 of the penal law or an attempt thereof, provided that the court makes a finding that the respondent did previously, or is likely to in the future, intimidate or attempt to intimidate such witness in such manner.

(2) An order of protection shall remain in effect for the period specified by the court, but shall not exceed the period of time specified in any order of disposition or order adjourning a proceeding in contemplation of dismissal.

§ 353.1. Conditional discharge. 1. The court may conditionally discharge the respondent if the court, having regard for the nature and circumstances of the crime and for the history, character and condition of the respondent, is of the opinion that consistent with subdivision two of section 352.2, neither the public interest nor the ends of justice would be served by a placement and that probation supervision is not appropriate. The court may, as a condition of a conditional discharge, in cases where the record indicates the respondent qualifies as an eligible person and has been adjudicated for an eligible offense as defined in section four hundred fifty-eight-l of the social services law, require the respondent to attend and complete an education reform program established pursuant to section four hundred fifty-eight-l of the social services law.

2. When the court orders a conditional discharge the respondent shall be released with respect to the finding upon which such order is based without placement or probation supervision but subject, during the period of conditional discharge, to such conditions enumerated in subdivision two of section 353.2, as the court may determine. The court shall order the period of conditional discharge authorized by subdivision three and shall specify the conditions to be complied with. The court may modify or enlarge the conditions at any time prior to the expiration or termination of the period of conditional discharge. Such action may not, however, be taken unless the respondent is personally present, except that the respondent need not be present if the modification consists solely of the elimination or relaxation of one or more conditions.

3. The maximum period of a conditional discharge shall not exceed one year.

4. The respondent must be given a written copy of the conditions at the time a conditional discharge is ordered or modified, provided, however, that whenever the respondent has not been personally present at the time of a modification, the court shall notify the respondent in writing within twenty days after such modification, specifying the nature of the elimination or relaxation of any condition and the effective date thereof. A copy of such conditions must be filed with and become part of the record of the case.

5. A finding that the respondent committed an additional crime after a conditional discharge has been ordered and prior to expiration and termination of the period of such order constitutes a ground for revocation of such order irrespective of whether such fact is specified as a condition of the order.

§ 353.2. Probation. 1. The court may order a period of probation if the court, having regard for the nature and circumstances of the crime and the history, character and condition of the respondent, is of the opinion that:

(a) placement of respondent is not or may not be necessary;

(b) the respondent is in need of guidance, training or other assistance which can be effectively administered through probation; and

(c) such disposition is consistent with the provisions of subdivision two of section 352.2.

2. When ordering a period of probation or a conditional discharge pursuant to section 353.1, the court may, as a condition of such order, require that the respondent:

(a) attend school regularly and obey all rules and regulations of the school;

(b) obey all reasonable commands of the parent or other person legally responsible for the respondent's care;

(c) abstain from visiting designated places or associating with named

individuals;
(d) avoid injurious or vicious activities;
(e) co-operate with a mental health, social services or other appropriate community facility or agency to which the respondent is referred;
(f) make restitution or perform services for the public good pursuant to section 353.6;
(g) except when the respondent has been assigned to a facility in accordance with subdivision four of section five hundred four of the executive law, in cases wherein the record indicates that the consumption of alcohol by the respondent may have been a contributing factor, attend and complete an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law; and
(h) comply with such other reasonable conditions as the court shall determine to be necessary or appropriate to ameliorate the conduct which gave rise to the filing of the petition or to prevent placement with the commissioner of social services or the division for youth.

3. When ordering a period of probation, the court may, as a condition of such order, further require that the respondent:
(a) meet with a probation officer when directed to do so by that officer and permit the officer to visit the respondent at home or elsewhere;
(b) permit the probation officer to obtain information from any person or agency from whom respondent is receiving or was directed to receive diagnosis, treatment or counseling;
(c) permit the probation officer to obtain information from the respondent's school;
(d) co-operate with the probation officer in seeking to obtain and in accepting employment, and supply records and reports of earnings to the officer when requested to do so;
(e) obtain permission from the probation officer for any absence from respondent's residence in excess of two weeks; and
(f) with the consent of the division for youth, spend a specified portion of the probation period, not exceeding one year, in a non-secure facility provided by the division for youth pursuant to article nineteen-G of the executive law.

4. A finding that the respondent committed an additional crime after probation supervision has been ordered and prior to expiration or termination of the period of such order constitutes a ground for revocation of such order irrespective of whether such fact is specified as a condition of such order.

5. The respondent must be given a written copy of the conditions at the time probation supervision is ordered. A copy of such conditions must be filed with and become part of the record of the case.

6. The maximum period of probation shall not exceed two years. If the court finds at the conclusion of the original period and after a hearing that exceptional circumstances require an additional year of probation, the court may continue the probation for an additional year.

§ 353.3 Placement. 1. In accordance with section 352.2 of this part, the court may place the respondent in his or her own home or in the custody of a suitable relative or other suitable private person or the commissioner of the local social services district or the office of children and family services pursuant to article nineteen-G of the executive law, subject to the orders of the court.

2. * Where the respondent is placed with the commissioner of the local social services district, the court may (i) in a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, direct the commissioner to provide services necessary to meet the needs of the respondent, provided that such services are authorized or required to be made available pursuant to the approved plan to implement a juvenile justice close to home initiative then in effect and the commissioner shall notify the court and the attorney for the respondent of the authorized agency that such respondent was placed in; or (ii) in a social services district that is not operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, direct the commissioner to

place him or her with an authorized agency or class of authorized agencies,; and if the court finds that the respondent placed with a social services district pursuant to this subdivision is a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, the court may place such respondent in an available long-term safe house. Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the respondent:

* NB Effective until March 31, 2028

* Where the respondent is placed with the commissioner of the local social services district, the court may direct the commissioner to place him or her with an authorized agency or class of authorized agencies, including, if the court finds that the respondent is a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, an available long-term safe house. Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the respondent:

* NB Effective March 31, 2028

(a) the commissioner shall apply to the court for an order to stay, modify, set aside, or vacate such directive pursuant to the provisions of section 355.1 of this part; or

(b) the commissioner shall return the respondent to the family court for a new dispositional hearing and order.

* 2-a. Notwithstanding any inconsistent provision of law to the contrary, and pursuant to subdivision two of this section in a district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law:

(a) beginning on the effective date of the district's approved plan that only covers juvenile delinquents placed in non-secure settings, the court may only place the respondent:

(i) in the custody of the commissioner of the local social services district for placement in a non-secure level of care; or

(ii) in the custody of the commissioner of the office of children and family services for placement in a limited secure or secure level of care; and

(b) beginning on the effective date of the district's approved plan to implement programs for youth placed in limited secure settings, the court may only place the respondent:

(i) in the custody of the commissioner of the local social services district for placement in:

(A) a non-secure level of care;

(B) a limited secure level of care; or

(C) either a non-secure or limited secure level of care, as determined by such commissioner; or

(ii) in the custody of the commissioner of the office of children and family services for placement in a secure level of care.

* NB Repealed March 31, 2028

3. Where the respondent is placed with the office of children and family services, the court shall, unless it directs the office to place him or her with an authorized agency or class of authorized agencies, including if the court finds that the respondent is a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, an available long-term safe house pursuant to subdivision four of this section, authorize the office to do one of the following:

(a) place the respondent in a secure facility without a further hearing at any time or from time to time during the first sixty days of residency in office of children and family services facilities. Notwithstanding the discretion of the office to place the respondent in a secure facility at any time during the first sixty days of residency in a office of children and family services facility, the respondent may be placed in a non-secure facility. In the event that the office desires to transfer a respondent to a secure facility at any time after the first sixty days of residency in office facilities, a hearing shall be held pursuant to subdivision three of section five hundred four-a of the executive law; or

(b) place the respondent in a limited secure facility. The respondent may be transferred by the office to a secure facility after a hearing is held pursuant to section five hundred four-a of the executive law; provided, however, that during the first twenty days of residency in office facilities, the respondent shall not be transferred to a secure facility unless the respondent has committed an act or acts which are exceptionally dangerous to the respondent or to others; or

(c) place the respondent in a non-secure facility. No respondent placed pursuant to this paragraph may be transferred by the office of children and family services to a secure facility.

4. Where the respondent is placed with the office of children and family services, the court may direct the office to place the respondent with an authorized agency or class of authorized agencies, including, if the court finds that the respondent is a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, an available long-term safe house, and in the event the office is unable to so place the respondent or, discontinues the placement with the authorized agency, the respondent shall be deemed to have been placed with the office pursuant to paragraph (b) or (c) of subdivision three of this section. In such cases, the office shall notify the court, presentment agency, respondent's attorney and parent or other person responsible for the respondent's care, of the reason for discontinuing the placement with the authorized agency and the level and location of the youth's placement.

5. If the respondent has committed a felony the initial period of placement shall not exceed eighteen months. If the respondent has committed a misdemeanor such initial period of placement shall not exceed twelve months. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.

6. The court may at any time conduct a hearing in accordance with section 355.1 of this part concerning the need for continuing a placement.

7. The place in which or the person with whom the respondent has been

placed under this section shall submit a report to the court, respondent's attorney of record, and presentment agency at the conclusion of the placement period, except as provided in paragraphs (a) and (b) of this subdivision. Such report shall include recommendations and such supporting data as is appropriate. The court may extend a placement pursuant to section 355.3 of this part.

(a) Where the respondent is placed pursuant to subdivision two or three of this section and where the agency is not seeking an extension of the placement pursuant to section 355.3 of this part, such report shall be submitted not later than thirty days prior to the conclusion of the placement.

(b) Where the respondent is placed pursuant to subdivision two or three of this section and where the agency is seeking an extension of the placement pursuant to section 355.3 of this part and a permanency hearing pursuant to section 355.5 of this part, such report shall be submitted not later than sixty days prior to the date on which the permanency hearing must be held and shall be annexed to the petition for a permanency hearing and extension of placement.

(c) Where the respondent is placed pursuant to subdivision two or three of this section, such report shall contain a plan for the release, or conditional release (pursuant to section five hundred ten-a of the executive law), of the respondent to the custody of his or her parent or other person legally responsible, or to another permanency alternative as provided in paragraph (d) of subdivision seven of section 355.5 of this part. If the respondent is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, such plan shall include, but not be limited to, the steps that the agency with which the respondent is placed has taken and will be taking to facilitate the enrollment of the respondent in a school or educational program leading to a high school diploma following release, or, if such release occurs during the summer recess, upon the commencement of the next school term. If the respondent is not subject to article sixty-five of the education law and does not elect to participate in an educational program leading to a high school diploma, such plan shall include, but not be limited to, the steps that the agency with which the respondent is placed has taken and will be taking to assist the respondent to become gainfully employed or enrolled in a vocational program following release.

8. In its discretion, the court may recommend restitution or require services for the public good pursuant to section 353.6 of this part in conjunction with an order of placement.

* 9. If the court places a respondent with the office of children and family services, or with a social services district with an approved plan to implement a juvenile justice services close to home initiative under section four hundred four of the social services law, pursuant to this section after finding that such respondent committed a felony, the court may, in its discretion, further order that such respondent shall be confined in a residential facility for a minimum period set by the order, not to exceed six months.

* NB Effective until March 31, 2028

* 9. If the court places a respondent with the office of children and family services pursuant to this section after finding that such child committed a felony, the court may, in its discretion, further order that such respondent shall be confined in a residential facility for a minimum period set by the order, not to exceed six months.

* NB Effective March 31, 2028

10. A placement pursuant to this section with the commissioner of the local social services district shall not be directed in any detention facility, but the court may direct detention pending transfer to a placement authorized and ordered under this section for no more than thirty days after the order of placement is made or in a city of one million or more, for no more than fifteen days after such order of placement is made. Such direction shall be subject to extension pursuant to subdivision three of section three hundred ninety-eight of the social services law.

§ 353.4. Transfer of certain juvenile delinquents. 1. If at the conclusion of the dispositional hearing and in accordance with section 352.2 of this act the court finds that the respondent has a mental illness, or intellectual or developmental disability, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself or herself or others, the court may issue an order placing such respondent with the office of children and family services or, with the consent of the local commissioner, with a local commissioner of social services. Any such order shall direct the temporary transfer for admission of the respondent to the custody of either the commissioner of mental health or the commissioner of developmental disabilities who shall arrange the admission of the respondent to the appropriate facility of the department of mental hygiene. The director of a hospital operated by the office of mental health may, subject to the provisions of section 9.51 of the mental hygiene law, transfer a person admitted to the hospital pursuant to this subdivision to a residential treatment facility for children and youth, as that term is defined in section 1.03 of the mental hygiene law, if care and treatment in such a facility would more appropriately meet the needs of the respondent. Persons temporarily transferred to such custody under this provision may be retained for care and treatment for a period of up to one year and whenever appropriate shall be transferred back to the office of children and family services pursuant to the provisions of section five hundred nine of the executive law or transferred back to the local commissioner of social services. Within thirty days of such transfer back, application shall be made by the office of children and family services or the local commissioner of social services to the placing court to conduct a further dispositional hearing at which the court may make any order authorized under section 352.2 of this act, except that the period of any further order of disposition shall take into account the period of placement hereunder. Likelihood to result in serious harm shall mean (a) substantial risk of physical harm to himself or herself as manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating he or she is dangerous to himself or herself or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious bodily harm.

2. (a) Where the order of disposition is for a restrictive placement under section 353.5 of this act if the court at the dispositional hearing finds that the respondent has a mental illness, or intellectual or developmental disability, as defined in section 1.03 of the mental

hygiene law, which is likely to result in serious harm to himself or herself or others, the court may, as part of the order of disposition, direct the temporary transfer, for a period of up to one year, of the respondent to the custody of the commissioner of mental health or of developmental disabilities who shall arrange for the admission of the respondent to an appropriate facility under his or her jurisdiction within thirty days of such order. The director of the facility so designated by the commissioner shall accept such respondent for admission.

(b) Persons transferred to the office of mental health or the office for people with developmental disabilities, pursuant to this subdivision, shall be retained by such office for care and treatment for the period designated by the court. At any time prior to the expiration of such period, if the director of the facility determines that the child is no longer mentally ill or no longer in need of active treatment, the responsible office shall make application to the family court for an order transferring the child back to the office of children and family services. Not more than thirty days before the expiration of such period, there shall be a hearing, at which time the court may:

(i) extend the temporary transfer of the respondent for an additional period of up to one year to the custody of the commissioner of mental health or the commissioner of developmental disabilities pursuant to this subdivision; or

(ii) continue the restrictive placement of the respondent in the custody of the office of children and family services.

(c) During such temporary transfer, the respondent shall continue to be under restrictive placement with the office of children and family services. Whenever the respondent is transferred back to the office of children and family services the conditions of the placement as set forth in section 353.5 shall apply. Time spent by the respondent in the custody of the commissioner of mental health or the commissioner of developmental disabilities shall be credited and applied towards the period of placement.

3. No dispositional hearing at which proof of a mental disability as defined in section 1.03 of the mental hygiene law is to be offered shall be completed until the commissioner of mental health or commissioner of

developmental disabilities, as appropriate, have been notified and afforded an opportunity to be heard at such dispositional hearing.

4. No order of disposition placing the respondent in accordance with this section shall be entered except upon clear and convincing evidence which shall include the testimony of two examining physicians as provided in section two hundred fifty-one.

5. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.

§ 353.5. Designated felony acts; restrictive placement. 1. Where the respondent is found to have committed a designated felony act, the order of disposition shall be made within twenty days of the conclusion of the dispositional hearing and shall include a finding based on a preponderance of the evidence as to whether, for the purposes of this article, the respondent does or does not require a restrictive placement under this section, in connection with which the court shall make specific written findings of fact as to each of the elements set forth in paragraphs (a) through (e) in subdivision two as related to the particular respondent. If the court finds that a restrictive placement under this section is not required, the court shall enter any other order of disposition provided in section 352.2. If the court finds that a restrictive placement is required, it shall continue the proceeding and enter an order of disposition for a restrictive placement. Every order under this section shall be a dispositional order, shall be made after a dispositional hearing and shall state the grounds for the order.

2. In determining whether a restrictive placement is required, the court shall consider:

(a) the needs and best interests of the respondent;

(b) the record and background of the respondent, including but not limited to information disclosed in the probation investigation and diagnostic assessment;

(c) the nature and circumstances of the offense, including whether any injury was inflicted by the respondent or another participant;

(d) the need for protection of the community; and

(e) the age and physical condition of the victim.

3. Notwithstanding the provisions of subdivision two, the court shall order a restrictive placement in any case where the respondent is found to have committed a designated felony act in which the respondent inflicted serious physical injury, as that term is defined in subdivision ten of section 10.00 of the penal law, upon another person who is sixty-two years of age or more.

* 4. When the order is for a restrictive placement in the case of a youth found to have committed a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the office of children and family services for an initial period of five years. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than twelve nor more than eighteen months provided, however, where the order of the court is made in compliance with subdivision five of this section, the respondent shall initially be confined in a secure facility for eighteen months.

(iii) after the period set under subparagraph (ii) of this paragraph, the respondent shall be placed in a residential facility for a period of twelve months; provided, however, that if the respondent has been placed from a family court in a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law for an act committed when the respondent was under sixteen years of age, once the time frames in subparagraph (ii) of this paragraph are met:

(A) beginning on the effective date of such a social services district's plan that only covers juvenile delinquents placed in non-secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services; and

(B) beginning on the effective date of such a social services district's plan that covers juvenile delinquents placed in limited secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure or limited secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services.

(C) If the respondent is placed with the local commissioner of social services in accordance with clause (A) or (B) of this subparagraph, the remainder of the provisions of this section shall continue to apply to the respondent's placement.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided in subparagraph (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided in subparagraph (iii) of this paragraph. No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the office of children and family services or, if applicable, a local social services district which operates an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(b) Notwithstanding any other provision of law, during the first twelve months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to such section, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in subparagraph (iii) of paragraph (a) of this subdivision, the respondent shall not be released from a residential facility without the written approval of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, unless a motion therefor under section 355.1 is granted by the court, which motion shall not be made prior to the expiration of three years of the placement.

(iv) unless otherwise specified in the order, the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended in accordance with section 355.3 on a petition of any party or the office of children and family services, or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday, or, for an act that was committed when the respondent was sixteen years of age or older, the respondent's twenty-third birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective until March 31, 2028

* 4. When the order is for a restrictive placement in the case of a youth found to have committed a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the division for youth for an initial period of five years. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than twelve nor more than eighteen months provided, however, where the order of the court is made in compliance with subdivision five the respondent shall initially be confined in a secure facility for eighteen months.

(iii) after the period set under clause (ii), the respondent shall be placed in a residential facility for a period of twelve months.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided in clause (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided in clause (iii). No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the division for youth designated pursuant to regulations of the director of the division.

(b) Notwithstanding any other provision of law, during the first twelve months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to 355.1, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in clause (iii) of paragraph (a), the respondent shall not be released from a residential facility without the written approval of the director of the division for youth or his designated deputy director.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the division for youth, unless a motion therefor under section 355.1 is granted by the court, which motion shall not be made prior to the expiration of three years of the placement.

(iv) unless otherwise specified in the order, the division shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement, or any extension thereof, the placement may be extended in accordance with section 355.3 on a petition of any party or the office of children and family services after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday, or, for an act that was committed when the respondent was sixteen years of age or older, the respondent's twenty-third birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective March 31, 2028

* 5. When the order is for a restrictive placement in the case of a youth found to have committed a designated felony act, other than a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the office of children and family services for an initial period of three years. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than six nor more than twelve months.

(iii) after the period set under subparagraph (ii) of this paragraph, the respondent shall be placed in a residential facility for a period set by the order, to be not less than six nor more than twelve months; provided, however, that if the respondent has been placed from a family court in a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, once the time frames in subparagraph (ii) of this paragraph are met:

(A) beginning on the effective date of such a social services district's plan that only covers juvenile delinquents placed in non-secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services; and

(B) beginning on the effective date of such a social services district's plan to implement programs for youth placed in limited secure settings, if the office of children and family services concludes, based on the needs and best interests of the respondent and the need for protection for the community, that a non-secure or limited secure level of care is appropriate for the respondent, such office shall file a petition pursuant to paragraph (b) or (c) of subdivision two of section 355.1 of this part to have the respondent placed with the applicable local commissioner of social services.

(C) If the respondent is placed with a local commissioner of social services in accordance with clause (A) or (B) of this subparagraph, the remainder of the provisions of this section shall continue to apply to the respondent's placement.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided by the court pursuant to subparagraph (ii) of this paragraph, nor may the respondent be released from a residential facility during the period provided by the court pursuant to subparagraph (iii) of this paragraph. No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice close to home initiative pursuant to section four hundred four of the social services law.

(b) Notwithstanding any other provision of law, during the first six months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to such section, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in subparagraph (iii) of paragraph (a) of this subdivision, the respondent shall not be released from a residential facility without the written approval of the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the office of children and family services, or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

(iv) unless otherwise specified in the order, the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement or any extension thereof, the placement may be extended in accordance with section 355.3 upon petition of any party or the office of children and family services or, if applicable, a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective until March 31, 2028

* 5. When the order is for a restrictive placement in the case of a youth found to have committed a designated felony act, other than a designated class A felony act,

(a) the order shall provide that:

(i) the respondent shall be placed with the division for youth for an initial period of three years. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the needs and best interests of the respondent or the need for protection of the community.

(ii) the respondent shall initially be confined in a secure facility for a period set by the order, to be not less than six nor more than twelve months.

(iii) after the period set under clause (ii), the respondent shall be placed in a residential facility for a period set by the order, to be not less than six nor more than twelve months.

(iv) the respondent may not be released from a secure facility or transferred to a facility other than a secure facility during the period provided by the court pursuant to clause (ii), nor may the respondent be released from a residential facility during the period provided by the court pursuant to clause (iii). No home visits shall be permitted during the period of secure confinement set by the court order or one year, whichever is less, except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be accompanied home visits: (A) while a youth is confined in a secure facility, whether such confinement is pursuant to a court order or otherwise; (B) while a youth is confined in a residential facility other than a secure facility within six months after confinement in a secure facility; and (C) while a youth is confined in a residential facility other than a secure facility in excess of six months after confinement in a secure facility unless two accompanied home visits have already occurred. An "accompanied home visit" shall mean a home visit during which the youth shall be accompanied at all times while outside the secure or residential facility by appropriate personnel of the division for youth designated pursuant to regulations of the director of the division.

(b) Notwithstanding any other provision of law, during the first six months of the respondent's placement, no motion, hearing or order may be made, held or granted pursuant to section 355.1; provided, however, that during such period a motion to vacate the order may be made pursuant to such section, but only upon grounds set forth in section 440.10 of the criminal procedure law.

(c) During the placement or any extension thereof:

(i) after the expiration of the period provided in clause (iii) of paragraph (a), the respondent shall not be released from a residential facility without the written approval of the director of the division for youth or his designated deputy director.

(ii) the respondent shall be subject to intensive supervision whenever not in a secure or residential facility.

(iii) the respondent shall not be discharged from the custody of the division for youth.

(iv) unless otherwise specified in the order, the division shall report in writing to the court not less than once every six months during the placement on the status, adjustment and progress of the respondent.

(d) Upon the expiration of the initial period of placement or any extension thereof, the placement may be extended in accordance with section 355.3 upon petition of any party or the division for youth, after a dispositional hearing, for an additional period not to exceed twelve months, but no initial placement or extension of placement under this section may continue beyond the respondent's twenty-first birthday.

(e) The court may also make an order pursuant to subdivision two of section 353.4.

* NB Effective March 31, 2028

6. When the order is for a restrictive placement in the case of a

youth found to have committed any designated felony act and such youth has been found by a court to have committed a designated felony act on a prior occasion, regardless of the age of such youth at the time of commission of such prior act, the order of the court shall be made pursuant to subdivision four.

7. If the dispositional hearing has been adjourned on a finding of specific circumstances pursuant to subdivision six of section 350.1 while the respondent is in detention, where a restrictive placement is subsequently ordered, time spent by the respondent in detention during such additional adjournment shall be credited and applied against any term of secure confinement ordered by the court pursuant to subdivision four or five.

* 8. The office of children and family services or, if applicable, the social services district operating an approved close to home initiative pursuant to section four hundred four of the social services law, shall retain the power to continue the confinement of the youth in a secure or other residential facility, as applicable, beyond the periods specified by the court, within the term of the placement.

* NB Effective until March 31, 2028

* 8. The division for youth shall retain the power to continue the confinement of the youth in a secure or other residential facility beyond the periods specified by the court, within the term of the placement.

* NB Effective March 31, 2028

§ 353.6. Restitution. 1. At the conclusion of the dispositional hearing the court may:

(a) recommend as a condition of placement, or order as a condition of probation or conditional discharge, restitution in an amount representing a fair and reasonable cost to replace the property, repair the damage caused by the respondent or provide the victim with compensation for unreimbursed medical expenses, not, however, to exceed one thousand five hundred dollars. In the case of a placement, the court may recommend that the respondent pay out of his or her own funds or earnings the amount of replacement, damage or unreimbursed medical expenses, either in a lump sum or in periodic payments in amounts set by the agency with which he or she is placed, and in the case of probation or conditional discharge, the court may require that the respondent pay out of his or her own funds or earnings the amount of replacement, damage or unreimbursed medical expenses, either in a lump sum or in periodic payments in amounts set by the court; and/or

(b) order as a condition of placement, probation, or conditional discharge, services for the public good including in the case of a crime involving willful, malicious, or unlawful damage or destruction to real or personal property maintained as a cemetery plot, grave, burial place, or other place of interment of human remains, services for the maintenance and repair thereof, taking into consideration the age and physical condition of the respondent.

2. If the court recommends restitution or requires services for the public good in conjunction with an order of placement pursuant to section 353.3 or 353.5, the placement shall be made only to an authorized agency, including the division for youth, which has adopted rules and regulations for the supervision of such a program, which rules and regulations, except in the case of the division for youth, shall be subject to the approval of the state department of social services. Such rules and regulations shall include, but not be limited to provisions: (i) assuring that the conditions of work, including wages, meet the standards therefor prescribed pursuant to the labor law; (ii) affording coverage to the respondent under the workers' compensation law as an employee of such agency, department, division or institution; (iii) assuring that the entity receiving such services shall not utilize the same to replace its regular employees; and (iv) providing for reports to the court not less frequently than every six months.

3. If the court requires restitution or services for the public good as a condition of probation or conditional discharge, it shall provide that an agency or person supervise the restitution or services and that such agency or person report to the court not less frequently than every six months. Upon the written notice submitted by a school district to the court and the appropriate probation department or agency which submits probation recommendations or reports to the court, the court may

provide that such school district shall supervise the performance of services for the public good.

4. The court, upon receipt of the reports provided for in subdivisions two and three may, on its own motion or the motion of the agency, probation service or the presentment agency, hold a hearing pursuant to section 355.1 to determine whether the dispositional order should be modified.

§ 353.7. Placement in qualified residential treatment programs. 1. The provisions of this section shall apply when a respondent is placed on or after September twenty-ninth, two thousand twenty-one and resides in a non-secure setting that is a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district or the office of children and family services in accordance with this article.

2. (a) When a respondent is in the care and custody of a local social services district or the office of children and family services pursuant to this article, such social services district or office shall report any anticipated placement of the respondent into a qualified residential treatment program as defined in section four hundred nine-h of the social services law to the court and the attorneys for the parties, including the attorney for the respondent, forthwith, but not later than one business day following either the decision to place the respondent in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or office shall subsequently notify the court and the attorneys for the parties, including the attorney for the respondent, of the date the placement change occurred, such notice shall occur no later than one business day following the placement change.

(b) When a respondent whose legal custody was transferred to a local social services district or the office of children and family services in accordance with this article resides in a qualified residential treatment program as defined in section four hundred nine-h of the social services law, and where such respondent's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district or the office of children and family services with legal custody of the respondent, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the respondent in the qualified residential treatment program commenced.

3. (a) Within sixty days of the start of a placement of a respondent referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(i) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(ii) Determine whether the needs of the respondent can be met through placement in a foster family home and, if not, whether placement of the respondent in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the respondent as specified in the respondent's permanency plan; and

(iii) Approve or disapprove the placement of the respondent in a qualified residential treatment program. Provided that, where a qualified individual determines that the placement of the respondent in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the respondent in the qualified residential treatment program if:

(A) the court finds, and states in the written order that:

(1) circumstances exist that necessitate the continued placement of the respondent in the qualified residential treatment program;

(2) there is not an alternative setting available that can meet the respondent's needs in a less restrictive environment; and

(3) that continued placement in the qualified residential treatment program serves the respondent's needs and best interests or the need for protection of the community; and

(B) the court's written order states the specific reasons why the court has made the findings required pursuant to clause (A) of this subparagraph.

(iv) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

(b) At the conclusion of the review, if the court disapproves placement of the respondent in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the respondent and direct the local social services district or office of children and family services, as applicable, to make such other arrangements for the respondent's care and welfare that is in the best interest of the respondent and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

4. The court may, on its own motion, or the motion of any of the parties or the attorney for the respondent, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to clause (A) of subparagraph (iii) of paragraph (a) of subdivision three of this section and provide such written order to the parties and the attorney for the respondent expeditiously, but no later than five days.

5. Documentation of the court's determination pursuant to this section shall be recorded in the respondent's case record.

6. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such respondent, including but not limited to the respondent's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 354.1. Retention and destruction of fingerprints of persons alleged to be juvenile delinquents. 1. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 or was initially fingerprinted as a juvenile offender and the action is subsequently removed to a family court pursuant to article seven hundred twenty-five of the criminal procedure law is adjudicated to be a juvenile delinquent for a felony, the family court shall forward or cause to be forwarded to the division of criminal justice services notification of such adjudication and such related information as may be required by such division, provided, however, in the case of a person twelve years of age such notification shall be provided only if the act upon which the adjudication is based would constitute a class A or B felony.

2. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 or was initially fingerprinted as a juvenile offender and the action is subsequently removed to family court pursuant to article seven hundred twenty-five of the criminal procedure law has had all petitions disposed of by the family court in any manner other than an adjudication of juvenile delinquency for a felony, but in the case of acts committed when such person was twelve years of age which would constitute a class A or B felony only, all such fingerprints, palmprints, photographs, and copies thereof, and all information relating to such allegations obtained by the division of criminal justice services pursuant to section 306.1 shall be destroyed

forthwith. The clerk of the court shall notify the commissioner of the division of criminal justice services and the heads of all police departments and law enforcement agencies having copies of such records, who shall destroy such records without unnecessary delay.

3. If the appropriate presentment agency does not originate a proceeding under section 310.1 for a case in which the potential respondent's fingerprints were taken pursuant to section 306.1, the presentment agency shall serve a certification of such action upon the division of criminal justice services, and upon the appropriate police department or law enforcement agency.

4. If, following the taking into custody of a person alleged to be a juvenile delinquent and the taking and forwarding to the division of criminal justice services of such person's fingerprints but prior to referral to the probation department or to the family court, an officer or agency, elects not to proceed further, such officer or agency shall serve a certification of such election upon the division of criminal justice services.

5. Upon certification pursuant to subdivision twelve of section 308.1 or subdivision three or four of this section, the department or agency shall destroy forthwith all fingerprints, palmprints, photographs, and copies thereof, and all other information obtained in the case pursuant to section 306.1. Upon receipt of such certification, the division of criminal justice services and all police departments and law enforcement agencies having copies of such records shall destroy them.

6. If a person fingerprinted pursuant to section 306.1 and subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such a person was twelve years of age which would constitute a class A or B felony only, is subsequently convicted of a crime, all fingerprints and related information obtained by the division of criminal justice services pursuant to such section and not destroyed pursuant to subdivisions two, five and seven or subdivision twelve of section 308.1 shall become part of such division's permanent adult criminal record for that person, notwithstanding section 381.2 or

381.3.

7. When a person fingerprinted pursuant to section 306.1 and subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such person was twelve years of age which would constitute a class A or B felony only, reaches the age of twenty-one, or has been discharged from placement under this act for at least three years, whichever occurs later, and has no criminal convictions or pending criminal actions which ultimately terminate in a criminal conviction, all fingerprints, palmprints, photographs, and related information and copies thereof obtained pursuant to section 306.1 in the possession of the division of criminal justice services, any police department, law enforcement agency or any other agency shall be destroyed forthwith. The division of criminal justice services shall notify the agency or agencies which forwarded fingerprints to such division pursuant to section 306.1 of their obligation to destroy those records in their possession. In the case of a pending criminal action which does not terminate in a criminal conviction, such records shall be destroyed forthwith upon such determination.

§ 354.2. Duties of counsel. 1. If the court has entered a dispositional order pursuant to section 352.2, it shall be the duty of the respondent's counsel to promptly advise such respondent and his or her parent or other person responsible for his or her care in writing of the right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if he or she is unable to pay the cost of an appeal. It shall be the further duty of such counsel to explain to the respondent and his or her parent or person responsible for his or her care the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It shall also be the duty of such counsel to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary

notice of appeal.

3. If the respondent has been permitted to waive the appointment of counsel pursuant to section two hundred forty-nine-a, it shall be the duty of the court to provide the notice and explanation pursuant to subdivision one and, if the respondent indicates that he or she wishes to appeal, the clerk of the court shall file and serve the notice of appeal.

§ 355.1. New hearing; staying, modifying or terminating an order. 1. Upon a showing of a substantial change of circumstances, the court may on its own motion or on motion of the respondent or his parent or person responsible for his care:

(a) grant a new fact-finding or dispositional hearing; or

(b) stay execution of, set aside, modify, terminate or vacate any order issued in the course of a proceeding under this article.

* 2. An order issued under section 353.3, may, upon a showing of a substantial change of circumstances, be set aside, modified, vacated or terminated upon motion of the commissioner of social services or the office of children and family services with whom the respondent has been placed.

(a)(i) For a social services district that only has an approved plan to implement programs for juvenile delinquents placed in non-secure settings as part of an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, beginning on the effective date of that plan, if the district determines that placement in a limited secure facility is appropriate and consistent with the need for protection of the community and the needs and best interests of the respondent placed into its care, the social services district shall file a petition to transfer the custody of the respondent to the office of children and family services, and shall provide a copy of such petition to such office, the respondent, the attorney for the respondent and the respondent's parent or legal guardian. The court shall render a decision whether the juvenile delinquent should be transferred to the office within seventy-two hours, excluding weekends and public holidays. The family court shall, after allowing the office of children and family services and the attorney for the respondent, after notice having been given, an opportunity to be heard, grant such a petition only if the court determines, and states in its written order, the reasons why a limited secure placement is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(ii) For a social services district with an approved plan or approved plans that cover juvenile delinquents placed in non-secure or in non-secure and in limited secure settings as part of an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, beginning on the effective date of the plan, if the district determines that a secure level of placement is appropriate and consistent with the need for protection of the community and the needs and best interests of the respondent placed into its care, the social services district shall file a petition to transfer the custody of the respondent to the office of children and family services, and shall provide a copy of such petition to such office, the respondent, the attorney for the respondent and the respondent's parent or legal guardian. The court shall render a decision whether the youth should be transferred within seventy-two hours, excluding weekends and public holidays. The family court shall, after allowing the office of children and family services and the attorney for the respondent, after notice having been given, an opportunity to be heard, grant such a petition only if the court determines, and states in its written order, that the youth needs a secure level of placement because:

(A) the respondent has been shown to be exceptionally dangerous to himself or herself or to other persons. Exceptionally dangerous behavior may include, but is not limited to, one or more serious intentional assaults, sexual assaults or setting fires; or

(B) the respondent has demonstrated by a pattern of behavior that he or she needs a more structured setting and the social services district has considered the appropriateness and availability of a transfer to an alternative non-secure or limited secure facility. Such behavior may include, but is not limited to: disruptions in facility programs; continuously and maliciously destroying property; or, repeatedly committing or inciting other youth to commit assaultive or destructive acts.

(iii) The court may order that the respondent be housed in a local secure detention facility on an interim basis pending its final ruling on the petition filed pursuant to this paragraph.

(b) The following provisions shall apply if the office of children and family services files a petition with a family court in a social services district with an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law to transfer, within the first ninety days that such plan is effective, to such district a respondent placed in the office's care pursuant to either section 353.3 or 353. 5 of this part:

(i) Such a petition shall be provided to the respondent, the attorney for the respondent and the respondent's parent or legal guardian. If the district only has an approved plan that covers juvenile delinquents placed in non-secure settings, the family court shall grant such a petition, without a hearing, unless the attorney for the respondent, after notice, objects to the transfer on the basis that the respondent needs to be placed with the office or the family court determines that there is insufficient information in the petition to grant the transfer without a hearing. The family court shall grant the petition unless the court determines, and states in its written order, the reasons why placement with the office is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(ii) If the district has an approved plan or approved plans that cover juvenile delinquents placed in non-secure and in limited secure settings, for the first ninety days that the plan that covers juvenile delinquents in limited secure settings is effective, the family court shall grant such a petition, without a hearing, unless the attorney for the respondent, after notice, objects to the transfer on the basis that the respondent needs to be placed with the office or the family court determines that there is insufficient information in the petition to grant the transfer without a hearing. The family court shall grant the petition unless the court determines, and states in its written order, the reasons why placement with the office is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(c) Beginning ninety-one days after the effective date a social services district's plan to implement programs for juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, if the office of children and family services files a petition to transfer to such district a respondent placed in the office's care pursuant to either section 353.3 or 353.5 of this part from a family court in such a social services district, the office shall provide a copy of the petition to the social services district, the attorney for the respondent and the presentment agency.

(i) If the district only has an approved plan that covers juvenile delinquents placed in non-secure settings, the family court shall, after allowing the social services district, the attorney for the respondent and the presentment agency an opportunity to be heard, grant a petition filed pursuant to this subparagraph unless the court determines, and states in its written order, the reasons why a secure or limited secure placement is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(ii) If the district has an approved plan or approved plans that cover juvenile delinquents placed in non-secure and limited secure settings, beginning ninety-one days after the effective date of the plan that covers juvenile delinquents placed in limited secure settings, the family court, after allowing the social services district, the attorney for the respondent and the presentment agency an opportunity to be heard, shall grant a petition filed pursuant to this subparagraph, unless the court determines, and states in its written order, the reasons why a secure placement is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

* NB Effective until March 31, 2028

* 2. An order issued under section 353.3, may, upon a showing of a substantial change of circumstances, be set aside, modified, vacated or terminated upon motion of the commissioner of social services or the division for youth with whom the respondent has been placed.

* NB Effective March 31, 2028

3. If the court issues a new order of disposition under this section the date such order expires shall not be later than the expiration date

of the original order.

§ 355.2. Motion procedures. 1. A motion for relief pursuant to section 355.1 must be in writing and must state the specific relief requested. If the motion is based upon the existence or occurence of facts, the motion papers must contain sworn allegations thereof; such sworn allegations may be based upon personal knowledge of the affiant or upon information and belief, provided that in the latter event the affidavit must state the sources of such information and the grounds of such belief.

2. Notice of such motion, including the court's own motion, shall be served upon the respondent, the presentment agency and the commissioner of social services or the division for youth having custody of the respondent. Motions shall be noticed in accordance with the civil practice law and rules.

3. Each party to the motion shall have the right to oral argument and the court shall conduct a hearing to resolve any material question of fact.

4. Regardless of whether a hearing is conducted, the court, upon determining the motion, must set forth on the record its findings of fact, its conclusions of law and the reasons for its determination.

5. If the motion is denied, a motion requesting the same or similar relief cannot be filed for a period of ninety days after such denial, unless the order of denial permits renewal at an earlier time.

§ 355.3 Extension of placement. 1. In any case in which the respondent has been placed pursuant to section 353.3 the respondent, the person with whom the respondent has been placed, the commissioner of social services, or the division for youth may petition the court to extend such placement. Such petition shall be filed at least sixty days prior to the expiration of the period of placement, except for good cause shown but in no event shall such petition be filed after the original expiration date.

2. The court shall conduct a hearing concerning the need for continuing the placement. The respondent, the presentment agency and the agency with whom the respondent has been placed shall be notified of such hearing and shall have the opportunity to be heard thereat. If the petition is filed within sixty days prior to the expiration of the period of placement, the court shall first determine at such hearing whether good cause has been shown. If good cause is not shown, the court shall dismiss the petition.

3. The provisions of sections 350.3 and 350.4 shall apply at such hearing.

4. At the conclusion of the hearing the court may, in its discretion, order an extension of the placement for not more than one year. The court must consider and determine in its order:

(i) that where appropriate, and where consistent with the need for the protection of the community, reasonable efforts were made to make it possible for the respondent to safely return to his or her home;

(ii) in the case of a respondent who has attained the age of sixteen, the services needed, if any, to assist the child to make the transition from foster care to independent living; and

(iii) in the case of a child placed outside New York state, whether the out-of-state placement continues to be appropriate and in the best interests of the child.

5. Pending final determination of a petition to extend such placement filed in accordance with the provisions of this section, the court may, on its own motion or at the request of the petitioner or respondent, enter one or more temporary orders extending a period of placement for a period not to exceed thirty days upon satisfactory proof showing probable cause for continuing such placement and that each temporary order is necessary. The court may order additional temporary extensions, not to exceed a total of fifteen days, if the court is unable to conclude the hearing within the thirty day temporary extension period.

In no event shall the aggregate number of days in extentions granted or ordered under this subdivision total more than forty-five days. The petition shall be dismissed if a decision is not rendered within the period of placement or any temporary extension thereof.

6. Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the respondent's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday except as provided for in subdivision four of section 353.5 of this part.

7. A youth who was formerly a respondent pursuant to this article may be eligible to file a motion pursuant to article ten-B of this act and may be subsequently placed into foster care, in a supervised setting as defined in subdivision twenty-two of section three hundred seventy-one of the social services law or placement in a foster family home, which shall include a kinship placement or a placement with fictive kin.

§ 355.4. Provisions for routine medical, dental and mental health services and treatment. * 1. At the conclusion of the dispositional hearing pursuant to this article, where the respondent is to be placed with the office of children and family services or a social services district, the court shall inquire as to whether the parents or legal guardian of the youth, if present, will consent for the office or the district to provide routine medical, dental and mental health services and treatment.

* NB Effective until March 31, 2028

* 1. At the conclusion of the dispositional hearing pursuant to this article, where the respondent is to be placed with the division for youth, the court shall inquire as to whether the parents or legal guardian of the youth, if present, will consent for the division to provide routine medical, dental and mental health services and treatment.

* NB Effective March 31, 2028

* 2. Notwithstanding subdivision one of this section, where the court places a youth with the office of children and family services or a

social services district pursuant to this article and no medical consent has been obtained prior to an order of disposition, the placement order shall be deemed to grant consent for the office or the district to provide for routine medical, dental and mental health services and treatment to such youth so placed.

* NB Effective until March 31, 2028

* 2. Notwithstanding subdivision one of this section, where the court places a youth with the division pursuant to this article and no medical consent has been obtained prior to an order of disposition, the placement order shall be deemed to grant consent for the division for youth to provide for routine medical, dental and mental health services and treatment to such youth so placed.

* NB Effective March 31, 2028

3. Subject to regulations of the department of health, routine medical, dental and mental health services and treatment is defined for the purposes of this section to mean any routine diagnosis or treatment, including without limitation the administration of medications or nutrition, the extraction of bodily fluids for analysis, and dental care performed with a local anesthetic. Routine mental health treatment shall not include psychiatric administration of medication unless it is part of an ongoing mental health plan or unless it is otherwise authorized by law.

4. (a) At any time during placement or at an extension of placement hearing, a parent or legal guardian may make a motion objecting to routine medical, dental or mental health services and treatment being provided to such youth as authorized under the provisions of subdivision one of this section.

(b) Such notice of motion shall be served on the youth, the presentment agency and the division not less than seven days prior to the return date of the motion. The persons on whom the notice of motion is served shall answer the motion not less than two days before the return date. On examining the motion and answer and, in its discretion, after hearing argument, the court shall enter an order, granting or denying the motion.

5. Nothing in this section shall preclude a youth from consenting on his or her own behalf to any medical, dental or mental health service and treatment where otherwise authorized by law to do so, or the division for youth from petitioning the court pursuant to section two hundred thirty-three of this act, as appropriate.

§ 355.5. Permanency hearing. * 1. For the purposes of this section the term "non-secure facility" means a facility operated by an authorized agency in accordance with an operating certificate issued pursuant to the social services law or a facility, not including a secure or limited secure facility, with a capacity of twenty-five beds or less operated by the office of children and family services in accordance with section five hundred four of the executive law. The term shall not include a limited secure facility within a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law.

* NB Effective until March 31, 2028

* 1. For the purposes of this section the term "non-secure facility" means a facility operated by an authorized agency in accordance with an operating certificate issued pursuant to the social services law or a facility, not including a secure or limited secure facility, with a capacity of twenty-five beds or less operated by the office of children and family services in accordance with section five hundred four of the executive law.

* NB Effective March 31, 2028

2. Where a respondent is placed with a commissioner of social services or the office of children and family services pursuant to section 353.3 of this article for a period of twelve or fewer months and resides in a foster home or non-secure facility;

(a) The initial permanency hearing shall be held no later than twelve months after the respondent who was placed with a commissioner of social services or the office of children and family services entered foster care and such permanency hearing shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this article.

(b) Subsequent permanency hearings shall be held no later than every twelve months following the respondent's initial permanency hearing and shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this article.

3. Where a respondent is placed with a commissioner of social services or the office of children and family services pursuant to section 353.3 of this article for a period in excess of twelve months and resides in a foster home or in a non-secure facility;

(a) the initial permanency hearing shall be held no later than twelve months after the respondent who was placed with a commissioner of social services or the office of children and family services entered foster care.

(b) subsequent permanency hearings shall be held no later than every twelve months following the respondent's initial twelve months in placement but in no event past the respondent's twenty-first birthday; provided, however, that they shall be held in conjunction with an extension of placement hearing held pursuant to section 355.3 of this part.

4. For the purposes of this section, the respondent shall be considered to have entered foster care sixty days after the respondent was removed from his or her home pursuant to this article.

5. A petition for an initial or subsequent permanency hearing shall be filed by the office of children and family services or by the commissioner of social services with whom the respondent was placed. Such petition shall be filed no later than sixty days prior to the end of the month in which an initial or subsequent permanency hearing must be held, as directed in subdivision two of this section.

6. The foster parent caring for the respondent or any pre-adoptive parent or relative providing care for the respondent shall be provided with notice of any permanency hearing held pursuant to this section by the office of children and family services or the commissioner of social services with whom the respondent was placed. Such foster parent, pre-adoptive parent and relative shall have the right to be heard at any

such hearing; provided, however, no such foster parent, pre-adoptive parent or relative shall be construed to be a party to the hearing solely on the basis of such notice and right to be heard. The failure of the foster parent, pre-adoptive parent, or relative caring for the child to appear at a permanency hearing shall constitute a waiver of the right to be heard and such failure to appear shall not cause a delay of the permanency hearing nor shall such failure to appear be a ground for the invalidation of any order issued by the court pursuant to this section.

7. At the permanency hearing, the court must consider and determine in its order:

(a) where appropriate, that reasonable efforts were made to make it possible for the respondent to return safely to his or her home, or if the permanency plan for the respondent is adoption, guardianship or another permanent living arrangement other than reunification with the parent or parents of the respondent, that reasonable efforts were made to make and finalize such alternate permanent placement including consideration of appropriate in-state and out-of-state placements;

(b) in the case of a respondent who has attained the age of fourteen, (i) the services needed, if any, to assist the respondent to make the transition from foster care to successful adulthood; and (ii)(A) that the permanency plan developed for the respondent, and any revision or addition to the plan, shall be developed in consultation with the respondent and, at the option of the respondent, with up to two members of the respondent's permanency planning team who are selected by the respondent and who are not a foster parent of, or case worker, case planner or case manager for, the child, except that the local commissioner of social services with custody of the respondent or the commissioner of the office of children and family services if such office has custody of the respondent may reject an individual selected by the respondent if such commissioner has good cause to believe that the individual would not act in the best interests of the respondent, and (B) that one individual so selected by the respondent may be designated to be the respondent's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard;

(c) in the case of a respondent placed outside of this state, whether the out-of-state placement continues to be appropriate and in the best interests of the respondent;

(d) with regard to the completion of placement ordered by the court pursuant to section 353.3 or 355.3 of this part: whether and when the respondent: (i) will be returned to the parent; (ii) should be placed for adoption with the local commissioner of social services filing a petition for termination of parental rights; (iii) should be referred for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent if the respondent is age sixteen or older and (A) the office of children and family services or the local commissioner of social services has documented to the court: (1) the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the respondent home or secure a placement for the respondent with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (2) the steps being taken to ensure that (I) the respondent's foster family home or child care facility is following the reasonable and prudent parent standard in accordance with guidance provided by the United States department of health and human services, and (II) the respondent has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the respondent in an age-appropriate manner about the opportunities of the respondent to participate in activities; and (B) the office of children and family services or the local commissioner of social services has documented to the court and the court has determined that there are compelling reasons for determining that it continues to not be in the best interest of the respondent to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian; and (C) the court has made a determination explaining why, as of the date of this hearing, another planned living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent is the best permanency plan for the respondent; and

(e) with regard to the completion or extension of placement ordered by the court pursuant to section 353.3 or 355.3 of this article, the steps that must be taken by the agency with which the respondent is placed to implement the plan for release or conditional release submitted pursuant to paragraph (c) of subdivision seven of section 353.3 of this article, including consideration of appropriate in-state and out-of-state placements, the adequacy of such plan and any modifications that should be made to such plan.

8. At the permanency hearing, the court shall consult with the respondent in an age-appropriate manner regarding the permanency plan for the respondent; provided, however, that if the respondent is age sixteen or older and the requested permanency plan for the respondent is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent, the court must ask the respondent about the desired permanency outcome for the respondent.

9. The court shall not reduce or terminate the placement of the respondent prior to the completion of the period of placement ordered by the court pursuant to section 353.3 or 355.3 of this article.

10. Where the respondent remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, the commissioner of the local social services district or the office of children and family services with legal custody of the respondent shall submit evidence at the permanency hearing with respect to the respondent:

(a) demonstrating that ongoing assessment of the strengths and needs of the respondent cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals for the respondent, as specified in the respondent's permanency plan;

(b) documenting the specific treatment and service needs that will be met for the respondent in the placement and the length of time the respondent is expected to need the treatment or services; and

(c) documenting the efforts made by the local social services district or the office of children and family services with legal custody of the respondent to prepare the respondent to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.

11. Where placement will end prior to a subsequent permanency hearing due to the respondent's age and/or failure to consent to continuation of placement, court orders made pursuant to this section shall be enforceable against the agency with whom such respondent was placed after such respondent was discharged from care.

(a) The court shall maintain jurisdiction over a case for purposes of hearing a motion for contempt against the agency with whom the respondent was placed pursuant to section seven hundred fifty-three of the judiciary law. Such a motion may be brought by a respondent who was formerly placed with a commissioner of social services or the office of children and family services pursuant to section 353.3 of this part and resided in a foster home or non-secure facility. In addition to any other defense, it shall be an affirmative defense to a motion filed in accordance with this paragraph that compliance with the court order was not possible due solely to the youth's refusal to consent to continuation of foster care placement where such refusal is documented in a signed, notarized letter executed by the youth after consultation with their attorney for the child.

(b) The court shall maintain jurisdiction over a motion described in paragraph (a) of this subdivision if such motion is filed before the respondent attains the age of twenty-three. The court's jurisdiction over any such motion shall continue until such motion and any related appeals are finally resolved.

(c) If the respondent is eligible to return to foster care pursuant to the provisions of article ten-B of this act, upon the consent of the respondent, the court may convert a motion brought under this subdivision to a motion to return the respondent to foster care.

PART 6

POST-DISPOSITIONAL PROCEDURES

§ 360.1. Jurisdiction and supervision of respondent placed on probation. 1. A respondent who is placed on probation shall remain under the legal jurisdiction of the court pending expiration or termination of the period of the order of probation.

2. The probation service shall supervise the respondent during the period of such legal jurisdiction.

3. If at any time during the period of probation the court has reasonable cause to believe that the respondent has violated a condition of the probation order, it may issue a search order. A search order is an order directed to a probation officer authorizing such officer to search the person of the respondent or any personal property which he owns or which is in his possession.

4. In executing a search order pursuant to this section, a probation officer may be assisted by a police officer.

§ 360.2. Petition of violation. 1. If at any time during the period of an order of probation or conditional discharge the probation service has reasonable cause to believe that the respondent has violated a condition thereof, it may file a petition of violation.

2. The petition must be verified and subscribed by the probation service or the appropriate presentment agency. Such petition must stipulate the condition or conditions of the order violated and a

reasonable description of the time, place and manner in which the violation occurred. Non-hearsay allegations of the factual part of the petition or of any supporting depositions must establish, if true, every violation charged.

3. The court must promptly take reasonable and appropriate action to cause the respondent to appear before it for the purpose of enabling the court to make a determination with respect to the alleged violation. Such action may include the issuance of a summons under section 312.1 or the issuance of a warrant under section 312.2.

4. If a petition is filed under subdivision one, the period of probation as prescribed by section 353.2 or conditional discharge as prescribed by section 353.1 shall be interrupted as of the date of the filing of the petition. Such interruption shall continue until a final determination as to the petition has been made by the court pursuant to a hearing held in accordance with section 360.3 or until such time as the respondent reaches the maximum age of acceptance into an office of children and family services facility.

5. If the court determines that there was no violation of probation or conditional discharge by the respondent, the period of interruption shall be credited to the period of probation or conditional discharge, as applicable.

§ 360.3. Hearing on violation. 1. The court may not revoke an order of probation or conditional discharge unless: (a) the court has found that the respondent has violated a condition of such order; and (b) the respondent has had an opportunity to be heard. The respondent is entitled to a hearing in accordance with this section promptly after a petition of violation has been filed.

2. At the time of his first appearance following the filing of a petition of violation the court must: (a) advise the respondent of the contents of the petition and furnish him with a copy thereof; (b) determine whether the respondent should be released or detained pursuant

to section 320.5; and (c) ask the respondent whether he wishes to make any statement with respect to the violation. If the respondent makes a statement, the court may accept it and base its decision thereon; the provisions of subdivision two of section 321.3 shall apply in determining whether a statement should be accepted. If the court does not accept such statement or if the respondent does not make a statement, the court shall proceed with the hearing. Upon request, the court shall grant a reasonable adjournment to the respondent to enable him to prepare for the hearing.

3. At such hearing, the court may receive any relevant, competent and material evidence. The respondent may cross-examine witnesses and may present evidence on his own behalf.

4. The respondent is entitled to counsel at all stages of a proceeding under this section and the court shall advise him of such right at the outset of the proceeding.

5. The presentment agency shall present the petition in all stages of this part.

6. At the conclusion of the hearing the court may revoke, continue or modify the order of probation or conditional discharge. If the court revokes the order, it shall order a different disposition pursuant to section 352.2 of this article provided, however, that if the court finds a violation of an order of conditional discharge where the underlying finding had been for an act solely constituting a violation as defined in subdivision three of section 10.00 of the penal law, the court may modify the conditions of the conditional discharge but may not order any other disposition under section 352.2 of this article. If the court continues the order of probation or conditional discharge, it shall dismiss the petition of violation.

§ 365.1. Appeal; authorized as of right. 1. An appeal to the appropriate appellate division may be taken as of right by the respondent from any order of disposition under this article in accordance with article eleven.

2. An appeal to the appropriate appellate division may be taken as of right by the presentment agency from the following orders of the family court:

(a) an order dismissing a petition prior to the commencement of a fact-finding hearing; or

(b) an order of disposition, but only upon the ground that such order was invalid as a matter of law; or

(c) an order suppressing evidence entered before the commencement of the fact-finding hearing pursuant to section 330.2, provided that such presentment agency files a statement pursuant to subdivision nine of section 330.2.

§ 365.2. Appeal by permission. An appeal may be taken by the respondent, in the discretion of the appropriate appellate division, from any other order under this article.

§ 365.3. Notice of appeal. 1. An appeal shall be taken by filing a written notice of appeal, in duplicate, with the clerk of the family court in which the order was entered.

2. If the respondent is the appellant, he must also serve a copy of such notice of appeal upon the appropriate presentment agency.

3. If the presentment agency is the appellant, it must serve a copy of such notice of appeal upon the respondent and upon the attorney who last appeared for him or her in the family court.

4. Following the filing with him of the notice of appeal in duplicate, the clerk of the family court must endorse upon such instruments the filing date and must transmit the duplicate notice of appeal to the clerk of the appropriate appellate division of the supreme court.

PART 7

SECURING TESTIMONY AND RECORDS

§ 370.1. Securing the attendance of witnesses; securing certain testimony. 1. The provisions of article six hundred twenty of the criminal procedure law concerning the securing of attendance of witnesses by material witness order shall apply to proceedings under this article.

2. Article six hundred sixty, six hundred seventy and six hundred eighty of the criminal procedure law concerning the securing of testimony for use in a subsequent proceeding, the use of testimony given in a previous proceeding and the examination of witness by commission shall apply to proceedings under this article.

3. The provisions of the uniform act to secure attendance of witnesses from without the state in criminal cases, as incorporated in article six hundred forty of the criminal procedure law, shall apply to proceedings under this article.

§ 375.1. Order upon termination of a delinquency action in favor of the respondent. 1. Upon termination of a delinquency proceeding against a respondent in favor of such respondent, unless the presentment agency upon written motion with not less than eight days notice to such respondent demonstrates to the satisfaction of the court that the interests of justice require otherwise or the court on its own motion with not less than eight days notice to such respondent determines that the interest of justice require otherwise and states the reason for such determination on the record, the clerk of the court shall immediately notify the counsel for the child, the director of the appropriate presentment agency, and the heads of the appropriate probation department and police department or other law enforcement agency, that the proceeding has terminated in favor of the respondent and, unless the court has directed otherwise, that the records of such action or proceeding, other than those destroyed pursuant to section 354.1 of this act, shall be sealed. Upon receipt of such notification all official records and papers, including judgments and orders of the court, but not including public court decisions or opinions or records and briefs on appeal, relating to the arrest, the prosecution and the probation service proceedings, including all duplicates or copies thereof, on file with the court, police agency, probation service and presentment agency shall be sealed and not made available to any person or public or private agency. Such records shall remain sealed during the pendency of any motion made pursuant to this subdivision.

2. For the purposes of subdivision one, a delinquency proceeding shall be considered terminated in favor of a respondent where:

(a) the petition is withdrawn; or

(b) the petition is dismissed under section 315.1 or 315.2 and the presentment agency has not appealed from such order or the determination of an appeal or appeals from such order has been against the presentment agency; or

(c) the petition has been deemed to have been dismissed under section 315.3 and the presentment agency has not appealed from such order or the determination of an appeal or appeals from such order has been against the presentment agency; or

(d) the petition is dismissed without prejudice under subdivision four of section 325.3 and the presentment agency has not appealed from such order or the determination of an appeal or appeals from such order has been against the presentment agency; or

(e) the entire petition has been dismissed under subdivision two of section 345.1; or

(f) the petition is dismissed under subdivision two of section 352.1; or

(g) prior to the filing of a petition, the probation department has adjusted the case or terminated the case without adjustment; or

(h) prior to the filing of a petition the presentment agency chooses not to proceed to petition; or

(i) the petition is dismissed pursuant to a motion made in accordance with subdivision eight, nine or ten of section 332.1.

3. Records sealed pursuant to subdivision one shall be made available to the respondent or his designated agent and the records and papers of a probation service shall be available to any probation service for the purpose of complying with subdivision four of section 308.1.

4. If prior to the filing of a petition the presentment agency elects not to commence a delinquency action it shall serve a certification of such disposition upon the appropriate probation service and the appropriate police department or law enforcement agency, which, upon receipt thereto, shall comply with the provision of subdivision one in the same manner as is required with respect to an order of the court.

5. If the probation service adjusts a delinquency case it shall serve a certification of such disposition upon the appropriate police department or law enforcement agency which, upon receipt thereof, shall comply with the provisions of subdivision one in the same manner as is required thereunder with respect to an order of a court.

6. A respondent in whose favor a delinquency proceeding was terminated prior to the effective date of this section may upon motion apply to the court, upon not less than twenty days notice to the presentment agency, for an order granting him the relief set forth in subdivision one, and such order shall be granted unless the presentment agency demonstrates to the satisfaction of the court that the interests of justice require otherwise. A respondent in whose favor a delinquency action or proceeding was terminated as defined by subdivisions four and five, prior to the effective date of this section, may apply to the appropriate presentment agency or probation service for a certification as described in such subdivisions granting him the relief set forth therein and such certification shall be granted by such presentment agency or probation service.

§ 375.2. Motion to seal after a finding. 1. If an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1, other than a finding that the respondent committed a designated felony act, the court may, in the interest of justice and upon motion of the respondent, order the sealing of appropriate records pursuant to subdivision one of section 375.1.

2. Such motion must be in writing and may be filed at any time subsequent to the entering of such finding. Notice of such motion shall be served upon the presentment agency not less than eight days prior to the return date of the motion. Answering affidavits shall be served at least two days before such time.

3. The court shall state on the record its reasons for granting or denying the motion.

4. If such motion is denied, it may not be renewed for a period of one year, unless the order of denial permits renewal at an earlier time.

5. The court shall not order the sealing of any record except as prescribed by this section or section 375.1.

6. Such a motion cannot be filed until the respondent's sixteenth birthday, or, commencing October first, two thousand eighteen, the respondent's seventeenth birthday, or commencing October first, two thousand nineteen, the respondent's eighteenth birthday.

7. Where an order of fact-finding has been issued pursuant to subdivision one of section 345.1 of this article that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, the records shall be sealed automatically at the expiration, as applicable, of a successful period of an adjustment, adjournment in contemplation of dismissal or conditional discharge.

§ 375.3. Expungement of court records. Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records.

PART 8

GENERAL PROVISIONS

§ 380.1. Nature and effect of adjudication. 1. No adjudication under this article may be denominated a conviction and no person adjudicated a juvenile delinquent shall be denominated a criminal by reason of such adjudication.

2. No adjudication under this article shall operate as a forfeiture of any right or privilege or disqualify any person from holding any public office or receiving any license granted by public authority. Such adjudication shall not operate as a disqualification of any person to pursue or engage in any lawful activity, occupation, profession or calling.

3. Except where specifically required by statute, no person shall be required to divulge information pertaining to the arrest of the respondent or any subsequent proceeding under this article; provided, however, whenever a person adjudicated a juvenile delinquent has been placed with the office of children and family services pursuant to section 353.3 of this article, and is thereafter enrolled as a student in a public or private elementary or secondary school, the court that

has adjudicated such person shall provide notification of such adjudication to the designated educational official of the school in which such person is enrolled as a student. Such notification shall be used by the designated educational official only for purposes related to the execution of the student's educational plan, where applicable, successful school adjustment and reentry into the community. Such notification shall be kept separate and apart from such student's school records and shall be accessible only by the designated educational official. Such notification shall not be part of such student's permanent school record and shall not be appended to or included in any documentation regarding such student and shall be destroyed at such time as such student is no longer enrolled in the school district. At no time shall such notification be used for any purpose other than those specified in this subdivision.

4. Notwithstanding any other provision of law, where a finding of juvenile delinquency has been entered, upon request, the records pertaining to such case shall be made available to the commissioner of mental health or the commissioner of developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

§ 381.1. Transfer of records and information to institutions and agencies. Whenever a person is placed with an institution suitable for placement of a person adjudicated a juvenile delinquent maintained by the state or any subdivision thereof or to an authorized agency including the division for youth, the family court placing such person shall forthwith transmit a copy of the orders of the family court pursuant to sections 352.1 and 352.2 and of the probation report and all other relevant evaluative records in the possession of the family court and probation department related to such person, including but not limited to any diagnostic, educational, medical, psychological and psychiatric records with respect to such person to such institution or agency, notwithstanding any contrary provision of law.

§ 381.2. Use of records in other courts. 1. Neither the fact that a person was before the family court under this article for a hearing nor any confession, admission or statement made by him to the court or to any officer thereof in any stage of the proceeding is admissible as evidence against him or his interests in any other court.

2. Notwithstanding the provisions of subdivision one, another court, in imposing sentence upon an adult after conviction may receive and consider the records and information on file with the family court, unless such records and information have been sealed pursuant to section 375.1.

§ 381.3. Use of police records. 1. All police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection.

2. Notwithstanding the provisions of subdivision one, the family court in the county in which the petition was adjudicated may, upon motion and for good cause shown, order such records open:

(a) to the respondent or his parent or person responsible for his care; or

(b) if the respondent is subsequently convicted of a crime, to a judge of the court in which he was convicted, unless such record has been sealed pursuant to section 375.1.

3. An order issued under subdivision two must be in writing.

§ 385.1. Reports. 1. In addition to reports filed pursuant to section two hundred thirteen, the chief administrator of the courts shall include in its annual report to the legislature and the governor information, by county, showing the total number of delinquency cases filed under this article, the precise crime or crimes charged in such petitions by penal law section, the number of respondents included in such petitions, the number of cases heard in the designated felony parts, the age of the alleged victim by crime, the length of time and number of adjournments between the filing of a petition and the conclusion of the fact-finding process, the number of cases dismissed by the court, the number withdrawn, the number admitted to in whole or in part, the number of contested fact-finding hearings and their result, the precise crime, if any, found to have been committed, the length of time and number of adjournments between the fact-finding hearing and the conclusion of the dispositional hearing and the final precise disposition of such cases. Designated felony cases shall be separately reported by each event or fact enumerated in this section. Cases removed from criminal courts shall also be separately reported by each event and fact enumerated in this section.

2. The office of probation and correctional alternatives shall include in its annual report to the legislature and the governor information, by county, showing the total number of delinquency cases adjusted prior to filing.

§ 385.2. Consolidation of records within a city having a population of one million or more. Notwithstanding any other provision of law, in a city having a population of one million or more, an index of the records of the local probation departments located in the counties comprising such city for proceedings under article three shall be consolidated and filed in a central office for use by the family court and local probation service in each such county. After consultation with the state administrative judge, the commissioner of the division of criminal justice services in consultation with the director of the office of probation and correctional alternatives shall specify the information to be contained in such index and the organization of such consolidated file.

ARTICLE 4
SUPPORT PROCEEDINGS

3. Hearing.
4. Orders.
5. Compliance with orders.
6. Effect of action for separation, divorce or annulment.
7. Undertaking.

PART 1

JURISDICTION AND DUTIES OF SUPPORT

Section 411. Jurisdiction.
412. Married person's duty to support spouse.
413. Parents' duty to support child.
413-a. Review and cost of living adjustment of child support orders.
413-b. Support orders for certain adult dependents.
415. Duties to support recipient of public assistance or welfare and patients in institutions in the department of mental hygiene.
416. Elements of support; provisions for accident, life and health insurance benefits.
417. Child of ceremonial marriage.
418. Genetic marker and DNA tests; admissibility of records or reports of test results; costs of tests.

§ 411. Jurisdiction. The family court has exclusive original jurisdiction over proceedings for support or maintenance under this article and in proceedings under article five-B of this act, known as the uniform interstate family support act. On its own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with article ten of this act.

§ 412. Married person's duty to support spouse. 1. A married person is chargeable with the support of his or her spouse and, except where the parties have entered into an agreement pursuant to section four hundred twenty-five of this article providing for support, the court, upon application by a party, shall make its award for spousal support pursuant to the provisions of this part.

2. For purposes of this section, the following definitions shall be used:

(a) "payor" shall mean the spouse with the higher income.

(b) "payee" shall mean the spouse with the lower income.

(c) "income" shall mean income as defined in the child support standards act and codified in section two hundred forty of the domestic relations law and section four hundred thirteen of this article without subtracting spousal support 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 the domestic relations law and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of this article.

(d) "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.

(e) "guideline amount of spousal support" shall mean the sum derived by the application of subdivision three or four of this section.

(f) "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 the domestic relations law and section four hundred thirteen of this article.

(g) "agreement" shall have the same meaning as provided in subdivision three of part B of section two hundred thirty-six of the domestic relations law.

3. Where the payor's income is lower than or equal to the income cap,

the court shall determine the guideline amount of spousal support as follows:

(a) Where child support will be paid for children of the marriage and where the payor as defined in this section is also the non-custodial parent pursuant to the child support standards act:

(1) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph two of this paragraph.

(4) the court shall determine the lower of the two amounts derived by subparagraphs one and three of this paragraph.

(5) the guideline amount of spousal support shall be the amount determined by subparagraph four of this paragraph except that, if the amount determined by subparagraph four of this paragraph is less than or equal to zero, the guideline amount of spousal support shall be zero dollars.

(6) spousal support shall be calculated prior to child support because the amount of spousal support 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.

(b) 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 section is the custodial parent pursuant to the child support standards act:

(1) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph two of this paragraph.

(4) the court shall determine the lower of amounts derived by subparagraphs one and three of this paragraph.

(5) the guideline amount of spousal support shall be the amount determined by subparagraph four of this paragraph except that, if the amount determined by subparagraph four of this paragraph is less than or

equal to zero, the guideline amount of spousal support shall be zero dollars.

(6) if child support will be paid for children of the marriage but the payor as defined in this section is the custodial parent pursuant to the child support standards act, spousal support shall be calculated prior to child support because the amount of spousal support 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.

4. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of spousal support as follows:

(a) the court shall perform the calculations set forth in subdivision three of this section for the income of the payor up to and including the income cap; and

(b) for income exceeding the cap, the amount of additional spousal support 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 paragraph (a) of subdivision six of this section; and

(c) 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.

5. Notwithstanding the provisions of this section, where the guideline amount of spousal support would reduce the payor's income below the self-support reserve for a single person, the guideline amount of spousal support 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 spousal support is awarded.

6. (a) The court shall order the guideline amount of spousal support up to the cap in accordance with subdivision three of this section, unless the court finds that the guideline amount of spousal support 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 spousal support accordingly based upon consideration of the

following factors:

(1) the age and health of the parties;

(2) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(3) the need of one party to incur education or training expenses;

(4) the termination of a child support award during the pendency of the spousal support award when the calculation of spousal support was based upon child support being awarded which resulted in a spousal support award lower than it would have been had child support not been awarded;

(5) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a support proceeding without fair consideration;

(6) the existence and duration of a pre-marital joint household or a pre-support proceedings separate household;

(7) 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;

(8) the availability and cost of medical insurance for the parties;

(9) 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;

(10) the tax consequences to each party;

(11) the standard of living of the parties established during the marriage;

(12) 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;

(13) 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;

(14) any other factor which the court shall expressly find to be just and proper.

(b) Where the court finds that the guideline amount of spousal support is unjust or inappropriate and the court adjusts the guideline amount of spousal support pursuant to this subdivision, the court shall set forth, in a written decision or on the record, the guideline amount of spousal support, the factors it considered, and the reasons that the court adjusted the guideline amount of spousal support. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(c) Where either or both parties are unrepresented, the court shall not enter a spousal support order unless the court informs the unrepresented party or parties of the guideline amount of spousal support.

7. When a party 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 spousal support award based upon the needs of the payee or the standard of living of the parties prior to commencement of the spousal support proceeding, 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.

8. In any action or proceeding for modification of an order of spousal support existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this section, brought pursuant to this article, the spousal support guidelines set forth in this section shall not constitute a change of circumstances warranting modification of such spousal support order.

9. In any action or proceeding for modification where spousal support or maintenance was established in a written agreement providing for spousal support made pursuant to section four hundred twenty-five of this article or made pursuant to subdivision three of part B of section two hundred thirty-six of the domestic relations law entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this section, brought pursuant to this article, the spousal support guidelines set forth in this section shall not constitute a change of circumstances warranting modification of such spousal support order.

10. The court may modify an order of spousal support upon a showing of a substantial change in circumstances. Unless so modified, any order for spousal support issued pursuant to this section shall continue until the earliest to occur of the following:

(a) a written stipulation or agreement between the parties;

(b) an oral stipulation or agreement between the parties entered into on the record in open court;

(c) issuance of a judgment of divorce or other order in a matrimonial proceeding;

(d) the death of either party.

§ 413. Parents' duty to support child. 1. (a) Except as provided in subdivision two of this section, the parents of a child under the age of twenty-one years are chargeable with the support of such child and, if possessed of sufficient means or able to earn such means, shall be required to pay for child support a fair and reasonable sum as the court may determine. 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 subdivision three of section four hundred fifty-one 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 (a) of subdivision three of section four hundred fifty-one 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 subdivision three of section four hundred fifty-one 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 (a) of subdivision three of section four hundred fifty-one 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 section four hundred sixteen of this part 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 paragraph one and subparagraphs (i) and (ii) of paragraph two of subdivision (e) of section four hundred sixteen of this part 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 paragraph one and subparagraphs (i) and (ii) of paragraph two of subdivision (e) of section four hundred sixteen of this part 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 paragraph one and subparagraphs (i) and (ii) of paragraph two of subdivision (e) of section four hundred sixteen of this part 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) of this subparagraph, 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 subdivision one of this section, 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, then 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, including but not limited to section four hundred fifteen of this part, 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 the domestic relations law, 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 four hundred twenty-four-a 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 paragraphs (a) through (k) of this subdivision shall not constitute grounds for 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.

2. Nothing in this article shall impose any liability upon a person to support the adopted child of his or her spouse, if such child was adopted after the adopting spouse is living separate and apart from the non-adopting spouse pursuant to a legally recognizable separation

agreement or decree under the domestic relations law. Such liability shall not be imposed for so long as the spouses remain separate and apart after the adoption.

3. a. 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 last permanent support order of the court. Additionally, a new support 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 and shall be subject to the provisions of section four hundred twenty-four-a of this article. 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.

b. Upon receipt 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 of the adjustment finding and proposed adjusted order, if any, to submit to the court identified thereon specific written objections to such finding and proposed order.

(1) 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 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.

(2) 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.

(3) 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 following remand by the court shall be effective as of the date the proposed adjusted order would have been effective had no written objections been filed.

(4) 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, which shall be effective as of the date the order would have been effective had no written objections been filed.

(5) If the determination of the specific written objections has been made by a family court support magistrate, the parties shall be permitted to obtain judicial review of such determination by filing timely written objections pursuant to subdivision (e) of section four hundred thirty-nine of this act.

(6) 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 issue the order without any 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.

c. 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.

4. 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 four hundred thirteen-a of this article.

§ 413-a. 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 four hundred thirteen of this article; or

(2) where application of the child support standards as set forth in section four hundred thirteen 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 four hundred sixteen of this part. 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 (PETITION) 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 SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT, 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 FOUR HUNDRED FORTY-THREE OF THE FAMILY COURT ACT, 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 OF ANY PARTY. ALL PARTIES WILL RECEIVE NOTICE OF ADJUSTMENT FINDINGS.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION FOUR HUNDRED FORTY-THREE OF THE FAMILY COURT ACT, 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 ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

§ 413-b. 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 under 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 the parent or kinship caregiver of an adult child with a disability, the court shall make its award for support for such individual with a developmental disability in accordance with the provisions of subdivision one of section four hundred thirteen of this part. In addition to the provisions of subdivision one of section four hundred thirteen of this part, the court may consider whether the financial responsibility of caring for the individual has been unreasonably placed on one parent when determining the child 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 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.

§ 415. Duties to support recipient of public assistance or welfare and patients in institutions in the department of mental hygiene. Except as otherwise provided by law, the spouse or parent of a recipient of public assistance or care or of a person liable to become in need thereof or of a patient in an institution in the department of mental hygiene, if of sufficient ability, is responsible for the support of such person or patient, provided that a parent shall be responsible only for the support of his child or children who have not attained the age of twenty-one years. In its discretion, the court may require any such person to contribute a fair and reasonable sum for the support of such relative and may apportion the costs of such support among such persons as may be just and appropriate in view of the needs of the petitioner and the other circumstances of the case and their respective means. Step-parents shall in like manner be responsible for the support of children under the age of twenty-one years.

§ 416. Elements of support; provisions for accident, life and health insurance benefits. (a) The court may include in the requirements for an order for support the providing of necessary shelter, food, clothing, care, medical attention, expenses of confinement, the expense of education, payment of funeral expenses, and other proper and reasonable expenses.

(b) The court may also order a party to purchase, maintain, or assign a policy of accident insurance or insurance on the life of either party and designate in the case of life insurance, the person or persons on whose behalf the petition is brought or in the case of accident insurance, the insured party as irrevocable beneficiaries during a period of time fixed by the court. The obligation to provide such insurance shall cease upon the termination of such party's duty to provide support.

(c) Every support order shall provide that if any legally responsible relative currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover any person on whose behalf the petition is brought, such responsible relative is required to exercise the option of additional coverage in favor of such person whom he or she is legally responsible to support and to execute and deliver to such person any forms, notices, documents, or instruments to assure timely payment of any health insurance claims for such person.

(d) 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 subdivision (e) of this section, 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.

(e) 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 insure 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 its 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 subdivision (c) of this section. 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.

(f) The cost of providing health insurance benefits or benefits under the state's child health insurance plan or the medical assistance program, pursuant to subdivision (e) of this section, 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 of section four hundred thirteen of this part.

(g) 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.

(h) 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. The support 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.

(i) 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.

(j) 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-1 of title forty-two of the United States code.

(k) 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.

§ 417. Child of ceremonial marriage. A child born of parents who at any time prior or subsequent to the birth of said child shall have entered into a ceremonial marriage shall be deemed the legitimate child of both parents for all purposes of this article regardless of the validity of such marriage.

§ 418. Genetic marker and DNA tests; admissibility of records or reports of test results; costs of tests. (a) The court, on its own motion or motion of any party, when paternity is contested, shall order the mother, the child and the alleged father to submit to one or more genetic marker or DNA marker tests of a type generally acknowledged as reliable by an accreditation body designated by the secretary of the federal department of health and human services and performed by a laboratory approved by such an accreditation body and by the commissioner of health or by a duly qualified physician to aid in the determination of whether the alleged father is or is not the father of the child. No such test shall be ordered, however, upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel or the presumption of legitimacy of a child born to a married woman. The record or report of the results of any such genetic marker or DNA test shall be received in evidence, pursuant to subdivision (e) of rule forty-five hundred eighteen of the civil practice law and rules where no timely objection in writing has been made thereto. Any order pursuant to this section shall state in plain language that the results of such test shall be admitted into evidence, pursuant to rule forty-five hundred eighteen of the civil practice law and rules absent timely objections thereto and that if such timely objections are not made, they shall be deemed waived and shall not be heard by the court. If the record or report of results of any such genetic marker or DNA test or tests indicate at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and, if unrebutted, shall establish the paternity of and liability for the support of a child pursuant to this article and article five of this act.

(b) Whenever the court directs a genetic marker or DNA test pursuant to this section, a report made as provided in subdivision (a) of this section may be received in evidence pursuant to rule forty-five hundred eighteen of the civil practice law and rules if offered by any party.

(c) The cost of any test ordered pursuant to subdivision (a) of this section shall be, in the first instance, paid by the moving party. If the moving party is financially unable to pay such cost, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from the funds of the appropriate local social services district. In its order of disposition, however, the court may direct that the cost of any such test be apportioned between the parties according to their respective abilities to pay or be assessed against the party who does not prevail on the issue of paternity, unless such party is financially unable to pay.

PART 2

VENUE AND PRELIMINARY PROCEDURE

§ 421. Venue. Proceedings to compel support under this article may be originated in the county in which one of the parties resides or is domiciled at the time of the filing of the petition. Upon application, the family court may change the place of trial of a proceeding in accordance with article five of the civil practice law and rules.

§ 422. Persons who may originate proceedings. (a) A husband, wife, child, or relative in need of public assistance or care may originate a proceeding under this article to compel a person chargeable with the support to support the petitioner as required by law. A social services official may originate a proceeding under this article if so authorized by section one hundred and two of the social services law. The commissioner of mental health may originate a proceeding under this article when authorized by article forty-three of the mental hygiene law. A parent or guardian, of a child, or other person in loco parentis, or a representative of an incorporated charitable or philanthropic society having a legitimate interest in the petitioner, or, when the petitioner is unable because of his physical or mental condition to file a petition, a guardian ad litem, or a committee, conservator, next friend or other person appointed by the court, may file a petition in behalf of a dependent relative.

(b) Any party to a decree of divorce, separation, or annulment may originate a proceeding to enforce or modify a decree of the supreme court or a court of competent jurisdiction, not of the state of New York, as is provided in part six of this article.

§ 423. Petition; prior demand not required. Proceedings under this article are commenced by the filing of a petition, which may be made on information and belief. The petitioner need not make a demand upon the respondent for support as a condition precedent to the filing of a petition for support. Any such petition for the establishment, modification and/or enforcement of a child support obligation for persons not in receipt of family assistance, which contains a request for child support enforcement services completed in a manner as specified in section one hundred eleven-g of the social services law, shall constitute an application for such services.

§ 424. Probation services. 1. A local probation service may provide services to a party seeking to establish, modify or enforce a support obligation where there is a contract with the appropriate social services district for the performance of support collection services under section one hundred eleven-h of the social services law.

2. A local probation service may provide services to persons ordered to pay support seeking to modify such orders.

3. The probation service may not prevent any person who wishes to file a petition under this article from having access to the court for that purpose nor may the probation service compel any person to appear at any conference, produce any papers or visit any place.

§ 424-a. Compulsory financial disclosure. Except as provided herein: (a) in all support proceedings in family court, there shall be compulsory disclosure by both parties of their respective financial states, provided, however, that this requirement shall not apply to a social services official who is a party in any support proceeding under this act. No showing of special circumstances shall be required before such disclosure is ordered and such disclosure may not be waived by either party or by the court. A sworn statement of net worth shall be filed with the clerk of the court on a date to be fixed by the court, no later than ten days after the return date of the petition. 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;

(b) when a respondent fails, without good cause, to file a sworn statement of net worth, 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 submitted with the returns, or to provide information relating to all group health plans available for the provision of care or other medical benefits by insurance or otherwise for the benefit of the disclosing party and the child or children for whom support is sought, as provided in subdivision (a) of this section, the court on its own motion or on application shall grant the relief demanded in the petition or shall order that, for purposes of the support proceeding, the respondent shall be precluded from offering evidence as to respondent's financial ability to pay support;

(c) when a petitioner other than a social services official fails, without good cause to file a sworn statement of net worth, a current and representative paycheck stub and the most recently filed state and federal income tax returns, as provided in subdivision (a) of this section, the court may on its own motion or upon application of any party adjourn such proceeding until such time as the petitioner files with the court such statements and tax returns. The provisions of this subdivision shall not apply to proceedings establishing temporary support or proceedings for the enforcement of a support order or support provision of a separation agreement or stipulation.

§ 425. Agreement to support; pilot program for use of alternative dispute resolution to obtain agreements to support. (a) If the parties reach an agreement for the support of the child and/or the petitioner, it must be reduced to writing and submitted to the family court or a support magistrate appointed pursuant to section four hundred thirty-nine of this act for approval in accordance with paragraph (h) of subdivision one of section four hundred thirteen of this article. If the court or support magistrate approves it, the court without further hearing may thereupon enter an order and findings of fact for the support of the child and/or the petitioner or the respondent in accordance with the agreement, which shall be binding upon the parties and shall in all respects be a valid order and findings of fact as though made after process had been issued out of the court. The court record shall show that such order and findings were made upon agreement.

(b) The chief administrator of the courts shall promulgate rules to establish and implement a pilot program for the provision of alternative dispute resolution and navigation services to litigants in child support matters in the family court. The cost of the pilot program shall be paid for with state funds appropriated for that purpose and may include federal funds received by the state under title IV-D of the social security act.

(i) The pilot program, which shall be conducted under the auspices of the community dispute resolution center program pursuant to article twenty-one-A of the judiciary law, shall be located in at least two counties in a city with a population of one million or more, and in at least one other county in the state, and shall be available at no charge to parties in cases under this article. The program shall be equipped to provide services that are culturally sensitive to, and in the native language of, the litigants in the community.

(ii) At the parties' initial appearance before the court, pursuant to section four hundred thirty-three or subdivision two of section four hundred fifty-one of this article, in a participating county, the court shall advise the parties of the availability of the dispute resolution program and of their right to consult with counsel during the dispute resolution process. Unless the case is deemed inappropriate for a referral to the dispute resolution program after a review of records in accordance with subdivision (e) of section six hundred fifty-one of this act, the court shall, if the parties consent to participate, refer the matter promptly to the program.

(iii) Prior to referring the parties to the program, the court shall issue a preliminary order of child support pursuant to section four hundred thirty-four of this article unless the petition is for a modification of an existing order of support pursuant to subdivision two of section four hundred fifty-one of this article.

(iv) Prior to referral pursuant to paragraph (iii) of this subdivision, the court shall also issue an order directing the parties to provide financial disclosures in accordance with section four hundred twenty-four-a of this part and to bring or transmit the required documents to the program.

(v) The mediators, neutral evaluators or other facilitators shall receive training in accordance with section eight hundred forty-nine-b of the judiciary law, as well as in the legal requirements in child support cases, including, but not limited to, the child support standards act, possible deviations, requirements regarding medical insurance and costs, educational and child care expenses, age of majority and emancipation, shared and joint custody, grounds for modifications of child support orders and the consequences of noncompliance with child support orders. In order to resolve disputes involving complex financial issues, the program may, if possible, include among its mediators, neutral evaluators or other facilitators, individuals with accounting or other financial qualifications and experience.

(vi) The program shall have the capacity to conduct proceedings electronically, where appropriate, as well as in person, for the convenience of the participants and shall provide a secure means for participants to submit and exchange relevant documents electronically.

(vii) If the parties reach an agreement, the program shall refer them back to the family court in which their case is pending for the court to allocute the parties and to approve the agreement in accordance with subdivision (a) of this section and paragraph (h) of subdivision one of section four hundred thirteen of this article. If the program deems the referral inappropriate due to its own screening for domestic violence or for other reasons, or if parties do not reach an agreement or reach only a partial agreement, the program shall refer them back to the family court in which their case is pending for the court to proceed with a hearing under this article. In all cases, the program shall transmit to the court all financial disclosure documents that have been provided in accordance with section four hundred twenty-four-a of this part.

(viii) In addition to or in lieu of alternative dispute resolution, including in cases in which an agreement is not reached, the program shall provide navigation services to the participants, including but not limited to information regarding family court procedures, the objection process, child support enforcement services available through the local department of social services, employment-related or job training programs in the jurisdiction, and consequences of noncompliance with child support orders. The program shall also provide assistance to litigants in preparation for the court appearance including, among other services, in organizing and transmitting required financial disclosures. Additionally, staff of the pilot program providing navigation services may be located on-site at the family court in the pilot counties selected pursuant to paragraph (i) of this subdivision in order to provide assistance in arranging the initial referral appointments, including ascertaining language access or other needs, and in explaining what documents are required to be brought or transmitted to the program.

§ 426. Issuance of summons. (a) On the filing of a petition under this article, the court may cause a copy of the petition and a summons to be issued, requiring the respondent to show cause why the order of support and other and further relief prayed for by the petition should not be made.

(b) The summons shall contain or have attached thereto a notice stating: (i) that a respondent's failure to appear shall result in entry of an order of default; (ii) that the respondent must provide the court with proof of his or her income and assets; (iii) that a temporary or permanent order of support will be made on the return date of the summons; and (iv) that a respondent's failure to appear may result in the suspension of his or her driving privileges; state professional, occupational and business licenses; and recreational licenses and permits.

§ 427. Service of summons. (a) Personal service of a summons and petition may be made by delivery of a true copy thereof to the person summoned at least eight days before the time stated therein for appearance; or by delivery of a true copy thereof to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by mailing a true copy thereof to the person to be served at his last known residence at least eight days before the time stated in the summons for appearance; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service.

(b) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in the civil practice law and rules.

(c) In any case, whether or not service is attempted under subdivision

(a) or (b) of this section, service of a summons and petition under this section may be effected by mail alone to the last known address of the person to be served. Service by mail alone shall be made at least eight days before the time stated in the summons for appearance. If service is by mail alone, the court will enter an order of support by default if there is proof satisfactory to the court that the respondent had actual notice of the commencement of the proceeding which may be established upon sufficient proof that the summons and petition were in fact mailed by certified mail and signed for at the respondent's correct street address or signed for at the post office. If service by certified mail at the respondent's correct street address cannot be accomplished, service pursuant to subdivisions one, two, three or four of section three hundred eight of the civil practice law and rules shall be deemed good and sufficient service. Upon failure of the respondent to obey a summons served in accordance with the provisions of this section by means other than mail alone, the court will enter an order of support by default. Such order of support shall be made pursuant to the provisions set forth in section four hundred thirteen of this article. The respondent shall have the right to make a motion for relief from such default order within one year from the date such order was entered.

§ 428. Issuance of warrant; certificate of warrant. (a) The court may issue a warrant, directing that the respondent be arrested, brought before the court, when a petition is presented to the court under section four hundred twenty-three and it appears that

(i) the summons cannot be served, or

(ii) the respondent has failed to obey the summons; or

(iii) the respondent is likely to leave the jurisdiction; or

(iv) a summons, in the court's opinion, would be ineffectual; or

(v) the safety of the petitioner is endangered; or

(vi) a respondent on bail or on parole has failed to appear.

(b) The petitioner may not serve a warrant upon the respondent, unless the court itself grants such permission upon the application of the petitioner. The clerk of the court may issue to the petitioner or to the representative of an incorporated charitable or philanthropic society having a legitimate interest in the family a certificate stating that a warrant for the respondent has been issued by the court. The presentation of such certificate by said petitioner or representative to any peace officer, acting pursuant to his special duties, or police officer authorizes him to arrest the respondent and take him to court.

(c) A certificate of warrant expires ninety days from the date of issue but may be renewed from time to time by the clerk of the court.

(d) Rules of court shall provide that a record of all unserved warrants be kept and that periodic reports concerning unserved warrants be made.

§ 429. Sequestration of respondent's property. Where in a proceeding under this article it appears to the court that the respondent 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 respondent, 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, and during the pendency of the proceeding 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 proceeding; 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 petitioning 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 respondent spouse as a dwelling for himself or herself with or without the children of the marriage, and may likewise turn over to the petitioning spouse for the use of such spouse with or without the children of the marriage any chattel or chattels of the respondent 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.

§ 430. Temporary order of protection. (a) Upon the filing of a petition under this article, the court for good cause shown may issue a temporary order of protection which may contain any of the provisions authorized on the making of an order of protection under section four hundred forty-six.

(b) A temporary order of protection is not a finding of wrongdoing.

(c) The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court pursuant to section four hundred twenty-eight of this article.

PART 3

HEARING

§ 431. Preliminary procedure on warrant. (a) When a respondent is taken into custody pursuant to a warrant issued by a family court in New York city under section four hundred twenty-eight, he shall be taken before the court issuing the warrant if the respondent is taken into custody in New York city. If the respondent is taken into custody in a county not within New York city, he shall be taken before a family judge in that county.

(b) When a respondent is taken into custody pursuant to a warrant issued by a family court in a county not within the city of New York, he shall be taken before the court issuing the warrant if the respondent is taken into custody in the county in which the court sits. If the respondent is taken into custody in a different county, he shall be brought before a family court judge in that county.

§ 432. Procedure before court. The court before whom the respondent is taken under section four hundred thirty-one may require an undertaking to appear or in default thereof may place the respondent in custody until the hearing commences.

§ 433. (a) Hearing. Upon the return of the summons or when a respondent is brought before the court pursuant to a warrant, the court shall proceed to hear and determine the case. The respondent shall be informed of the contents of the petition, advised of his right to counsel, and shall be given opportunity to be heard and to present witnesses. The court may exclude the public from the court room in a proper case.

(b) If the initial return of a summons or warrant is before a judge of the court, when support is an issue, the judge must make an immediate order, either temporary or permanent with regard to support. If a temporary order is made, the court shall refer the issue of support to a support magistrate for final determination pursuant to sections four hundred thirty-nine and four hundred thirty-nine-a of this act. Procedures shall be established by the chief administrator of the courts which shall provide for the disposition of all support matters or a referral to a support magistrate prior to the conclusion of a respondent's first appearance before the court. Such procedures shall provide for referral of support issues by appropriate clerical staff of the family court at any time after a petition has been presented to the court.

(c) In any proceeding under this article, the court may permit a party or a witness to be deposed or to testify by telephone, audio-visual means, or other electronic means at a designated family court or other location:

(i) where such party or witness resides in a county other than that of the family court where the case is pending and that of any contiguous county; provided, however, that for the purposes of this section, the five counties of New York city shall be treated as one county;

(ii) where such party or witness is presently incarcerated and will be incarcerated on the date on which the hearing or deposition is scheduled and is not expected to be released within a reasonable period of time after the date on which the hearing or deposition is scheduled; or

(iii) where the court determines that it would be an undue hardship for such party or witness to testify or to be deposed at the family court where the case is pending.

(d) Any such deposition or testimony taken by telephone, audio-visual means or other electronic means in accordance with subdivision (c) of this section shall be recorded and preserved for transcription. Where a party or witness is deposed or testifies by telephone, audio-visual or other electronic means pursuant to this section, documentary evidence referred to by a party or witness or the court may be transmitted by facsimile, telecopier, or other electronic means and may not be excluded from evidence by reason of an objection based on the means of transmission. The chief administrator of the courts shall promulgate rules to facilitate the taking of testimony by telephone, audio-visual means or other electronic means.

§ 434. Order for temporary child support. The court shall make an order for temporary child support pending a final determination, in an amount sufficient to meet the needs of the child, without 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 the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this article.

§ 434-a. Order for temporary spousal support. The court may make an order for temporary spousal support pending a final determination, notwithstanding that information with respect to income and assets of the respondent may be unavailable.

§ 435. Procedure; adjournment; confidentiality of requests. (a) Hearings are conducted by the court without a jury. The court may adjourn the hearing to enable it to make inquiry into the surroundings, conditions and capacities of the child, into the financial abilities and responsibilities of both parents and for other proper cause. If the court so adjourns the hearing, it may require the respondent to give an undertaking to appear or in default thereof may commit him until the hearing resumes.

(b) Hearings are conducted without a jury. The support magistrate may adjourn the hearing in order to make inquiry into the surroundings, conditions and capacities of the child and into the financial abilities and responsibilities of both parents and for other proper cause including a referral of issues required to be determined by a judge. If the support magistrate so adjourns the hearing, the support magistrate shall make a temporary order of support, pending a final determination, and may require the respondent to give an undertaking to appear or in default thereof may, subject to the provisions in section four hundred thirty-nine of this act and confirmation by a judge, commit him or her until the hearing resumes. The support magistrate shall enter an order of support on default if the respondent fails to answer or appear after having been properly served.

(c) Reports prepared by the probation service for use by the court at any time prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole or in part to the support magistrate, child's attorney, counsel, party in interest, or other appropriate person. Such reports may not be made available to the court prior to a determination that the respondent is liable under this article for the support of the petitioner.

§ 436. Competence of spouse. Wives and husbands are competent witnesses against each other in a hearing under section four hundred thirty-three and may testify to non-access in such a hearing.

§ 437. Presumption of sufficient means. A respondent is prima facie presumed in a hearing under section four hundred thirty-three and section four hundred fifty-four to have sufficient means to support his or her spouse and children under the age of twenty-one years.

§ 437-a. Referral to work programs. In any proceeding to establish, decrease or enforce an order of support, if the support obligor is unemployed, the court may require the support obligor to seek employment, or to participate in job training, employment counseling or other programs designed to lead to employment provided such programs are available. The court shall not require the support obligor to seek employment or to participate in job training, employment counseling, or other programs designed to lead to employment under this section if the support obligor is in receipt of supplemental security income or social security disability benefits.

§ 438. Counsel fees. (a) In any proceeding under this article, including proceedings for support of a spouse and children, or for support of children only, or at any hearing to modify or enforce an order entered in that proceeding or a proceeding to modify a decree of divorce, separation, or annulment, including an appeal under article eleven, the court may allow counsel fees at any stage of the proceeding, to the attorney representing the spouse, former spouse or person on behalf of children.

(b) In any proceeding for failure to obey any lawful order compelling payment of support of a spouse or former spouse and children, or of children only, the court shall, upon a finding that such failure was willful, order respondent to pay counsel fees to the attorney representing the petitioner or person on behalf of the children. Representation by an attorney pursuant to paragraph (b) of subdivision nine of section one hundred eleven-b of the social services law shall not preclude an award of counsel fees to an applicant which would otherwise be allowed under this section.

§ 439. Support magistrates. * (a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, five-B and five-C and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to issues specified in section four hundred fifty-five of this article, issues of contested parentage involving claims of equitable estoppel, custody, visitation including visitation as a defense, determinations of parentage made pursuant to section 581-407 of this act, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

* NB Effective until August 31, 2027

* (a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to issues specified in section four hundred fifty-five of this article, issues of contested paternity involving claims of equitable estoppel, custody, visitation including visitation as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of

this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

* NB Effective August 31, 2027

(b) In any proceeding to establish paternity which is heard by a support magistrate, the support magistrate shall advise the mother and putative father of the right to be represented by counsel and shall advise the mother and putative father of their right to blood grouping or other genetic marker or DNA tests in accordance with section five hundred thirty-two of this act. The support magistrate shall order that such tests be conducted in accordance with section five hundred thirty-two of this act. The support magistrate shall be empowered to hear and determine all matters related to the proceeding including the making of an order of filiation pursuant to section five hundred forty-two of this act and an application to change the name of the child pursuant to section sixty of the civil rights law, provided, however, that where the respondent denies paternity and paternity is contested on the grounds of equitable estoppel, the support magistrate shall not be empowered to determine the issue of paternity, but shall transfer the proceeding to a judge of the court for a determination of the issue of paternity. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. Whenever an order of filiation is made by a support magistrate, the support magistrate also shall make a final or temporary order of support.

(c) The support magistrate, in any proceeding in which issues specified in section four hundred fifty-five of this act, or issues of custody, visitation, including visitation as a defense, orders of protection or exclusive possession of the home are present or in which paternity is contested on the grounds of equitable estoppel, shall make a temporary order of support and refer the proceeding to a judge. Upon determination of such issue by a judge, the judge may make a final determination of the issue of support, or immediately refer the proceeding to a support magistrate for further proceedings regarding child support or other matters within the authority of the support magistrate.

(d) Rules of evidence shall be applicable in proceedings before a support magistrate. A support magistrate shall have the power to issue subpoenas, to administer oaths and to direct the parties to engage in and permit such disclosure as will expedite the disposition of issues. The assignment of proceedings and matters to support magistrates, the conduct of the trial before a support magistrate, the contents and filing of a support magistrate's findings of fact and decision and all matters incidental to proceedings before support magistrates shall be in accordance with rules provided for by the chief administrator of the courts. Proceedings held before a support magistrate may be recorded mechanically as provided by the chief administrator of the courts. A transcript of such proceeding may be made available in accordance with the rules of the chief administrator of the courts.

(e) The determination of a support magistrate shall include findings of fact and, except with respect to a determination of a willful violation of an order under subdivision three of section four hundred fifty-four of this article where commitment is recommended as provided in subdivision (a) of this section, a final order which shall be entered and transmitted to the parties. Specific written objections to a final order of a support magistrate may be filed by either party with the court within thirty days after receipt of the order in court or by personal service, or, if the objecting party or parties did not receive the order in court or by personal service, thirty-five days after mailing or electronic transmission of the order to such party or parties. A party filing objections shall arrange for the service by a non-party over the age of eighteen of a copy of such objections upon the opposing party, who shall have thirteen days from such service to file a written rebuttal to such objections, which shall be served by a non-party over the age of eighteen upon the other party. Proof of service upon the opposing party shall be filed with the court at the time of filing of objections and any rebuttal. Within thirty-five days after the objection is filed, the judge, based upon a review of the objections and the rebuttal, if any, shall (i) remand one or more issues of fact to the support magistrate, (ii) make, with or without holding a new hearing, the judge's own findings of fact and order, or (iii) deny the objections. Pending review of the objections and the rebuttal, if any, the order of the support magistrate shall be in full force and effect and no stay of such order shall be granted. In the event a new order is issued, payments made by the respondent in excess of the new order shall be applied as a credit to future support obligations. The final order of a support magistrate, after objections and the rebuttal, if any, have been reviewed by a judge, may be appealed pursuant to article eleven of this act.

(f) The chief administrator shall promulgate written rules for the selection, appointment, reappointment, compensation and training of support magistrates, who shall be attorneys admitted to the practice of law in this state for at least three years and who shall be knowledgeable with respect to the family court and federal and state support law and programs. Support magistrates shall be appointed on a full-time basis for a term of three years and may be reappointed for subsequent terms which shall be five years in length, except that the rules promulgated hereunder may permit the appointment of an acting support magistrate to serve during a support magistrate's authorized leave of absence. Where it is determined that the employment of a full-time support magistrate is not required, one or more counties may agree to share the services of a full-time support magistrate or a support magistrate may be appointed to serve within one or more counties on a part-time basis.

§ 439-a. Expedited process. (a) When used in this section, expedited process means a process in effect in the family court which reduces the processing time of support order establishment and enforcement efforts from the date of successful service of process on the respondent to the date on which a support obligation or enforcement order is entered, the petition is voluntarily withdrawn or the petition is dismissed on the merits or for lack of jurisdiction of the respondent, by the referral of proceedings to hearing examiners appointed and qualified under section four hundred thirty-nine of this article and exercising the powers set forth in such section.

(b) The chief administrator shall assign a sufficient number of support magistrates to ensure that such expedited process shall conform to the requirements of such case processing as set forth in federal statutes and regulations promulgated by the federal secretary of health and human services.

(c) The use of an expedited process shall be required (i) in any county which has a population of four hundred thousand or more or which is wholly within a city and (ii) in any county which has a population of less than four hundred thousand and for which the state has not been granted an exemption from the federal expedited process required by federal statutes and regulations of the federal secretary of health and human services.

(d) The chief administrator of the courts may request of the state commissioner of social services that an exemption from use of an expedited process as required by this section and section four hundred thirty-nine of this article in counties which are not wholly within a city and which have a population of less than four hundred thousand be applied for from the federal secretary of health and human services pursuant to federal statutes and regulations providing for waivers from the federal expedited process requirements. The chief administrator of the courts shall, upon making such a request, provide such information in the possession of the office of court administration which supports an exemption from use of an expedited process to the state commissioner of social services. Upon receipt of such a request from the chief administrator of the courts, the state commissioner of social services with the approval of the local commissioner of social services may apply to the federal secretary of health and human services for exemption from use of an expedited process. If application for such exemption is made, the state commissioner of social services shall, promptly upon receiving notification from the federal department of health and human services, inform the chief administrator of the courts and the local commissioners of social services of the granting or denial of any such application.

PART 4

ORDERS

§ 440. Order of support. 1. (a) Any support order made by the court in any proceeding under the provisions of article five-B of this act, pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or under the provisions of article four, five or five-A of this act (i) shall direct that payments of child support or combined child and spousal support collected on behalf of persons in receipt of services pursuant to section one hundred eleven-g of the social services law, or on behalf of persons in receipt of public assistance be made to the support collection unit designated by the appropriate social services district, which shall receive and disburse funds so paid; or (ii) shall be enforced pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules at the same time that the court issues an order of support; and (iii) shall in either case, except as provided for herein, be effective as of the earlier of the date of the filing of the petition therefor, or, if the children for whom support is sought are in receipt of public assistance, the date for which their eligibility for public assistance was effective. Any retroactive amount of support due shall be support arrears/past due support and shall be paid in one sum or periodic sums, as the court directs, and any amount of temporary support which has been paid to be taken into account in calculating any amount of such retroactive support due. 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. Where such direction is for child support and parentage has been established by a voluntary acknowledgment of parentage as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgment has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgment with the appropriate registrar within five business days. The court shall not direct that support payments be made to the support collection unit unless the child, who is the subject of the order, is in receipt of public assistance or child support services pursuant to section one hundred eleven-g of the social services law. Any such order 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. 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.

(b) (1) When the court issues an order of child support or combined child and spousal support 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 support collection unit shall issue an income execution immediately for child support or combined spousal and child support, and shall issue an execution for medical support enforcement in accordance with the provisions of the order of support 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. 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 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 execution pursuant to this paragraph shall not apply; provided, however, that if the support collection unit makes an error in the issuance of an 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. When an income execution for support enforcement is issued pursuant to this paragraph, such income execution shall supersede any income deduction order previously issued for enforcement of the same support order pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules, whereupon such income deduction order shall cease to have further effect.

(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 at which 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, the 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 immediately issue an income deduction order or when

the parties agree to an alternative arrangement as provided in this paragraph, the court shall not issue an income deduction order. In addition, the court shall make provisions for health insurance benefits in accordance with the requirements of section four hundred sixteen of this article.

(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, section two hundred forty-c of the domestic relations law and section four hundred thirteen-a of this article. 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.

2. The court shall require any person chargeable with support under the provisions of article five-B of this act or under any support order made pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or in any proceeding under the provisions of article four, five or five-A of this act to provide his or her social security number, the name and address of his or her employer and to report any changes of employer or change in employment status affecting compensation received, including rate of compensation or loss of employment, to the support collection unit designated by the appropriate social services district and to keep such support collection unit advised of his or her current employer and current employment status; provided, however, that a social security number may be required only where permitted under federal law.

3. The amount of support determined in accordance with the statewide child support standards, as set forth in section four hundred thirteen of this act, shall constitute prima facie evidence of the ability of any person chargeable with support in accordance with the provisions of article three-A of the domestic relations law or under any support order made pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or in any proceeding

under the provisions of article four, five or five-A of this chapter to support or contribute such amount towards the support of his or her children.

4. Any support order made by the court in any proceeding under the provisions of article five-B of this act, pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or under the provisions of this article or article five or five-A of this act shall include, on its face, a notice printed or typewritten in a size equal to at least eight point bold type:

(a) informing the respondent that a willful failure to obey the order may, after court hearing, result in commitment to jail for a term not to exceed six months for contempt of court, and

(b) 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.

5. 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 pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or under the provisions of article four, five, five-A or five-B of this act 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.

6. Any order of support made by the court shall provide for health insurance benefits pursuant to section four hundred sixteen of this article.

§ 441. Order dismissing petition. If the allegations of a petition under this article are not established by competent proof, the court shall dismiss the petition. If a neglect petition was filed in the support proceeding, the court retains jurisdiction over the neglect petition whether or not it dismisses the support petition.

§ 442. Order of support by a spouse. If the court finds after a hearing that a husband or wife is chargeable under section four hundred twelve with the support of his or her spouse and is possessed of sufficient means or able to earn such means, the court shall make an order requiring the husband or wife to pay weekly or at other fixed periods a fair and reasonable sum for or towards the support of the other spouse. The court shall require the spouse chargeable with support to make his or her residence known at all times should he or she move from the address last known to the court by reporting such change to the support collection unit designated by the appropriate social services district. Failure to report such change shall subject him or her to the provisions of section four hundred fifty-four of this act.

§ 443. Order of support by parent. If the court finds after a hearing that a parent is chargeable under section four hundred thirteen of this act with the support of his or her child and is possessed of sufficient means or able to earn such means, the court shall make an order requiring the parent to pay weekly or at other fixed periods a fair and reasonable sum for or towards the support of such child. Where permitted under federal law and where the record of the proceedings contains such information, the court shall also 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. Failure to report such changes shall subject the parent to the provisions of section four hundred fifty-four of this act.

§ 445. Order of support by relative; duration. (a) If the court finds after a hearing that a relative, including a step-parent, should be held responsible under section four hundred fifteen for support, the court in its discretion may make an order requiring such person to contribute a fair and reasonable sum for the support of such person.

(b) For good cause shown, the court may at any time terminate or modify an order made under this section.

§ 446. Order of protection. The court may make an order of protection in assistance or as a condition of any other order made under this part. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by the petitioner or respondent or both. No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counter-claim in accordance with section one hundred fifty-four-b of this act. Such an order may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent or the child, 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 eight hundred twelve of this act, 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;

(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 this proceeding or in any other proceeding or action under this act or the domestic relations law;

(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 participate in an educational program and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the state or any political subdivision thereof;

(g) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(h) 1. 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.

2. "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;

(i) 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 subdivision, "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;

(j) 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 subdivision, "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

(k) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his religious faith shall be preserved and protected.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

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.

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.

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.

§ 446-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the 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 section eight hundred forty-two-a of this act.

§ 447. Order of visitation. (a) In the absence of an order of custody or of visitation entered by the supreme court, the court may make an order of custody or of visitation, in accordance with subdivision one of section two hundred forty of the domestic relations law, requiring one parent to permit the other to visit the children at stated periods without an order of protection, even where the parents are divorced and the support order is for a child only.

(b) Any order of the family court under this section shall terminate when the supreme court makes an order of custody or of visitation concerning the children, unless the supreme court continues the order of the family court.

§ 448. Enforcement by income deduction. Orders of 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. The family court is hereby authorized to enter an order with respect to an income deduction, in accordance with the provisions of section fifty-two hundred forty-two of the civil practice law and rules, in any support proceeding under the provisions of article five-B of this act under any support order made pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or in any support proceeding under the provisions of article four, five or five-A of this act.

§ 449. Effective date of order of support. 1. Any order of spousal support made under this article shall be effective as of the date of the filing of the petition therefor, and any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, to the petitioner, to the custodial parent or to third persons. Any amount of temporary support which has been paid shall be taken into account in calculating any amount of retroactive support due.

2. Any order of child support made under this article shall be

effective as of the earlier of the date of the filing of the petition therefor, or, if the children for whom support is sought are in receipt of public assistance, the date for which their eligibility for public assistance was effective. Any retroactive amount of support due shall be support arrears/past-due support and shall be paid in one sum or periodic sums, as the court shall direct, to the petitioner, to the custodial parent or to third persons. Any amount of temporary support which has been paid shall be taken into account in calculating any amount of retroactive support due. 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.

PART 5

COMPLIANCE WITH ORDERS

§ 451. Continuing jurisdiction. 1. Except as provided in article five-B of this act, the court has continuing jurisdiction over any support proceeding brought under this article until its judgment is completely satisfied and may modify, set aside or vacate any order issued in the course of the proceeding, provided, however, that the modification, set aside or vacatur shall not reduce or annul child support arrears accrued prior to the making of an application pursuant to this section. The court shall not reduce or annul any other arrears unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing payment prior to the accrual of the arrears, in which case the facts and circumstances constituting such good cause shall be set forth in a written memorandum of decision. A modification may increase support payments nunc pro tunc as of the date of the initial application for support based on newly discovered evidence. Any retroactive amount of support due shall be paid and be enforceable as provided in section four hundred forty of this article. Upon an application to set aside or vacate an order of support, no hearing shall be required unless such application shall be supported by affidavit and other evidentiary material sufficient to establish a prima facie case for the relief requested.

2. A proceeding to modify an order of support shall be commenced by the filing of a petition which shall allege facts sufficient to meet one or more of the grounds enumerated in subdivision three of this section.

3. (a) 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.

(b) 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:

(i) three years have passed since the order was entered, last modified or adjusted; or

(ii) 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.

§ 453. Petition; violation of court order. Proceedings under this part shall be originated by the filing of a petition containing an allegation that the respondent has failed to obey a lawful order of this court.

(a) Persons who may originate and prosecute proceedings. The original petitioner, the support collection unit 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, or any person to whom the order is payable expressly or who may originate proceedings under section four hundred twenty-two of this article may originate and prosecute a proceeding under this part.

(b) Issuance of summons. Upon the filing of a petition under this part, the court may cause a copy of the petition and a summons to be issued, requiring the respondent to show cause why he should not be dealt with in accordance with section four hundred fifty-four of this part. The summons shall include on its face, printed or typewritten in a size equal to at least eight point bold type, a notice, warning the respondent that a failure to appear in court may result in immediate arrest, and that, after an appearance in court, a finding that the respondent willfully failed to obey the order may result in commitment to jail for a term not to exceed six months, for contempt of court. The notice shall also advise the respondent of the right to counsel, and the right to assigned counsel, if indigent.

(c) Service of summons. Upon the issuance of a summons, the provisions of section four hundred twenty-seven of this article shall apply, except that no order of commitment may be entered upon the default in appearance by the respondent if service has been made by mail alone notwithstanding proof of actual notice of the commencement of the proceeding.

(d) Issuance of warrant. The court may issue a warrant, directing that the respondent be arrested and brought before the court, pursuant to section four hundred twenty-eight of this article.

§ 454. Powers of the court on violation of a support order. 1. If a respondent is brought before the court for failure to obey any lawful order of support and if, after hearing, the court is satisfied by competent proof that the respondent has failed to obey any such order, the court may use any or all of the powers conferred upon it by this part. The court has the power to use any or all enforcement powers in every proceeding brought for violation of a court order under this part regardless of the relief requested in the petition.

2. Upon a finding that a respondent has failed to comply with any lawful order of support:

(a) the court shall enter a money judgment under section four hundred sixty of this article; and

(b) the court may make an income deduction order for support enforcement under section fifty-two hundred forty-two of the civil practice law and rules;

(c) the court may require the respondent to post an undertaking under section four hundred seventy-one of this article;

(d) the court may make an order of sequestration under section four hundred fifty-seven of this article.

(e) the court may suspend the respondent's driving privileges pursuant to section four hundred fifty-eight-a of this article.

(f) the court may suspend the respondent's state professional or business license pursuant to section four hundred fifty-eight-b of this article;

(g) the court may suspend the recreational license or licenses of the respondent pursuant to section four hundred fifty-eight-c of this article.

(h) the court may require the respondent, if the persons for whom the respondent has failed to pay support are applicants for or recipients of public assistance, to participate in work activities as defined in title nine-B of article five of the social services law. Those respondents ordered to participate in work activities need not be applicants for or recipients of public assistance.

(i) except as otherwise provided in paragraph (h) of this subdivision, the court may require the respondent to participate in job training, employment counseling or other programs designed to lead to employment if authorized pursuant to section four hundred thirty-seven-a of this article provided such programs are available.

3. Upon a finding by the court that a respondent has willfully failed to obey any lawful order of support, the court shall order respondent to pay counsel fees to the attorney representing petitioner pursuant to section four hundred thirty-eight of this act and may in addition to or in lieu of any or all of the powers conferred in subdivision two of this section or any other section of law:

(a) commit the respondent to jail for a term not to exceed six months. For purposes of this subdivision, failure to pay support, as ordered, shall constitute prima facie evidence of a willful violation. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. Such commitment does not prevent the court from subsequently committing the respondent for failure thereafter to comply with any such order; or

(b) require the respondent to participate in a rehabilitative program if the court determines that such participation would assist the respondent in complying with such order of support and access to such a program is available. Such rehabilitative programs shall include, but not be limited to, work preparation and skill programs, non-residential alcohol and substance abuse programs and educational programs; or

(c) place the respondent on probation under such conditions as the court may determine and in accordance with the provisions of the criminal procedure law.

4. The court shall not deny any request for relief pursuant to this section unless the facts and circumstances constituting the reasons for its determination are set forth in a written memorandum of decision.

* 5. The court may review a support collection unit's denial of a challenge made by a support obligor pursuant to paragraph (d) of subdivision twelve of section one hundred eleven-b of the social services law if objections thereto are filed by a support obligor who has received notice that the office of temporary and disability

assistance intends to notify the department of motor vehicles that the support obligor's driving privileges are to be suspended. Specific written objections to a support collection unit's denial may be filed by the support obligor within thirty-five days of the mailing of the notice of the support collection unit's denial. A support obligor who files such objections shall serve a copy of the objections upon the support collection unit, which shall have ten days from such service to file a written rebuttal to such objections and a copy of the record upon which the support collection unit's denial was made, including all documentation submitted by the support obligor. Proof of service shall be filed with the court at the time of filing of objections and any rebuttal. The court's review shall be based upon the record and submissions of the support obligor and the support collection unit upon which the support collection unit's denial was made. Within forty-five days after the rebuttal, if any, is filed, the court shall (i) deny the objections and remand to the support collection unit or (ii) affirm the objections if the court finds the determination of the support collection unit is based upon a clearly erroneous determination of fact or error of law, whereupon the court shall direct the support collection unit not to notify the department of motor vehicles to suspend the support obligor's driving privileges. Provisions set forth herein relating to procedures for appeal to the family court by individuals subject to suspension of driving privileges for failure to pay child support shall apply solely to such cases and not affect or modify any other procedure for review or appeal of administrative enforcement of child support requirements.

* NB Repealed August 31, 2027

§ 455. Commitment. 1. The court may at any time suspend an order of commitment upon such reasonable conditions, if any, as the court deems appropriate to carry out the purposes of this article without placing the respondent on probation or may place him on probation under such conditions as the court may determine and in accordance with the provisions of the criminal procedure law. For good cause shown, the court may at any time revoke the suspension of the order of commitment.

2. Except as provided in article five-B of this act, any respondent against whom an order of commitment has been issued, if financially unable to comply with any lawful order issued under this article, upon such notice to such parties as the court may direct, may make application to the court for an order relieving him or her of payments directed in such order and the commitment order. The court, upon the hearing on such application, if satisfied by competent proof that the respondent is financially unable to comply with such order may, upon a showing of good cause until further order of the court, modify such order and relieve the respondent from the commitment 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 order directing payment prior to the accrual of such arrears. Such modification may increase the amount to be paid pursuant to a lawful order issued under this article nunc pro tunc based on newly discovered evidence.

3. 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 payment pursuant to the provisions of this section, is no longer financially unable to comply with the order to make such payment, then the court may, upon a showing of good cause modify or revoke its order relieving such person totally or partially from making such payment.

4. Notwithstanding any inconsistent provision of this article, the provision of any order issued under this article requiring the payment of money 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 is imprisoned pursuant to any order adjudging him or her in contempt for failure to comply with any provision in such order.

5. Any respondent may assert his or her financial inability to comply with the directions contained in an order issued under this article or an order or judgment entered in a matrimonial action or in an action for

the enforcement in this state of a judgment in a matrimonial action rendered in another state, as a defense in a proceeding instituted against him or her under subdivision one of section four hundred fifty-four of this article or under the judiciary law to punish him or her for failure to comply with such directions. If the court, upon the hearing of such contempt proceeding, is satisfied by competent proof that the respondent 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 respondent for contempt; provided, however, that if an order or judgement for child support issued by another state is before the court solely for enforcement, the court may only modify the order in accordance with article five-B of this act. No such modification shall reduce or annul arrears accrued prior to the making of such application for modification unless the defaulting party shows good cause for failure to make application for relief from the order or judgment 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.

§ 456. Probation. (a) No person may be placed on probation under this article unless the court makes an order to that effect, either at the time of the making of an order of support or under section four hundred fifty-four. The period of probation may continue so long as an order of support, order of protection or order of visitation applies to such person.

(b) The court may at any time, where circumstances warrant it, revoke an order of probation. Upon such revocation, the probationer shall be brought to court, which may, without further hearing, make any order that might have been made at the time the order of probation was made.

§ 457. Order of sequestration on failure to obey support order. If an order of support is made under this article and the respondent has failed to obey it and either leaves or threatens to leave the state, the court on application may issue an order of sequestration of his property within the state, providing that such property may be taken, sequestered and applied in like manner as is provided in section four hundred twenty-nine.

§ 458-a. Enforcement of arrears; Suspension of driving privileges.
(a) If the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to court 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 the requirements of all summonses, subpoenas and warrants relating to a paternity or child support proceeding. Nothing in this subdivision shall authorize the court to terminate the respondent's suspension of driving privileges except as provided in this subdivision.

(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 of section four hundred thirteen of this act falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one of section four hundred thirteen of this act; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of this act 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 of section four hundred thirteen of this act.

(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.

§ 458-b. Child support proceedings and enforcement of arrears; suspension of state professional, occupational and business licenses.

(a) If the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to court order for a period of four months 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 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 the requirements of all summonses, 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 and has fully complied with all summons, subpoenas and warrants relating to a paternity or child support proceeding, the court shall cause the suspension of the order to be removed 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 of section four hundred thirteen of this act falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one of section four hundred thirteen of this act; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of this act 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 of section four hundred thirteen of this act.

(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.

§ 458-c. Child support proceedings and enforcement of arrears; suspension of recreational licenses. (a) If the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to court 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 of section four hundred thirteen of this act falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one of section four hundred thirteen of this article; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen 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 of section four hundred thirteen of this article.

§ 459. Additional arrears. If a respondent has failed to obey a lawful order under this article the party seeking enforcement may amend the petition to include any additional arrears which have accrued from the commencement of such enforcement proceeding up to the date of the hearing, provided that written notice of the intention to so amend has been given eight days previously.

§ 460. Entry and docketing of a money judgment. 1. Where the family court enters an order:

(a) requiring any party to provide for the support of another party, or child, or both; or

(b) providing for the support or maintenance of a spouse or former spouse, or child, or both, on a referral from the supreme court in an action for divorce, separation, annulment or a proceeding for the determination of the custody of a minor by writ of habeas corpus or by petition and order to show cause; or

(c) enforcing or modifying an order or decree of a court of competent jurisdiction not of the state of New York providing for the support of the petitioner and/or child support; or

(d) awarding support under article five-B of this act; or

(e) awarding counsel fees under this act;

and the party defaults in paying any sum of money due as required by the order directing the payment thereof, the court, without regard to the amount due, shall make an order directing the entry of judgment for the amount of child support arrears, 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 such 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 made upon such notice to the party or other person as the court may direct. Such judgment shall provide for the payment of interest on the amount of any arrears if the default was willful, in that the defaulting party 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.

2. A certified copy of the order directing the entry of a money judgment shall be entered in the office of the clerk of the county in which the proceeding was commenced. Said clerk shall docket the same in the book kept by him for the docketing of judgments as if said order were a transcript of a judgment directed for the amount designated in the order. An order docketed under this subdivision shall have the same effect as a docketed judgment entered in the supreme court within the county where it is docketed and may be enforced by execution or in any other manner provided by law for the collection of a money judgment.

3. The relief provided for herein shall be in addition to any and every other remedy which may be provided under the law including, but not limited to, the remedies provided under the provisions of section four hundred fifty-four of this act and sections fifty-two hundred forty-one and fifty-two hundred forty-two of the civil practice law and

rules; provided that when a judgment for such arrears has been entered pursuant to this section, such judgment shall not thereafter be subject to modification or be affected by the provisions of section four hundred sixty-two of this act. After the entry of any order hereunder, the judgment creditor shall not thereafter be entitled to collect, by any form of remedy, any greater portion of such arrears than that represented by the order so entered.

PART 6

EFFECT OF ACTION FOR SEPARATION, DIVORCE OR ANNULMENT

§ 461. Duty to support child after separation agreement, separation, or termination of marriage. (a) A separation agreement, a decree of separation, and a final decree or judgment terminating a marriage relationship does not eliminate or diminish either parent's duty to support a child of the marriage under section four hundred thirteen of this article. In the absence of an order of the supreme court or of another court of competent jurisdiction requiring support of the child, the family court may entertain a petition and make an order for its support.

(b) If an order of the supreme court or of another court of competent jurisdiction requires support of the child, the family court may:

(i) entertain an application to enforce the order requiring support; or

(ii) entertain an application to modify such order as provided under subdivision two of section four hundred fifty-one of this article, unless the order of the supreme court provides that the supreme court retains exclusive jurisdiction to enforce or modify the order.

(c) In an action for divorce, separation or annulment in the supreme court, the supreme court on its own motion or on motion of one of the parties may refer an application for temporary or permanent support or both of a child of the marriage to the family court. If the supreme court so refers the application, the family court shall have jurisdiction to determine the application with the same powers possessed by the supreme court and the family court's disposition of the application shall be an order of the family court appealable only under article eleven of this act.

§ 462. Effect of support order in matrimonial action on duration of family court support order for child. Any order of the family court requiring support of a child terminates when the supreme court makes an order in an action for divorce, separation or annulment providing for the support of the child, unless the supreme court continues the order of the family court.

§ 463. Effect of separation agreement on duty to support a spouse. A separation agreement does not preclude the filing of a petition and the making of an order under section four hundred forty-five of this article for support of a spouse who is likely to become in need of public assistance or care.

§ 464. Effect of pendency of action for divorce, separation or annulment on petition for support of a spouse. (a) In a matrimonial action in the supreme court, the supreme court on its own motion or on motion of either spouse may refer to the family court an application for temporary or permanent support, or for maintenance or a distribution of marital property. If the supreme court so refers an application, the family court has jurisdiction to determine the application with the same powers possessed by the supreme court and the family court's disposition of the application is an order of the family court appealable only under article eleven of this act.

(b) In the absence of an order of referral under paragraph (a) of this section and in the absence of an order by the supreme court granting temporary or permanent support or maintenance, the family court during the pendency of such action may entertain a petition and may make an order under section four hundred forty-five of this article for a spouse who is likely to become in need of public assistance or care.

§ 465. Effect of denial of support in action for separation. After final adjudication of an action for separation in which the supreme court denies support to a spouse, the family court may entertain a petition and make an order for support of such spouse

(a) under section four hundred forty-two of this article if in the opinion of the family court the circumstances of the parties have changed, or

(b) under section four hundred forty-five of this article if it is shown to the satisfaction of the family court that the petitioner is likely to become in need of public assistance or care.

§ 466. Effect of granting of support in action for divorce, separation or annulment. (a) The supreme court may provide in an order or decree granting temporary or permanent support or maintenance in an action for divorce, separation or annulment that only the family court may entertain an application to enforce or, upon a showing to the family court that there has been a subsequent change of circumstance and that modification is required, to modify such order or decree. If the supreme court so provides, the family court shall entertain such an application and any disposition by the family court of the application is an order of the family court appealable only under article eleven of this act.

(b) The supreme court may provide in an order or decree granting alimony, maintenance or support in an action for divorce, separation or annulment that the order or decree 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 an order or decree of the supreme court involving the parties to the action.

(c) If the supreme court enters an order or decree granting alimony, maintenance or support in an action for divorce, separation or annulment and if the supreme court does not exercise the authority given under subdivision (a) or (b) of this section; or if a court of competent jurisdiction not of the state of New York shall enter an order or decree granting alimony, maintenance or support in any such action, the family court may

(i) entertain an application to enforce the order or decree granting alimony or maintenance, or

(ii) entertain an application to modify the order or decree granting alimony or maintenance on the ground that there has been a subsequent change of circumstances and that modification is required.

§ 467. Referral by supreme court of applications to fix custody in action for divorce, separation or annulment. (a) In an action for divorce, separation or annulment, the supreme court may refer to the family court the determination of applications to fix temporary or permanent custody or visitation, applications to enforce judgments and orders of custody or visitation, and applications to modify judgments and orders of custody which modification may be granted only upon a showing to the family court that there has been a subsequent change of circumstances and that modification is required.

(b) In the event no such referral has been made and unless the supreme court provides in the order or judgment awarding custody or visitation in an action for divorce, separation or annulment, that it may be enforced or modified only in the supreme court, the family court may: (i) determine an application to enforce the order or judgment awarding custody or visitation, or (ii) determine an application to modify the order or judgment awarding custody or visitation upon a showing that there has been a subsequent change of circumstances and modification is required.

(c) In any determination of an application pursuant to this section, the family court shall have jurisdiction to determine such applications, in accordance with subdivision one of section two hundred forty of the domestic relations law, with the same powers possessed by the supreme court, and the family court's disposition of any such application is an order of the family court appealable only under article eleven of this act.

§ 469. Rules of court; venue. (a) Rules of court under section four hundred twenty-four of this article may be made applicable with such modifications, if any, as may be appropriate to the determination of applications referred to the family court by the supreme court under part six of this article.

(b) The supreme court referring an application to the family court under part six may designate a county within the judicial district as the county in which the application is to be determined. If the supreme court does not designate the county, section four hundred twenty-one of this article applies.

(c) Section four hundred twenty-one of this article applies in determining the county in which an application under section four hundred sixty-one, section four hundred sixty-six or section six hundred fifty-four may be heard.

PART 7

UNDERTAKING

§ 471. Undertaking for support and cash deposits. The court may in its discretion require either a written undertaking with sufficient surety approved by the court or may require that cash be posted to secure compliance by the respondent with the order for support for such period. Such undertaking shall be for a definite period, not to exceed three years, and the required amount of the principal of such undertaking shall not exceed the total payments for support required for three years and shall be so stated in the order for support. After hearing and for good cause shown, the court may extend an undertaking requirement by requiring a new undertaking similar to the original undertaking. The respondent may deposit cash with the clerk, or when the court so orders, with the support collection unit designated by the appropriate social services district, when the order for support directs payments to such unit. When such cash has been deposited with the support collection unit and the respondent fails to make any payment, when due, within such period, payment shall be made by the support collection unit to the petitioner out of such cash. When cash is posted as security, as herein provided, the person or persons so posting such cash shall at the expiration of the period for which such security shall have been ordered be entitled to the return of such cash less any amount which shall have been paid therefrom to the petitioner by reason of any default or defaults in payments on the part of the respondent. The form of the undertaking and the form and manner of justification of the surety shall conform to the rules of court.

§ 472. Undertaking to be filed. If the property securing the undertaking consists of real estate, the undertaking shall be filed with the county clerk of the county in which the real estate is located and the same shall constitute a lien upon the real estate specified in the undertaking. The county clerk of each county is hereby directed to accept such undertakings for filing and to provide proper and sufficient books and indexes wherein the same shall be entered.

§ 473. Substitution of surety. The court may at any time thereafter, before or after there has been a default, if all arrears have been paid in case there shall have been a default on such undertaking, accept a new undertaking in lieu of the original undertaking, and the court shall enter an order discharging such undertaking.

§ 474. Default. A default in the terms of the order shall constitute a breach of the undertaking. When there has been a default the court shall cause an affidavit to be drawn, verified and filed by any person familiar with the facts. The surety shall thereupon be personally served, or served by registered mail at the address given in the undertaking or subsequent address furnished by said surety in writing, with notice of such default and shall be required to attend at the court on a day certain and show cause why judgment should not be entered on the undertaking and the amount thereof applied to the relief of the petitioner for the amount in default. If the surety appears and pays the amount in arrears the court may remit the forfeiture. Inability to serve the surety shall not be prejudicial to the renewal of proceedings against the respondent.

§ 475. Procedure as to defaults. If the surety contests the default the court shall hear and determine the issue. In the event that the court finds that a default has been suffered, it shall make an order specifying the amount in default and forfeiting the undertaking or cash deposit to the extent of such default. A certified copy of such order shall be filed in the county clerk's office with a certified copy of the undertaking and thereupon the said clerk shall docket the same in the book kept by the clerk for the docketing of judgments, as if the same was a transcript of a judgment directed for the amount of such sum in default. The certified copy of the undertaking and of the order shall be the judgment record. Such judgment shall be a lien on all of the real estate and collectible out of the real and personal property of the surety. An execution may be issued to collect the amount thereof in the same manner as upon a judgment recovered in any court of record.

§ 476. Forfeitures applied to support of petitioner. (a) All sums collected from the surety by judgment as well as forfeited cash deposits shall be applied by the clerk of court to the support of the petitioners for whose benefit the order for support was made. Subsequent defaults shall be proceeded upon in the same manner until the amount of the principal of the undertaking or the cash deposited has been recovered in full.

(b) Where the respondent, or any one in his behalf, shall have deposited with the court monies as surety for compliance with the terms of the order of support and the respondent shall have died, the court may make an order directing the payment to the petitioner of all monies still in possession of the court in conformance with the order of support.

§ 477. Surrender of respondent by surety. A surety may at any time surrender a respondent to the court. The respondent shall thereupon be dealt with as provided in the order for support. If the arrears on the order for support with interest thereon are paid in full, the court may make an order discharging the surety of any further liability and directing the return of the balance of the cash on deposit to the person entitled thereto.

§ 478. Termination of surety's liability. Whenever the liability on an undertaking has ceased, the court shall make an order to that effect. Upon receipt of a certified copy of the order, the county clerk shall discharge of record the lien of the undertaking.

§ 479. When new security required. After an undertaking has been given or cash has been deposited and it shall appear upon proof by affidavit either

(a) that a judgment entered upon default can not be collected; or

(b) that the liability of the surety has ceased; or

(c) that the money deposited has been applied in full; or

(d) that personal service cannot be effected upon the surety or the person depositing the cash; or

(e) if for any reason the court shall find that there is not sufficient security, the court may issue a summons requiring the respondent to appear or a warrant for the arrest of the respondent, and require him to give new or additional security. In default thereof the court may commit him under the original order in the manner hereinabove provided.

ARTICLE 5

PATERNITY PROCEEDINGS

PART 1

JURISDICTION AND DUTIES TO SUPPORT

§ 511. Jurisdiction. Except as otherwise provided, the family court has exclusive original jurisdiction in proceedings to establish paternity and, in any such proceedings in which it makes a finding of paternity, to order support and to make orders of custody or of visitation, as set forth in this article. On its own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with the provisions of article ten of this act. In accordance with the provisions of section one hundred eleven-b of the domestic relations law, the surrogate's court has original jurisdiction concurrent with the family court to determine the issues relating to the establishment of paternity.

§ 512. Definitions. When used in this article,

(a) The phrase "child born out of wedlock" refers to a child who is begotten and born out of lawful matrimony.

(b) The word "child" refers to a child born out of wedlock.

(c) The word "mother" refers to the mother of a child born out of wedlock.

(d) The word "father" refers to the father of a child born out-of-wedlock.

§ 513. Obligation of parents. Subject to the provisions of paragraph (f) of subdivision six of section three hundred ninety-eight of the social services law, each parent of a child born out of wedlock is chargeable with the support of such child including the child's funeral expenses and, if possessed of sufficient means or able to earn such means, shall be required to pay child support. A court shall make an award for child support pursuant to subdivision one of section four hundred thirteen of this act.

§ 514. Liability of father to mother. The father is liable for the reasonable expenses of the mother's confinement and recovery and such reasonable expenses in connection with her pregnancy as determined by the court; provided, however, where the mother's confinement, recovery and expenses in connection with her pregnancy were paid under the medical assistance program on the mother's behalf, the father may be liable to the social services district furnishing such medical assistance and to the state department of health for medical assistance so expended. Such expenses, including such expenses paid by the medical assistance program on the mother's behalf, shall be deemed cash medical support and the court shall determine the obligation of the parties to contribute to the cost thereof pursuant to subparagraph five of paragraph (c) of subdivision one of section four hundred thirteen of this act.

§ 515. Governmental obligation to child. In case of the neglect or inability of the parents to provide for the support and education of the child, it shall be supported by the county, city or town chargeable therewith under the provisions of the social welfare law.

§ 516-a. Acknowledgment of parentage. (a) An acknowledgment of parentage executed pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of the public health law shall establish the parentage of and liability for the support of a child pursuant to this act. Such acknowledgment must be reduced to writing and filed pursuant to section four thousand one hundred thirty-five-b of the public health law with the registrar of the district in which the birth occurred and in which the birth certificate has been filed. No further judicial or administrative proceedings are required to ratify an unchallenged acknowledgment of parentage.

(b) (i) Where a signatory to an acknowledgment of parentage executed pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of the public health law had attained the age of eighteen at the time of execution of the acknowledgment, the signatory may seek to rescind the acknowledgment by filing a petition with the court to vacate the acknowledgment within the earlier of sixty days of the date of signing the acknowledgment or the date of an administrative or a judicial proceeding (including, but not limited to, a proceeding to establish a support order) relating to the child in which the signatory is a party. For purposes of this section, the "date of an administrative or a judicial proceeding" shall be the date by which the respondent is required to answer the petition.

(ii) Where a signatory to an acknowledgment of parentage executed pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of the public health law had not attained the age of eighteen at the time of execution of the acknowledgment, the signatory may seek to rescind the acknowledgment by filing a petition with the court to vacate the acknowledgment anytime up to sixty days after the signatory's attaining the age of eighteen years or sixty days after the date on which the respondent is required to answer a petition (including, but not limited to, a petition to establish a support order) relating to the child in which the signatory is a party, whichever is earlier; provided, however, that the signatory must have been advised at such proceeding of his or her right to file a petition to vacate the acknowledgment within sixty days of the date of such proceeding.

(iii) Where a petition to vacate an acknowledgment of parentage has been filed in accordance with paragraph (i) or (ii) of this subdivision, the court shall order genetic marker tests or DNA tests for the determination of the child's parentage. No such test shall be ordered, however, where the acknowledgment was signed by the intended parent of a child born through assisted reproduction pursuant to subparagraph (ii) of paragraph (b) of subdivision one of section four thousand one hundred thirty-five-b of the public health law, or upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel, or the presumption of legitimacy of a child born to a married person. If the court determines, following the test, that the person who signed the acknowledgment is the parent of the child, the court shall make a finding of parentage and enter an order of parentage. If the court determines that the person who signed the acknowledgment is not the parent of the child, the acknowledgment shall be vacated.

(iv) After the expiration of the time limits set forth in paragraphs (i) and (ii) of this subdivision, any of the signatories to an acknowledgment of parentage may challenge the acknowledgment in court by alleging and proving fraud, duress, or material mistake of fact. If the petitioner proves to the court that the acknowledgment of parentage was signed under fraud, duress, or due to a material mistake of fact, the court shall then order genetic marker tests or DNA tests for the determination of the child's parentage. No such test shall be ordered, however, where the acknowledgment was signed by the intended parent of a child born through assisted reproduction pursuant to subparagraph (ii) of paragraph (b) of subdivision one of section four thousand one hundred thirty-five-b of the public health law, or upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel, or the presumption of legitimacy of a child born to a married person. If the court determines, following the test, that the person who signed the acknowledgment is the parent of the child, the court shall make a finding of parentage and enter an order of parentage. If the court determines that the person who signed the acknowledgment is not the parent of the child, the acknowledgment shall be vacated.

(v) If, at any time before or after a signatory has filed a petition to vacate an acknowledgment of parentage pursuant to this subdivision, the signatory dies or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall abate but may be commenced or continued by any of the persons authorized by this article to commence a parentage proceeding.

(c) An acknowledgment of parentage is void if, at the time of signing, any of the following are true:

(i) a person other than the signatories is a presumed parent of the child pursuant to section twenty-four of the domestic relations law;

(ii) a court has entered a judgment of parentage of the child;

(iii) another person has signed a valid acknowledgment of parentage with regard to the child;

(iv) the child has a parent pursuant to section 581-303 of the family court act other than the signatories;

(v) a signatory is a gamete donor under section 581-302 of the family court act; or

(vi) the acknowledgment is signed by a person who asserts that they are a parent under section 581-303 of the family court act of a child conceived through assisted reproduction, but the child was not conceived through assisted reproduction.

(d) Neither signatory's legal obligations, including the obligation for child support arising from the acknowledgment, may be suspended during the challenge to the acknowledgment except for good cause as the court may find. If the court vacates the acknowledgment of parentage, the court shall immediately provide a copy of the order to the registrar of the district in which the child's birth certificate is filed and also to the putative father registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law. In addition, if the parent of the child who is the subject of the acknowledgment is in receipt of child support services pursuant to title six-A of article three of the social services law, the court shall immediately provide a copy of the order to the child support enforcement unit of the social services district that provides the parent with such services.

(e) A determination of parentage made by any other state, whether established through an administrative or judicial process or through an acknowledgment of parentage signed in accordance with that state's laws, must be accorded full faith and credit pursuant to section 466(a)(11) of title IV-D of the social security act (42 U.S.C. § 666(a)(11)).

(f) Any reference to an acknowledgment of paternity in any law of this state, or any similar instrument signed in another state consistent with the law of that state shall be interpreted to mean an acknowledgment of parentage executed pursuant to section one hundred eleven-k of the social services law, section four thousand one hundred thirty-five-b of the public health law, or signed in another state consistent with the law of that state.

§ 517. Time for instituting proceedings. Proceedings to establish the paternity of a child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the child reaches the age of twenty-one years, unless paternity has been acknowledged by the father in writing or by furnishing support.

§ 518. Effect of death, absence, or mental illness of mother. If, at any time before or after a petition is filed, the mother dies or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall abate but may be commenced or continued by any of the persons authorized by this article to commence a paternity proceeding.

§ 519. Effect of death, absence or mental illness of putative father. If, at any time before or after a petition if filed, the putative father dies, or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall necessarily abate but may be commenced or continued by any of the persons authorized by this article to commence a paternity proceeding where:

(a) the putative father was the petitioner in the paternity proceeding; or,

(b) the putative father acknowledged paternity of the child in open court; or,

(c) a genetic marker or DNA test had been administered to the putative father prior to his death; or,

(d) the putative father has openly and notoriously acknowledged the child as his own.

PART 2

VENUE AND PRELIMINARY PROCEDURE

§ 521. Venue. Proceedings to establish paternity may be originated in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside of the state of New York does not bar a proceeding to establish paternity in the county where the putative father resides or is found or in the county where the mother resides or the child is found.

§ 522. Persons who may originate proceedings. Proceedings to establish the paternity of the child and to compel support under this article may be commenced by the mother, whether a minor or not, by a person alleging to be the father, whether a minor or not, by the child or child's guardian or other person standing in a parental relation or being the next of kin of the child, or by any authorized representative of an incorporated society doing charitable or philanthropic work, or if the mother or child is or is likely to become a public charge on a county, city or town, by a public welfare official of the county, city or town where the mother resides or the child is found. If a proceeding is originated by a public welfare official and thereafter withdrawn or dismissed without consideration on the merits, such withdrawal or dismissal shall be without prejudice to other persons.

§ 523. Petition. Proceedings are commenced by the filing of a verified petition, alleging that the person named as respondent, or the petitioner if the petitioner is a person alleging to be the child's father, is the father of the child and petitioning the court to issue a summons or a warrant, requiring the respondent to show cause why the court should not enter a declaration of paternity, an order of support, and such other and further relief as may be appropriate under the circumstances. The petition shall be in writing and verified by the petitioner. Any such petition for the establishment of paternity or the establishment, modification and/or enforcement of a child support obligation for persons not in receipt of family assistance, which contains a request for child support enforcement services completed in a manner as specified in section one hundred eleven-g of the social services law, shall constitute an application for such services.

§ 524. Issuance of summons. (a) On receiving a petition sufficient in law commencing a paternity proceeding, the court shall cause a summons to be issued, requiring the respondent to show cause why the declaration of paternity, order of filiation, order of support and other and further

relief prayed for by the petition should not be made.
(b) The summons shall contain or have attached thereto a notice stating: (i) that the respondent's failure to appear shall result in the default entry of an order of filiation by the court upon proof of respondent's actual notice of the commencement of the proceeding; and (ii) that a respondent's failure to appear may result in the suspension of his or her driving privileges; state professional, occupational and business licenses; and sporting licenses and permits.

§ 525. Service of summons. (a) Personal service of summons and petition shall be made by delivery of a true copy thereof to the person to be summoned at least eight days before the time stated therein for appearance; or by delivery of a true copy thereof to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by mailing a true copy thereof to the person to be served at his last known residence at least eight days before the time stated in the summons for appearance; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service. If so requested by one acting on behalf of the respondent or by a parent or other person legally responsible for his care, the court shall not proceed with the hearing or proceeding earlier than eight days after such service.
(b) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in the civil practice law and rules.
(c) In any case, whether or not service is attempted under subdivision (a) or (b) of this section, service of a summons and petition under this section may be effected by mail alone to the last known address of the person to be served. Service by mail alone shall be made at least eight days before the time stated in the summons for appearance. If service is by mail alone, the court will enter an order of filiation by default if there is proof satisfactory to the court that the respondent had actual notice of the commencement of the proceeding, which may be established upon sufficient proof that the summons and petition were in fact mailed

by certified mail and signed for at the respondent's correct street address or signed for at the post office. If service by certified mail at the respondent's correct street address cannot be accomplished, service pursuant to subdivision one, two, three or four of section three hundred eight of the civil practice law and rules shall be deemed good and sufficient service. Upon failure of the respondent to obey a summons served in accordance with the provisions of this section by means other than mail alone, the court will enter an order of filiation by default. The respondent shall have the right to make a motion for relief from such default order within one year from the date such order was entered.

§ 526. Issuance of warrant. The court may issue a warrant, directing that the respondent be arrested and brought before the court, when a petition is presented to the court under section five hundred twenty-three and it appears that

(a) the summons cannot be served; or

(b) the respondent has failed to obey the summons; or

(c) the respondent is likely to leave the jurisdiction; or

(d) a summons, in the court's opinion, would be ineffectual; or

(e) the safety of the petitioner is endangered; or

(f) a respondent on bail or on parole has failed to appear.

§ 527. Preliminary procedure on warrant. (a) When a respondent is taken into custody pursuant to a warrant issued by a family court in a county in New York city under section five hundred twenty-six, he or she shall be taken before the court issuing the warrant if the respondent is taken into custody in New York city. If the respondent is taken into custody in a county not within New York city, he or she shall be taken before a family court judge in that county.

(b) When a respondent is taken into custody pursuant to a warrant issued by a family court in a county not within the city of New York, he or she shall be taken before the court issuing the warrant if the respondent is taken into custody in the county in which the court sits. If the respondent is taken into custody in a different county, he or she shall be brought before a family court judge in that county.

§ 528. Procedure before court. The court before whom the respondent is taken under section five hundred twenty-seven may require an undertaking to appear or in default thereof may place the respondent in custody.

PART 3

HEARINGS

§ 531. Hearing. The trial shall be by the court without a jury. The mother or the alleged father shall be competent to testify but the respondent shall not be compelled to testify. If the mother is married both she and her husband may testify to nonaccess. If the respondent shall offer testimony of access by others at or about the time charged in the complaint, such testimony shall not be competent or admissible in evidence except when corroborated by other facts and circumstances tending to prove such access. The court may exclude the general public from the room where the proceedings are heard and may admit only persons directly interested in the case, including officers of the court and witnesses.

§ 531-a. Testimony by telephone, audio-visual means or other electronic means. (a) In any proceeding under this article, the court may permit a party or a witness to be deposed or to testify by telephone, audio-visual means, or other electronic means at a designated family court or other location:

(i) where such party or witness resides in a county other than that of the family court where the case is pending and that of any contiguous county; provided, however, that for the purposes of this section, the five counties of New York city shall be treated as one county;

(ii) where such party or witness is presently incarcerated and will be incarcerated on the date on which the hearing or deposition is scheduled and is not expected to be released within a reasonable period of time after the date on which the hearing is scheduled; or

(iii) where the court determines that it would be an undue hardship for such party or witness to testify or to be deposed at the family court where the case is pending.

(b) Any such deposition or testimony taken by telephone, audio-visual means or other electronic means in accordance with subdivision (a) of this section shall be recorded and preserved for transcription. Where a party or witness is deposed or testifies by telephone, audio-visual or other electronic means pursuant to this section, documentary evidence referred to by a party or witness or the court may be transmitted by facsimile, telecopier, or other electronic means and may not be excluded from evidence by reason of an objection based on the means of transmission. The chief administrator of the courts shall promulgate rules to facilitate the taking of testimony by telephone, audio-visual means or other electronic means.

§ 532. Genetic marker and DNA tests; admissibility of records or reports of test results; costs of tests. (a) The court shall advise the parties of their right to one or more genetic marker tests or DNA tests and, on the court's own motion or the motion of any party, shall order the mother, her child and the alleged father to submit to one or more genetic marker or DNA tests of a type generally acknowledged as reliable by an accreditation body designated by the secretary of the federal department of health and human services and performed by a laboratory approved by such an accreditation body and by the commissioner of health or by a duly qualified physician to aid in the determination of whether the alleged father is or is not the father of the child. No such test shall be ordered, however, upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel, or the presumption of legitimacy of a child born to a married woman. The record or report of the results of any such genetic marker or DNA test ordered pursuant to this section or pursuant to section one hundred eleven-k of the social services law shall be received in evidence by the court pursuant to subdivision (e) of rule forty-five hundred eighteen of the civil practice law and rules where no timely objection in writing has been made thereto and that if such timely objections are not made, they shall be deemed waived and shall not be heard by the court. If the record or report of the results of any such genetic marker or DNA test or tests indicate at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall establish, if unrebutted, the paternity of and liability for the support of a child pursuant to this article and article four of this act.

(b) Whenever the court directs a genetic marker or DNA test pursuant to this section, a report made as provided in subdivision (a) of this section may be received in evidence pursuant to rule forty-five hundred eighteen of the civil practice law and rules if offered by any party.

(c) The cost of any test ordered pursuant to subdivision (a) of this section shall be, in the first instance, paid by the moving party. If the moving party is financially unable to pay such cost, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from the funds of the appropriate local social services district. In its order of disposition, however, the court may direct that the cost of any such test be apportioned between the parties according to their respective abilities to pay or be assessed against the party who does not prevail on the issue of paternity, unless such party is financially unable to pay.

§ 533. Adjournment on application of party. The court, on application of either party, may for good cause shown grant such adjournments as may be necessary. If an adjournment is granted upon the request of either party, the court may require the respondent to give an undertaking for appearance.

§ 534. Adjournment on motion of court. On its own motion, the court may adjourn the hearing after it has made a finding of paternity to enable it to make inquiry into the surroundings, conditions and capacities of the child, into the financial abilities and responsibilities of both parents or for other proper cause. If the court so adjourns the hearing, it may require the respondent to give an undertaking to appear.

§ 535. Counsel for social services commissioner. (a) The corporation counsel of the city of New York shall represent the social services commissioner of such city in all proceedings under this article in which the commissioner is the petitioner.

(b) In any county outside the city of New York in which attorneys have been appointed pursuant to section sixty-six of the social services law, such attorneys may represent the social services commissioner of such county in all proceedings under this article in which the commissioner is the petitioner.

(c) Except as provided in subdivision (b) of this section, in any county outside the city of New York, the county attorney, or an attorney designated by the county executive, if there be one, otherwise by the board of supervisors, shall represent the social services commissioner of the county in all proceedings under this article in which the commissioner is the petitioner.

§ 536. Counsel fees. Once an order of filiation is made, the court in its discretion may allow counsel fees to the attorney for the prevailing party, if he or she is unable to pay such counsel fees. Representation by an attorney pursuant to paragraph (b) of subdivision nine of section one hundred eleven-b of the social services law shall not preclude an award of counsel fees to an applicant which would otherwise be allowed under this section.

PART 4

ORDERS

§ 541. Order dismissing petition. If the court finds the male party is not the father of the child, it shall dismiss the petition. If a neglect petition was filed in the paternity proceeding, the court retains jurisdiction over the neglect petition whether or not it dismisses the paternity petition.

§ 542. Order of filiation. (a) If the court finds the male party is the father of the child, it shall make an order of filiation, declaring paternity. Such order shall contain the social security number of the declared father.

(b) If the respondent willfully fails to appear before the court subsequent to the administration and analysis of a genetic marker test or DNA test administered pursuant to sections four hundred eighteen and five hundred thirty-two of this act or section one hundred eleven-k of the social services law, and if such test does not exclude the respondent as being the father of the child or the court determines that there exists clear and convincing evidence of paternity, the court shall enter an order of temporary support notwithstanding that paternity of such child has not been established nor an order of filiation entered against the respondent. The respondent shall be prospectively relieved from liability for support under such order of temporary support upon the respondent's appearance before the court.

(c) If the respondent willfully fails to comply with an order made by either the court pursuant to sections four hundred eighteen and five hundred thirty-two of this act or by a social services official or designee pursuant to section one hundred eleven-k of the social services law, and willfully fails to appear before the court when otherwise required, the court shall enter an order of temporary support notwithstanding that paternity of the subject child has not been established nor an order of filiation entered against the respondent. The respondent shall be prospectively relieved from liability for support under such order of temporary support upon the respondent's compliance with such order and subsequent appearance before the court.

§ 543. Transmission of order of filiation. When an order of filiation is made, the clerk of the court shall forthwith transmit to the state commissioner of health on a form prescribed by him a written notification as to such order, together with such other facts as may assist in identifying the birth record of the person whose paternity was in issue. When it appears to the clerk that the person whose paternity was established was born in New York city, he shall forthwith transmit the written notification aforesaid to the commissioner of health of the city of New York instead of to the state commissioner of health.

§ 544. Transmission of abrogation of filiation order. If an order of filiation is abrogated by a later judgment or order of the court that originally made the order or by another court on appeal, that fact shall be immediately communicated in writing by the clerk of the court that originally made the order of filiation to the state commissioner of health on a form prescribed by him. If notice of the order was given to the commissioner of health of New York city, notice of abrogation shall be transmitted to him.

§ 545. Order of support by parents. 1. In a proceeding in which the court has made an order of filiation, the court shall direct the parent or parents possessed of sufficient means or able to earn such means to pay weekly or at other fixed periods a fair and reasonable sum according to their respective means as the court may determine and apportion for such child's support and education, until the child is twenty-one. The order shall be effective as of the earlier of the date of the application for an order of filiation, or, if the children for whom support is sought are in receipt of public assistance, the date for which their eligibility for public assistance was effective. Any retroactive amount of child support 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 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. The court shall direct such parent to make his or her residence known at all times should he or she move from the address last known to the court by reporting such change to the support collection unit designated by the appropriate social services district. The order shall contain the social security numbers of the named parents. The order may also direct each parent to pay an amount as the court may determine and apportion for the support of the child prior to the making of the order of filiation, and may direct each parent to pay an amount as the court may determine and apportion for the funeral expenses if the child has died. The necessary expenses incurred by or for the mother in connection with her confinement and recovery and such expenses in connection with the pregnancy of the mother 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 of section four hundred thirteen of this act. In addition, the court shall make provisions for health insurance benefits in accordance with the requirements of section four hundred sixteen of this act.

2. The court, in its discretion, taking into consideration the means of the father and his ability to pay and the needs of the child, may direct the payment of a reasonable sum or periodic sums to the mother as reimbursement for the needs of the child accruing from the date of the birth of the child to the date of the application for an order of filiation.

§ 546. Payment to parent or support collection unit. (a) The court may require the payment to be made to the parent having custody of the child or to the support collection unit as designated by the appropriate social services district.

(b) The support collection unit as designated by the appropriate social services district shall report to the court as the court may direct, the amounts received and paid over.

§ 547. Substitution of trustee. The court, on motion of a party or otherwise, may at any time for good cause shown substitute another trustee for the one designated and acting.

§ 548. Compliance with orders. The provisions of part five and part seven of article four of this act apply when an order is issued under this article.

§ 548-a. Paternity or child support proceedings; suspension of driving privileges. (a) 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.

(b) 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 the requirements of all summonses, subpoenas and warrants relating to a paternity or child support proceeding.

§ 548-b. Paternity or child support proceedings; suspension of state professional, occupational and business licenses. (a) 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.

(b) 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.

§ 548-c. Paternity or child support proceedings; suspension of recreational licenses. 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.

§ 549. Order of visitation. (a) If an order of filiation is made or if a paternity agreement or compromise is approved by the court, in the absence of an order of custody or of visitation entered by the supreme court the family court may make an order of custody or of visitation, in accordance with subdivision one of section two hundred forty of the domestic relations law, requiring one parent to permit the other to visit the child or children at stated periods.

(b) Any order of the family court under this section shall terminate when the supreme court makes an order of custody or of visitation concerning the child or children, unless the supreme court continues the order of the family court.

§ 550. Temporary order of protection. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection which may contain any of the provisions authorized on the making of an order of protection under section five hundred fifty-one.

(b) A temporary order of protection is not a finding of wrongdoing.

(c) The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant directing that the respondent be arrested and brought before the court pursuant to section five hundred twenty-six of this article.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

§ 551. Order of protection. The court may make an order of protection in assistance or as a condition of any other order made under this article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by the petitioner or respondent or both. No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counter-claim in accordance with section one hundred fifty-four-b of this act. Such an order may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other parent, or the child, 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 eight hundred twelve of this act, 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;

(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 this proceeding or in any other proceeding or action under this act or the domestic relations law;

(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 participate in an educational program and to pay the costs thereof if the person has the means to do so, provided, however, that nothing contained herein shall be deemed to require payment of the costs of any such program by the state or any political subdivision thereof;

(g) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(h) 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, whether or not an order of filiation is made;

(i) 1. 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.

2. "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;

(j) 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 subdivision, "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;

(k) 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 subdivision, "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

(l) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his religious faith shall be preserved and protected.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

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.

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.

§ 552. Firearms; surrender and license suspension, revocation and ineligibility. Upon the 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 section eight hundred forty-two-a of this act.

PART 5

RELATED PROCEEDINGS

§ 561. Proceedings to compel support by mother. Proceedings may be initiated under article four of this act to compel a mother who fails to support her child to do so in accord with the provisions of article four of this act.

§ 562. Proceedings to compel support by mother and father. Proceedings to compel a father who does not deny paternity of a child and the mother of the child to support the child may be instituted in accord with the provisions of article four of this act, unless an agreement or compromise is made in accord with section five hundred seventeen.

§ 563. Paternity and support proceedings combined; apportionment. When a proceeding to establish paternity is initiated under this article, the court on its own motion or on motion of any person qualified under article four of this act to file a support petition may direct the filing of a petition under article four to compel the mother to support her child. If the court enters an order of filiation, it may apportion the costs of the support and education of the child between the parents according to their respective means and responsibilities.

§ 564. Order of filiation in other proceedings. (a) In any proceeding in the family court, whether under this act or under any other law, if there is an allegation or statement in a petition that a person is the father of a child who is a party to the proceeding or also is a subject of the proceeding and if it shall appear that the child is a child born out-of-wedlock, the court may make an order of filiation declaring the paternity of the child in accordance with the provisions of this section.

(b) The court may make such an order of filiation if (1) both parents are before the court, (2) the father waives both the filing of a petition under section five hundred twenty-three of this act and the right to a hearing under section five hundred thirty-three of this act, and (3) the court is satisfied as to the paternity of the child from the testimony or sworn statements of the parents.

(c) The court may in any such proceeding in its discretion direct either the mother or any other person empowered under section five hundred twenty-two of this act to file a verified petition under section five hundred twenty-three of this act.

(d) The provisions of part four of this article five shall apply to any order of filiation made under this section. The court may in its discretion direct a severance of proceedings upon such order of filiation from the proceeding upon the petition referred to in subdivision (a) of this section.

(e) For the purposes of this section the term "petition" shall include a complaint in a civil action, an accusatory instrument under the criminal procedure law, a writ of habeas corpus, a petition for supplemental relief, and any amendment in writing of any of the foregoing.

§ 565. A proceeding to challenge testing directive. The court is authorized to hear and decide motions to challenge a directive by the department of social services requiring a party to submit to genetic testing, pursuant to section one hundred eleven-k of the social services law. Nothing contained in this section shall be deemed to preclude the authority of a local social services district from filing a petition pursuant to this article.

ARTICLE 5-A

SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF SUPPORT AND ESTABLISHMENT OF PATERNITY

§ 571. Enforcement of support and establishment of paternity. 1. Any inconsistent provision of this law or any other law notwithstanding, in cases where a social services official has accepted, on behalf of the state and a social services district, an assignment of support rights from a person applying for or receiving family assistance in accordance with the provisions of the social services law, the social services official or an authorized representative of the state is authorized to bring a proceeding or proceedings in the family court pursuant to article four of this act to enforce such support rights and, when appropriate or necessary, to establish the paternity of a child pursuant to article five of this act.

2. The official who brings such a proceeding and the attorney representing him shall be deemed to represent the interests of all persons, officials and agencies having an interest in the assignment. The court shall determine, in accordance with applicable provisions of law, whether such person is a necessary party to the proceeding and whether independent counsel need be appointed to represent any party to the assignment or any other person having an interest in the support right.

3. (a) Any support order made by the court in such a proceeding shall direct that payments be made directly to the support collection unit, as designated by the appropriate social services district, so long as there is in effect an assignment of support rights to such district. Further, the order shall provide that when the person or family no longer

receives public assistance, payments shall continue to be made to the support collection unit, unless the person or family requests otherwise. When the person or family is no longer receiving public assistance, the social services district shall notify the parties to the order that the person or family upon request to the social services official and without further judicial intervention may receive support payments directly. If such a request is made, the person paying support shall be so notified and shall be informed that unless such person applies for an order pursuant to section four hundred forty of this act within thirty days, the person or family may receive such payments directly.

(b) The entry of an order of support under this section shall not preclude an assignor who is no longer receiving public assistance from instituting a support proceeding and receiving a hearing de novo on the amount of support to which the assignor is entitled at that time.

4. Any order for support made by the court in such a proceeding shall specify the amount of support to be paid on behalf of the spouse, if any, and the amount to be paid on behalf of each child.

5. In cases where a support agreement or compromise is entered into between a social services official and the absent parent, the social services official may petition the court for approval of such agreement or compromise in accordance with the provisions of section four hundred twenty-five of this chapter, which provisions shall apply thereto.

6. In cases where an order for support has been made by a family court and upon notification to the court that an assignment of support rights has thereafter been made to the social services official responsible for furnishing family assistance, payments pursuant to such order shall be made to such official until he or she notifies the court of the termination of the assignment.

7. Any inconsistent provision of the law notwithstanding, the provision of this section shall also apply to cases brought in accordance with title six-A of article three of the social services law involving persons who are not applicants for or recipients of family assistance.

8. Any other inconsistent provision of law notwithstanding, if an applicant for or recipient of family assistance is pregnant, and a proceeding to establish paternity has been filed, and the allegation of paternity is denied by the respondent there shall be a stay of all paternity proceedings until sixty days after the birth of the child.

9. Any order of support made pursuant to this section shall be effective as of the date of the application therefor, and any retroactive amount of support 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.

10. (a) When a person has applied for and is receiving public assistance and care and an assignment of support rights has been made or has applied for and is receiving child support enforcement services pursuant to section one hundred eleven-g of the social services law, or is receiving such services in another state, and such person has an existing order of support which does not direct that support payments be made to the support collection unit, the social services district shall, upon notice to the parties and without further judicial intervention, direct that support payments be made directly to the appropriate support collection unit.

(b) When a child is in foster care, in this state or in another state, and where there is an existing order for the support of such child which does not direct that support payments be made to the support collection unit, the social services district shall, upon notice to the parties and without further judicial intervention, direct that support payments be made directly to the appropriate support collection unit.

11. A support order of another state payable to a support collection unit as a result of a notice pursuant to this section or through a court order shall be deemed to be an order on behalf of persons receiving services under title six-A of article three of the social services law and shall be enforceable in the same manner as such orders.

ARTICLE 5-B

UNIFORM INTERSTATE FAMILY SUPPORT ACT

PART 1

GENERAL PROVISIONS

§ 580-101. Short title. This article may be cited as the "uniform interstate family support act" or "UIFSA".

§ 580-102. Definitions. In this article:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The

Hague on November twenty-third, two thousand seven.

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(i) which has been declared under the law of the United States to be a foreign reciprocating country;

(ii) which has established a reciprocal arrangement for child support with this state as provided in section 580-308 of this article;

(iii) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this article; or

(iv) in which the Convention is in force with respect to the United States.

(6) "Foreign support order" means a support order of a foreign tribunal.

(7) "Foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country which is authorized to establish, enforce or modify support orders, or to determine parentage of a child. The term includes a competent authority under the Convention.

(8) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support as defined by section five thousand two hundred forty-one of the civil practice law and rules.

(10) "Income withholding order" means an order or other legal process directed to an obligor's employer, an income payor as defined by section five thousand two hundred forty-one or five thousand two hundred

forty-two of the civil practice law and rules, or other debtor to withhold support from the income of the obligor.

(11) "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(14) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(16) "Obligee" means:

(i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(ii) a foreign country, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(iii) an individual seeking a judgment determining parentage of the individual's child; or

(iv) a person that is a creditor in a proceeding under part seven of this article.

(17) "Obligor" means an individual, or the estate of a decedent that:

(i) owes or is alleged to owe a duty of support;

(ii) is alleged but has not been adjudicated to be a parent of a child;

(iii) is liable under a support order; or

(iv) is a debtor in a proceeding under part seven of this article.

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

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

(20) "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.

(21) "Register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(24) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

(25) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(26) "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 under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) "Support enforcement agency" means a public official, governmental entity or private agency authorized to:

(i) seek enforcement of support orders or laws relating to the duty of support;

(ii) seek establishment or modification of child support;

(iii) request determination of parentage of a child;

(iv) attempt to locate obligors or their assets; or

(v) request determination of the controlling child support order.

(28) "Support order" means a judgment, decree, order, decision or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care,

arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees and other relief.

(29) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

§ 580-103. State tribunal and state support enforcement agencies. (a) The family court is the tribunal of this state.

(b) The office of temporary and disability assistance and/or a social services district as defined in subdivision seven of section two of the social services law are the support enforcement agencies of this state.

§ 580-104. Remedies cumulative. (a) Remedies provided by this article are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(b) This article does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this article.

§ 580-105. Application of the article to a resident of a foreign country and foreign support proceedings. (a) A tribunal of this state shall apply parts one through six of this article and, as applicable, part seven of this article, to a support proceeding involving:

(1) a foreign support order;

(2) a foreign tribunal; or

(3) an obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of parts one through six of this article.

(c) Part seven of this article applies only to a support proceeding under the convention. In such a proceeding, if a provision of part seven of this article is inconsistent with parts one through six of this article, part seven of this article controls.

PART 2

JURISDICTION

§ 580-201. Bases for jurisdiction over nonresident. (a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with a summons and petition within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document or other action having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage of a child in the putative father registry maintained in this state by the office of children and family services; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subdivision (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 580-611 of this article are met, or, in the case of a foreign support order, unless the requirements of section 580-615 of this article are met.

§ 580-202. Duration of personal jurisdiction. Personal jurisdiction acquired by a tribunal of this state in a proceeding under this article or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 580-205, 580-206 and 580-211 of this part.

§ 580-203. Initiating and responding tribunal of state. Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state, and as a responding tribunal for proceedings initiated in another state or a foreign country.

§ 580-204. Simultaneous proceedings. (a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state or foreign country is the home state of the child.

§ 580-205. Continuing exclusive jurisdiction to modify child support order. (a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) even if this state is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

§ 580-206. Continuing jurisdiction to enforce child support order. (a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

§ 580-207. Determination of controlling child support order. (a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this state, another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal controls.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article:

(i) an order issued by a tribunal in the current home state of the child controls; or

(ii) if an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of this state shall issue a child support order, which controls.

(c) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subdivision (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to part six of this article, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subdivision (a), (b) or (c) of this section has continuing jurisdiction to the extent provided in section 580-205 or 580-206 of this part.

(f) A tribunal of this state that determines by order which is the controlling order under paragraph one or two of subdivision (b) or subdivision (c) of this section, or that issues a new controlling order under paragraph three of subdivision (b) of this section, shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 580-209 of this part.

(g) Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this article.

§ 580-208. Child support orders for two or more obligees. In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

§ 580-209. Credit for payments. A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, another state, or a foreign country.

§ 580-210. Application of article to nonresident subject to personal jurisdiction. A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this article, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to section 580-316 of this article, communicate with a tribunal outside this state pursuant to section 580-317 of this article and obtain discovery through a tribunal outside this state pursuant to section 580-318 of this article. In all other respects, parts three through six of this article do not apply, and the tribunal shall apply the procedural and substantive law of this state.

§ 580-211. Continuing exclusive jurisdiction to modify spousal-support order. (a) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal-support order.

PART 3

CIVIL PROVISIONS OF GENERAL APPLICATION

Section 580-301. Proceedings under article.

§ 580-301. Proceedings under article. (a) Except as otherwise provided in this article, this part applies to all proceedings under this article.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

§ 580-302. Proceeding by a minor parent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§ 580-303. Application of law of state. Except as otherwise provided in this article, a responding tribunal of this state shall:

1. apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

2. determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§ 580-304. Duties of initiating tribunal. (a) Upon the filing of a petition authorized by this article, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

§ 580-305. Duties and powers of responding tribunal. (a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subdivision (b) of section 580-301 of this part, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) establish or enforce a support order, modify a child support order, determine the controlling child support order or determine parentage of a child;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment and telephone number at the place of employment;

(9) issue a warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this article, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this article, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

§ 580-306. Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

§ 580-307. Duties of support enforcement agency. (a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this article.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) take all steps necessary to enable an appropriate tribunal of this state, another state or a foreign country to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within ten days, exclusive of Saturdays, Sundays and legal holidays, after receipt of notice in a record from an initiating, responding or registering tribunal, send a copy of the notice to the petitioner;

(5) within ten days, exclusive of Saturdays, Sundays and legal holidays, after receipt of communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 580-319 of this part.

(f) This article does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§ 580-308. Duty of certain state officials. (a) If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this article or may provide those services directly to the individual.

(b) The commissioner of temporary and disability assistance may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

§ 580-309. Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this article.

§ 580-310. Duties of state information agency. (a) The office of temporary and disability assistance is the state information agency under this article.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this article and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this article received from another state or a foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security.

§ 580-311. Pleadings and accompanying documents. (a) In a proceeding under this article, a petitioner seeking to establish a support order, to determine parentage of a child or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under section 580-312 of this part, the petition or accompanying documents must provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§ 580-312. Nondisclosure of information in exceptional circumstances. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

§ 580-313. Costs and fees. (a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under part six of this article, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§ 580-314. Limited immunity of petitioner. (a) Participation by a petitioner in a proceeding under this article before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while physically present in this state to participate in the proceeding.

§ 580-315. Nonparentage as defense. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this article.

§ 580-316. Special rules of evidence and procedure. (a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement or modification of a support order, or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this article, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this article.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this article.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

§ 580-317. Communications between tribunals. A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail or other means, to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

§ 580-318. Assistance with discovery. A tribunal of this state may:

1. request a tribunal outside this state to assist in obtaining discovery; and

2. upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

§ 580-319. Receipt and disbursement of payments. (a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from a support enforcement agency of this state or another state, a support enforcement agency or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) A support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subdivision (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

PART 4

ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE

§ 580-401. Establishment of support order. (a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) the individual seeking the order resides outside this state; or

(2) the support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

(3) identified as the father of the child through genetic testing;

(4) an alleged father who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be the father of the child;

(6) an acknowledged father as provided by applicable state law;

(7) the mother of the child; or

(8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 580-305 of this article.

§ 580-402. Proceeding to determine parentage. A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this article or a law or procedure substantially similar to this article.

PART 5

ENFORCEMENT OF SUPPORT ORDER WITHOUT REGISTRATION

§ 580-501. Employer's receipt of income withholding order of another state. An income withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer or income payor under section five thousand two hundred forty-one of the civil practice law and rules or other debtor (for purposes of this part and section 580-605 of this article, employer shall also include income payor or other debtor) without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§ 580-502. Employer's compliance with income withholding order of another state. (a) Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subdivision (d) of this section and section 580-503 of this part, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child support payment.

§ 580-503. Compliance with multiple income withholding orders. If an obligor's employer receives two or more income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

§ 580-504. Immunity from civil liability. An employer that complies with an income withholding order issued in another state in accordance with this part is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

§ 580-505. Penalties for noncompliance. An employer that willfully fails to comply with an income withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§ 580-506. Contest by obligor. (a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in part six of this article, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(b) The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income withholding order relating to the obligor; and

(3) the person designated to receive payments in the income withholding order or, if no person is designated, to the obligee.

§ 580-507. Administrative enforcement of orders. (a) A party or support enforcement agency seeking to enforce a support order or an income withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this article.

PART 6
REGISTRATION, ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER

Subpart A. Registration and enforcement of support order.
B. Contest of validity or enforcement.
C. Registration and modification of child support order of another state.
D. Registration and modification of foreign child support order.

SUBPART A

REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

§ 580-601. Registration of order for enforcement. A support order or income withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

§ 580-602. Procedure to register order for enforcement. (a) Except as otherwise provided in section 580-706 of this article, a support order or income withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in section 580-312 of this article, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

§ 580-603. Effect of registration for enforcement. (a) A support order or income withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

§ 580-604. Choice of law. (a) Except as otherwise provided in subdivision (d) of this section, the law of the issuing state or foreign country governs:

(1) the nature, extent, amount and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

SUBPART B

CONTEST OF VALIDITY OR ENFORCEMENT

§ 580-605. Notice of registration of order. (a) When a support order or income withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) that a registered support order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the

registered order must be requested within twenty days after notice unless the registered order is under section 580-707 of this article;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in subdivision (b) of this section apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to section five thousand two hundred forty-one or five thousand two hundred forty-two of the civil practice law and rules.

§ 580-606. Procedure to contest validity or enforcement of registered support order. (a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by section 580-605 of this subpart. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 580-607 of this subpart.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

§ 580-607. Contest of registration or enforcement. (a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;

(5) there is a defense under the law of this state to the remedy sought;

(6) full or partial payment has been made;

(7) the statute of limitation under section 580-604 of this part precludes enforcement of some or all of the alleged arrearages; or

(8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subdivision (a) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subdivision (a) of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

§ 580-608. Confirmed order. Confirmation of a registered support 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.

SUBPART C

REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

§ 580-609. Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify, or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in sections 580-601 through 580-608 of this part if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

§ 580-610. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of section 580-611 or 580-613 of this subpart have been met.

§ 580-611. Modification of child support order of another state. (a)

If section 580-613 of this subpart does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(i) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under section 580-207 of this article establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subdivisions (a) through (e) of this section and subdivision (b) of section 580-201 of this article, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) one party resides in another state; and

(2) the other party resides outside the United States.

§ 580-612. Recognition of order modified in another state. If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

(a) may enforce its order that was modified only as to arrears and interest accruing before the modification;

(b) may provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(c) shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

§ 580-613. Jurisdiction to modify child support order of another state when individual parties reside in this state. (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of parts one and two of this article, this part and the procedural and substantive law of this state to the proceeding for enforcement or modification. Parts three, four, five, seven and eight of this article do not apply.

§ 580-614. Notice to issuing tribunal of modification. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

SUBPART D

REGISTRATION AND MODIFICATION OF FOREIGN CHILD SUPPORT ORDER

§ 580-615. Jurisdiction to modify child support order of foreign country. (a) Except as otherwise provided in section 580-711 of this article, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to section 580-611 of this part has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

§ 580-616. Procedure to register child support order of foreign country for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under sections 580-601 through 580-608 of this part if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

PART 7

SUPPORT PROCEEDINGS UNDER CONVENTION

§ 580-701. Definitions. In this part:

1. "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

2. "Central authority" means the entity designated by the United States or a foreign country described in paragraph (iv) of subdivision five of section 580-102 of this article to perform the functions specified in the Convention.

3. "Convention support order" means a support order of a tribunal of a foreign country described in paragraph (iv) of subdivision five of section 580-102 of this article.

4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor or child residing outside the United States.

5. "Foreign central authority" means the entity designated by a foreign country described in paragraph (iv) of subdivision five of section 580-102 of this article to perform the functions specified in the Convention.

6. "Foreign support agreement":

(i) means an agreement for support in a record that:

(a) is enforceable as a support order in the country of origin;

(b) has been:

(A) formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(B) authenticated by, or concluded, registered or filed with a foreign tribunal; and

(c) may be reviewed and modified by a foreign tribunal; and

(ii) includes a maintenance arrangement or authentic instrument under the convention.

7. "United States central authority" means the secretary of the United States department of health and human services.

§ 580-702. Applicability. This part applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this part is inconsistent with parts one through six of this article, this part controls.

§ 580-703. Relationship of office of temporary and disability assistance to United States central authority. The office of temporary and disability assistance is recognized as the agency designated by the United States central authority to perform specific functions under the Convention; provided, however, that a social services district of this state may perform any function authorized under state law.

§ 580-704. Initiation by state support enforcement agencies of support proceeding under Convention. (a) In a support proceeding under this part, the support enforcement agencies of this state shall:

(1) transmit and receive applications; and

(2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) recognition or recognition and enforcement of a foreign support order;

(2) enforcement of a support order issued or recognized in this state;

(3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) establishment of a support order if recognition of a foreign support order is refused under paragraph two, four or nine of subdivision (b) of section 580-708 of this part;

(5) modification of a support order of a tribunal of this state; and

(6) modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) modification of a support order of a tribunal of this state; and

(3) modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

§ 580-705. Direct request. (a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, sections 580-706 through 580-713 of this part apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) a security, bond or deposit is not required to guarantee the payment of costs and expenses; and

(2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the state child support agencies.

(e) This part does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

§ 580-706. Registration of Convention support order. (a) Except as otherwise provided in this part, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in part six of this article.

(b) Notwithstanding section 580-311 and subdivision (a) of section 580-602 of this article, a request for registration of a Convention support order must be accompanied by:

(1) a complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate,

either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under section 580-707 of this part only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

§ 580-707. Contest of registered Convention support order. (a) Except as otherwise provided in this part, sections 580-605 through 580-608 of this article apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than thirty days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subdivision (b) of this section, the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in section 580-708 of this part. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

§ 580-708. Recognition and enforcement of registered Convention support order. (a) Except as otherwise provided in subdivision (b) of this section, a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with section 580-201 of this article;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with section 580-706 of this part lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this article in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(i) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(ii) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of section 580-711 of this part.

(c) If a tribunal of this state does not recognize a Convention support order under paragraph two, four or nine of subdivision (b) of this section:

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the state child support agency shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 580-704 of this part.

§ 580-709. Partial enforcement. If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

§ 580-710. Foreign support agreement. (a) Except as otherwise provided in subdivisions (c) and (d) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) a complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this article in this state; or

(4) the record submitted under subdivision (b) of this section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

§ 580-711. Modification of Convention child support order. (a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, subdivision (c) of section 580-708 of this part applies.

§ 580-712. Personal information; limit on use. Personal information gathered or transmitted under this part may be used only for the purposes for which it was gathered or transmitted.

§ 580-713. Record in original language; English translation. A record filed with a tribunal of this state under this part must be in the original language and, if not in English, must be accompanied by an English translation.

PART 8

INTERSTATE RENDITION

§ 580-801. Grounds for rendition. (a) For purposes of this part, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this article.

(b) The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this article applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§ 580-802. Conditions of rendition. (a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this article or that the proceeding would be of no avail.

(b) If, under this article or a law substantially similar to this article, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

PART 9
MISCELLANEOUS PROVISIONS

§ 580-901. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 580-902. Severability. 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.

§ 580-903. Effective date. This article shall take effect on January first, two thousand sixteen; provided, however, that if it shall become a law after January first, two thousand sixteen, it shall be deemed to have been in full force and effect on and after January first, two thousand sixteen; and provided further, that the provisions of this article shall apply to any action or proceeding filed or order issued on or before the effective date of this article.

ARTICLE 5-C

JUDGMENTS OF PARENTAGE OF CHILDREN CONCEIVED THROUGH ASSISTED REPRODUCTION OR PURSUANT TO SURROGACY AGREEMENTS

PART 1

GENERAL PROVISIONS

§ 581-101. Purpose. The purpose of this article is to legally establish a child's relationship to his or her parents where the child is conceived through assisted reproduction except for children born to a person acting as surrogate who contributed the egg used in conception. This article and all governmental measures adopted pursuant thereto should comply with existing laws on reproductive health and bodily integrity.

§ 581-102. Definitions. (a) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:

1. intrauterine or vaginal insemination;

2. donation of gametes;

3. donation of embryos;

4. in vitro fertilization and transfer of embryos; and

5. intracytoplasmic sperm injection.

(b) "Child" means a born individual of any age whose parentage may be determined under this act or other law.

(c) "Compensation" means payment of any valuable consideration in excess of reasonable medical and ancillary costs.

(d) "Donor" means an individual who does not intend to be a parent who produces gametes and provides them to another person, other than the individual's spouse, for use in assisted reproduction. The term does not include a person who is a parent under part three of this article. Donor also includes an individual who had dispositional control of an embryo or gametes who then transfers dispositional control and releases all present and future parental and inheritance rights and obligations to a resulting child.

(e) "Embryo" means a cell or group of cells containing a diploid complement of chromosomes or group of such cells, not a gamete or gametes, that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur.

(f) "Embryo transfer" means all medical and laboratory procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.

(g) "Gamete" means a cell containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs shall be considered gametes. A human gamete used or intended for reproduction may not contain nuclear DNA that has been deliberately altered, or nuclear DNA from one human combined with the cytoplasm or cytoplasmic DNA of another human being.

(h) "Health care practitioner" means an individual licensed or certified under title eight of the education law, or a similar law of another state or country, acting within his or her scope of practice.

(i) "Independent escrow agent" means someone other than the parties to a surrogacy agreement and their attorneys. An independent escrow agent can, but need not, be a surrogacy program, provided such surrogacy program is owned by an attorney licensed to practice law in the state of New York. If such independent escrow agent is not an attorney owned surrogacy program, it shall be bonded and insured.

(j) "In vitro fertilization" means the formation of a human embryo outside the human body for purposes of assisted reproduction.

(k) "Intended parent" is an individual who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a surrogacy agreement, provided the individual meets the requirements of this article.

(l) "Parent" as used in this article means an individual with a parent-child relationship created or recognized under this act or other law.

(m) "Participant" is an individual who either provides a gamete that is used in assisted reproduction, is an intended parent, is a person acting as surrogate, or is the spouse of an intended parent or person acting as surrogate.

(n) "Person acting as surrogate" means an adult person, not an intended parent, who enters into a surrogacy agreement to bear a child who will be the legal child of the intended parent or parents so long as the person acting as surrogate has not provided the egg used to conceive the resulting child.

(o) "Record" means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

(p) "Retrieval" means the procurement of eggs or sperm from a gamete provider.

(q) "Spouse" means an individual married to another, or who has a legal relationship entered into under the laws of the United States or of any state, local or foreign jurisdiction, which is substantially equivalent to a marriage, including a civil union or domestic partnership.

(r) "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.

(s) "Surrogacy agreement" means an agreement between at least one intended parent and a person acting as surrogate intended to result in a live birth where the child will be the legal child of the intended parent or parents.

(t) "Transfer" means the placement of an embryo or gametes into the body of a person with the intent to achieve pregnancy and live birth.

PART 2

JUDGMENT OF PARENTAGE

§ 581-201. Judgment of parentage. (a) A civil proceeding may be maintained to adjudicate the parentage of a child under the circumstances set forth in this article. This proceeding is governed by the civil practice law and rules.

(b) A judgment of parentage may be issued prior to birth but shall not become effective until the birth of the child.

(c) A petition for a judgment of parentage or nonparentage of a child conceived through assisted reproduction may be initiated by (1) a child, or (2) a parent, or (3) a participant, or (4) a person with a claim to parentage, or (5) social services official or other governmental agency authorized by other law, or (6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor, in order to legally establish the child-parent relationship of either a child born through assisted reproduction under part three of this article or a child born pursuant to a surrogacy agreement under part four of this article.

§ 581-202. Proceeding for judgment of parentage of a child conceived through assisted reproduction. (a) A proceeding for a judgment of parentage with respect to a child conceived through assisted reproduction may be commenced:

(1) if an intended parent or child resides in New York state, in the county where the intended parent resides any time after pregnancy is achieved or in the county where the child was born or resides or in the county where the birth is intended to occur; or

(2) if neither an intended parent nor the child reside in New York state, up to ninety days after the birth of the child in the county where the child was born.

(b) The petition for a judgment of parentage must be verified.

(c) Where the court finds the following statements in the petition to be true, the court shall adjudicate the intended parent or parents to be the parent or parents of the child without the need for additional proceedings or documentation:

(1) a statement that an intended parent or child has been a resident of the state for at least six months, or if an intended parent or child is not a New York state resident, that the child was born in New York

state within ninety days of filing; and

(2) a statement from the gestating intended parent that the gestating intended parent became pregnant as a result of assisted reproduction; and

(3) in cases where there is a non-gestating intended parent, a statement from the gestating intended parent and non-gestating intended parent that the non-gestating intended parent consented to assisted reproduction pursuant to section 581-304 of this article; and

(4) proof of any donor's donative intent.

The court may, in its discretion, dispense with testimony to establish the truthfulness of the statements.

(d) The following shall be deemed sufficient proof of a donor's donative intent for purposes of this section:

(1) where gametes or embryos have been released to a gamete or embryo storage facility or were donated in the presence of a health care practitioner, either:

(i) a statement or documentation from the gamete or embryo storage facility or health care practitioner stating or demonstrating that such gametes or embryos had previously been released;

(ii) a record from the gamete or embryo donor or donors evidencing intent to release the gametes or embryos; or

(iii) clear and convincing evidence that the gamete or embryo donor or donors confirmed, prior to donation, that the donor or donors would have no parental or proprietary interest in the gametes or embryos;

(2) where the gametes or embryos were not released to a gamete or embryo storage facility or donated in the presence of a health care practitioner, either:

(i) a record from the gamete or embryo donor acknowledging the donation and confirming that the donor or donors shall have no parental or proprietary interest in the gametes or embryos. The record shall be signed by the intended parent or parents and the gamete or embryo donor or donors:

(A) before a notary public, or

(B) before two witnesses who are not the intended parents, or

(C) before a health care practitioner; or

(ii) clear and convincing evidence that the gamete or embryo donor or donors agreed, prior to the gametes or embryos being used for assisted reproduction, that the donor or donors would have no parental or proprietary interest in the gametes or embryos.

(3) Except for those agreements executed in compliance with section 581-306 of this article, this subdivision shall not apply where the person providing the gametes or embryos is the spouse of the intended parent.

(e) In the absence of evidence pursuant to subparagraphs (i) and (ii) of paragraph one and subparagraph (i) of paragraph two of subdivision (d) of this section, notice shall be given to the donor at least twenty days prior to the date set for the proceeding to determine the existence of donative intent by delivery of a copy of the petition and notice pursuant to section three hundred eight of the civil practice law and rules. If an intended parent or an intended parent's spouse is not a petitioner, such notice shall also be given to such person who shall be a necessary party unless the intended parent proceeded without the participation of their spouse in compliance with subdivision (b) of section 581-305 or section 581-306 of this article. 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 last known address or addresses of the donor or donors, and/or the non-petitioning intended parent, if any, with reasonable effort, notice may be given, without prior court order therefore, at least twenty days prior to the proceeding by registered or certified mail directed to such last known address or addresses. Notice by publication shall not be required to be given to anyone entitled to notice pursuant to the provisions of this section.

Notwithstanding the above, where there is evidence that sperm is provided under the supervision of a health care practitioner to someone other than the sperm provider's intimate partner or spouse without a record of the sperm provider's intent to parent, notice is not required.

(f) In cases not covered by subdivision (c) of this section, the court shall adjudicate the parentage of the child consistent with part three of this article.

(g) Where the requirements of subdivision (c) of this section are met or where the court finds the intended parent or parents to be a parent under subdivision (f) of this section, the court shall issue a judgment of parentage:

(1) declaring the intended parent or parents to be the legal parent or parents of the child immediately upon the birth of the child; and

(2) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(3) if there is a donor or donors, ordering that any donor is not a parent of the child; and

(4) ordering that:

* (i) Pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if such person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit forthwith to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of such determination; and

* NB Effective until December 21, 2027

* (i) The hospital birth registrar shall report the parentage of the child on the record of live birth in conformity with the judgment of parentage, if the judgment of parentage is issued before the birth of the child; and

* NB Effective December 21, 2027

(ii) If a change to the child's birth certificate is necessitated by the judgment of parentage, then pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if such person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit forthwith to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of such determination; and

(iii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgment of parentage the local registrar where a child is born will report the parentage of the child to the appropriate department of health in conformity with the court order. If an original birth certificate has already been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents; and

* (5) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within fourteen days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

* NB Effective December 21, 2027

§ 581-203. Proceeding for judgment of parentage of a child conceived pursuant to a surrogacy agreement. (a) The proceeding may be commenced (1) in any county where an intended parent resided any time after the surrogacy agreement was executed; or (2) in the county where the child was born or resides or in the county where the birth is intended to occur; or (3) in the county where the surrogate resided any time after the surrogacy agreement was executed.

(b) The proceeding may be commenced at any time after pregnancy is achieved and the person acting as surrogate, the spouse of the person acting as surrogate, if any, donors for whom there is not proof of donative intent as set forth in subdivision (d) of section 581-202 of this part, and all intended parents are necessary parties. The service provisions of subdivision (e) of section 581-202 of this part shall be applicable to donors entitled to notice pursuant to this provision.

(c) The petition for a judgment of parentage must be verified and include the following:

(1) a statement that the person acting as surrogate or at least one intended parent has been a resident of the state for at least six months at the time the surrogacy agreement was executed; and

(2) a certification from the attorney representing the intended parent or parents and the attorney representing the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, that each of the requirements of part four of this article have been met; and

(3) a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that the parties are jointly requesting the judgment of parentage; and

(4) a copy of the executed surrogacy agreement.

(d) Where the court finds the statements required by subdivision (c) of this section to be true, the court shall issue a judgment of parentage, without additional proceedings or documentation:

(1) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the intended parent or parents are the only legal parent or parents of the child;

(2) declaring, that upon the birth of the child born during the term of the surrogacy agreement, the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, is not a legal parent of the child;

(3) declaring that upon the birth of the child born during the term of the surrogacy agreement, any donor, if applicable, is not a parent of the child;

(4) ordering the person acting as surrogate and the spouse of the person acting as surrogate, if any, to transfer the child to the intended parent or parents if this has not already occurred;

(5) ordering the intended parent or parents to assume responsibility for the maintenance and support of the child immediately upon the birth of the child; and

(6) ordering that:

* (i) Pursuant to section two hundred fifty-four of the judiciary law,

the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if the person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of the determination; and

* NB Effective until December 21, 2027

* (i) The hospital birth registrar shall report the parentage of the child on the record of live birth in conformity with the judgment of parentage, if the judgment of parentage is issued before the birth of the child; and

* NB Effective December 21, 2027

(ii) If a change to the child's birth certificate is necessitated by the judgment of parentage, then pursuant to section two hundred fifty-four of the judiciary law, the clerk of the court shall transmit to the state commissioner of health, or for a person born in New York city, to the commissioner of health of the city of New York, on a form prescribed by the commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue and, if the person whose parentage has been determined is under eighteen years of age, the clerk shall also transmit to the registry operated by the department of social services pursuant to section three hundred seventy-two-c of the social services law a notification of the determination; and

(iii) Pursuant to section forty-one hundred thirty-eight of the public health law and NYC Public Health Code section 207.05 that upon receipt of a judgement of parentage the local registrar where a child is born will report the parentage of the child to the appropriate department of health in conformity with the court order. If an original birth certificate has already been issued, the appropriate department of health will amend the birth certificate in an expedited manner and seal the previously issued birth certificate except that it may be rendered accessible to the child at eighteen years of age or the legal parent or parents; and

* (7) if the judgment of parentage is issued prior to the birth of the child, ordering the petitioner or petitioners, within fourteen days of such birth, to provide the court with notification thereof, together with such other facts as may assist in identifying the birth record of the child whose parentage was in issue. Such notification shall be in writing on a form to be prescribed by the chief administrator of the courts. The court shall thereafter issue an amended judgment of parentage that includes the child's name as it appears on the child's birth certificate and the child's date of birth.

* NB Effective December 21, 2027

(e) In the event the certification required by paragraph two of subdivision (c) of this section cannot be made because of a technical or non-material deviation from the requirements of this article; the court may nevertheless enforce the agreement and issue a judgment of parentage if the court determines the agreement is in substantial compliance with the requirements of this article. In the event that any other requirements of subdivision (c) of this section are not met, the court shall determine parentage according to part four of this article.

§ 581-204. Judgment of parentage for intended parents who are spouses. Notwithstanding or without limitation on presumptions of parentage that apply, a judgment of parentage may be obtained under this part by intended parents who are each other's spouse. Nothing in this section requires intended parents to be married to each other in order to be jointly declared the parents of the child.

§ 581-205. Inspection of records. Court records relating to proceedings under this article shall be sealed, provided, however, that the office of temporary and disability assistance, a child support unit of a social services district or a child support agency of another state providing child support services pursuant to title IV-d of the federal social security act, when a party to a related support proceeding and to the extent necessary to provide child support services or for the administration of the program pursuant to title IV-d of the federal social security act, may obtain a copy of a judgment of parentage. The parties to the proceeding and the child shall have the right to inspect and make copies of the entire court record, including, but not limited to, the name of the person acting as surrogate and any known donor. Notwithstanding any other provision of law, the county clerk or the clerk of the supreme, surrogate's or family court shall not display the surname of the child or parties in any caption, document, index, minutes or other record available to the public, whether filed in hard copy or electronically.

§ 581-206. Jurisdiction, and exclusive continuing jurisdiction. (a) Proceedings pursuant to this article may be instituted in New York state supreme court, family court or surrogates court.

(b) The court conducting a proceeding under this article shall have exclusive, continuing jurisdiction of all matters relating to the determination of parentage until the child attains the age of one hundred eighty days, whereafter continuing jurisdiction shall be determined by the jurisdictional standards of section seventy-six of the domestic relations law.

(c) Subject to the jurisdictional standards of section seventy-six of the domestic relations law, the court conducting a proceeding under this article has exclusive, continuing jurisdiction of all matters relating to the determination of parentage until the child attains the age of one hundred eighty days.

§ 581-207. Certified copy of judgment of parentage. Upon issuing a judgment of parentage pursuant to section 581-202 or 581-203 of this part, the issuing court shall provide a certified copy of such judgment to the intended parent or parents.

PART 3

CHILD OF ASSISTED REPRODUCTION

§ 581-301. Scope of article. This article does not apply to the birth of a child conceived by means of sexual intercourse.

§ 581-302. Status of donor. A donor is not a parent of a child conceived by means of assisted reproduction where there is proof of donative intent under subdivision (d) of section 581-202 of this article.

§ 581-303. Parentage of child of assisted reproduction. (a) An individual who provides gametes for, or who consents to, assisted reproduction with the intent to be a parent of the child with the consent of the gestating parent as provided in section 581-304 of this part, is a parent of the resulting child for all legal purposes.

(b) The court shall issue a judgment of parentage pursuant to this article upon application by any person authorized to file a petition pursuant to subdivision (c) of section 581-201 of this article.

§ 581-304. Consent to assisted reproduction. (a) Where the intended parent who gives birth to a child by means of assisted reproduction is a spouse, the consent of both spouses to the assisted reproduction is presumed and neither spouse may challenge the parentage of the child, except as provided in section 581-305 of this part.

(b) Where the intended parent who gives birth to a child by means of assisted reproduction is not a spouse, the consent to the assisted reproduction must be in a record in such a manner as to indicate the mutual agreement of the intended parents to conceive and parent a child together.

(c) The absence of a record described in subdivision (b) of this section shall not preclude a finding that such consent existed if the court finds by clear and convincing evidence that at the time of the assisted reproduction the intended parents agreed to conceive and parent the child together.

§ 581-305. Limitation on spouses' dispute of parentage of child of assisted reproduction. (a) Neither spouse may challenge the marital presumption of parentage of a child created by assisted reproduction during the marriage unless the court finds by clear and convincing evidence that one spouse used assisted reproduction without the knowledge and consent of the other spouse.

(b) Notwithstanding the foregoing, a married individual may use assisted reproduction and the marital presumption shall not apply if the spouses:

(1) are living separate and apart 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

(2) have been living separate and apart for at least three years prior to the use of assisted reproduction.

(c) The limitation provided in this section applies to a spousal relationship that has been declared invalid after assisted reproduction or artificial insemination.

§ 581-306. Effect of embryo disposition agreement between intended parents which transfers legal rights and dispositional control to one intended parent. (a) An embryo disposition agreement between intended parents with joint dispositional control of an embryo shall be binding under the following circumstances:

(1) it is in writing;

(2) each intended parent had the advice of independent legal counsel

prior to its execution, which may be paid for by either intended parent; and

(3) where the intended parents are married, transfer of legal rights and dispositional control becomes effective upon: (i) living separate and apart 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 (ii) living separate and apart at least three years; or (iii) divorce; or (iv) death.

(b) The intended parent who transfers legal rights and dispositional control of the embryo is not a parent of any child conceived from the embryo unless the agreement states that he or she consents to be a parent and that consent is not withdrawn consistent with subdivision (c) of this section.

(c) If the intended parent transferring legal rights and dispositional control consents to be a parent, he or she may withdraw his or her consent to be a parent upon written notice to the embryo storage facility and to the other intended parent prior to transfer of the embryo. If he or she timely withdraws consent to be a parent he or she is not a parent for any purpose including support obligations but the embryo transfer may still proceed.

(d) An embryo disposition agreement that is not in compliance with subdivision (a) of this section may still be found to be enforceable by the court after balancing the respective interests of the parties except that the intended parent who divested him or herself of legal rights and dispositional control may not be declared to be a parent for any purpose without his or her consent. The intended parent awarded legal rights and dispositional control of the embryos shall, in this instance, be declared to be the only parent of the child.

§ 581-307. Effect of death of intended parent. If an individual who consented in a record to be a parent by assisted reproduction dies before the transfer of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless the deceased individual consented in a signed record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child, provided that the record complies with the estates, powers and trusts law. Any rights of the child born after the death of an intended parent may be enforced by a government agency authorized by law, including but not limited to a department of social services.

PART 4

SURROGACY AGREEMENT

§ 581-401. Surrogacy agreement authorized. (a) If eligible under this article to enter into a surrogacy agreement, a person acting as surrogate, the spouse of the person acting as surrogate, if applicable, and the intended parent or parents may enter into a surrogacy agreement which will be enforceable provided the surrogacy agreement meets the requirements of this article.

(b) A surrogacy agreement shall not apply to the birth of a child conceived by means of sexual intercourse, or where the person acting as surrogate contributed the egg used in conception.

(c) A surrogacy agreement may provide for payment of compensation under part five of this article.

§ 581-402. Eligibility to enter surrogacy agreement. (a) A person acting as surrogate shall be eligible to enter into an enforceable surrogacy agreement under this article if the person acting as surrogate has met the following requirements at the time the surrogacy agreement is executed:

(1) the person acting as surrogate is at least twenty-one years of age;

(2) the person acting as surrogate: (i) is a United States citizen or a lawful permanent resident, and (ii) has been a resident of New York state for at least six months if neither intended parent has been a resident of New York state for at least six months;

(3) the person acting as surrogate has not provided the egg used to conceive the resulting child;

(4) the person acting as surrogate has completed a medical evaluation with a health care practitioner relating to the anticipated pregnancy. Such medical evaluation shall include a screening of the medical history of the potential surrogate including known health conditions that may pose risks to the potential surrogate or embryo during pregnancy;

(5) the person acting as surrogate has given informed consent to undergo the medical procedures after the licensed health care practitioner has informed them of the medical risks of surrogacy including the possibility of multiple births, risk of medications taken for the surrogacy, risk of pregnancy complications, psychological and psychosocial risks, and impacts on their personal lives;

(6) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, have been represented from the initiation of the contractual process and throughout the duration of the surrogacy agreement by independent legal counsel of their own choosing who is licensed to practice law in the state of New York which shall be paid for by the intended parent or parents, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay the fee for such legal counsel. Where the independent legal counsel of the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, is paid by the intended parent or parents, a separate retainer agreement shall be prepared clearly stating that such legal counsel will only represent the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, in all matters pertaining to the surrogacy agreement, that such legal counsel will not offer legal advice to any other parties to the surrogacy agreement, and that the attorney-client relationship lies with the person acting as surrogate and the spouse of

the person acting as surrogate, if applicable;

(7) the person acting as surrogate has or the surrogacy agreement stipulates that the person acting as surrogate will obtain a comprehensive health insurance policy that takes effect prior to taking any medication or commencing treatment to further embryo transfer that covers preconception care, prenatal care, major medical treatments, hospitalization, and behavioral health care, and the comprehensive policy has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy; the policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the health insurance policy. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with preconception, pregnancy, childbirth, or postnatal care, that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or termination of the pregnancy. A person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements;

(8) the surrogacy agreement must provide that the intended parent or parents shall procure and pay for a life insurance policy for the person acting as surrogate that takes effect prior to taking any medication or the commencement of medical procedures to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars or the maximum amount the person acting as surrogate qualifies for if less than seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing. The policy shall be paid for, whether directly or through reimbursement or other means, by the intended parent or parents on behalf of the person acting as surrogate

pursuant to the surrogacy agreement, except that a person acting as surrogate who is receiving no compensation may waive the right to have the intended parent or parents pay for the life insurance policy; and

(9) the person acting as surrogate meets all other requirements deemed appropriate by the commissioner of health regarding the health of the prospective surrogate.

(b) The intended parent or parents shall be eligible to enter into an enforceable surrogacy agreement under this article if he, she or they have met the following requirements at the time the surrogacy agreement was executed:

(1) at least one intended parent is:

(i) a United States citizen or a lawful permanent resident; and

(ii) has been a resident of New York state for at least six months if the person acting as surrogate has not been a resident of the state of New York for at least six months;

(2) they have been represented from the initiation of the contractual process and throughout the duration of the surrogacy agreement by independent legal counsel of his, her or their own choosing who is licensed to practice law in the state of New York; and

(3) they are an adult person who is not in a spousal relationship, or any adults who are spouses together, or any adults who are intimate partners together, except an adult in a spousal relationship is eligible to enter into an enforceable surrogacy agreement without their spouse if:

(i) they are living separate and apart 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

(ii) they have been living separate and apart for at least three years prior to execution of the surrogacy agreement.

(c) where the spouse of an intended parent is not a required party to the agreement, the spouse is not an intended parent and shall not have rights or obligations to the child.

§ 581-403. Requirements of surrogacy agreement. A surrogacy agreement shall be deemed to have satisfied the requirements of this article and be enforceable if it meets the following requirements:

(a) it shall be in a record with each signature either notarized or witnessed by two non-parties and signed by:

(1) each intended parent, and

(2) the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, unless:

(i) they are living separate and apart 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

(ii) they have been living separate and apart for at least three years prior to execution of the surrogacy agreement;

(b) it shall be executed prior to the person acting as surrogate taking any medication or the commencement of medical procedures in the furtherance of embryo transfer, provided the person acting as surrogate shall have provided informed consent to undergo such medical treatment or medical procedures prior to executing the agreement;

(c) it shall be executed by a person acting as surrogate meeting the eligibility requirements of subdivision (a) of section 581-402 of this part and by the spouse of the person acting as surrogate, if applicable, unless the signature of the spouse of the person acting as surrogate is not required as set forth in this section;

(d) it shall be executed by intended parent or parents who met the eligibility requirements of subdivision (b) of section 581-402 of this part;

(e) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, and the intended parent or parents shall have been represented from the initiation of the contractual process and the surrogacy agreement states that they shall be represented throughout the duration of the surrogacy agreement by separate, independent legal counsel of their own choosing, who is licensed to practice law in the state of New York;

(f) if the surrogacy agreement provides for the payment of compensation to the person acting as surrogate, the funds for base compensation and reasonable anticipated additional expenses shall have been placed in escrow with an independent escrow agent, who consents to the jurisdiction of New York courts for all proceedings related to the enforcement of the escrow agreement, prior to the person acting as surrogate commencing any medical procedure other than medical evaluations necessary to determine the person acting as surrogate's eligibility;

(g) the surrogacy agreement must include information disclosing how the intended parent or parents will cover the medical expenses of the person acting as surrogate and the child. If comprehensive health care coverage is used to cover the medical expenses, the disclosure shall include a review and summary of the health care policy provisions related to coverage and exclusions for the person acting as surrogate's pregnancy; and

(h) the surrogacy agreement shall include the following information:

(1) the date, city and state where the surrogacy agreement was executed;

(2) the first and last names of and contact information for the intended parent or parents and of the person acting as surrogate;

(3) the first and last names of and contact information for the persons from which the gametes originated, if known. The agreement shall specify whether the gametes provided were eggs, sperm, or embryos;

(4) the name of and contact information for the licensed and registered surrogacy program arranging or facilitating the transactions contemplated by the surrogacy agreement, if any; and

(5) the name of and contact information for the attorney representing the person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, and the attorney representing the intended parent or parents; and

(i) the surrogacy agreement must comply with all of the following terms:

(1) As to the person acting as surrogate and the spouse of the person acting as surrogate, if applicable:

(i) the person acting as surrogate agrees to undergo embryo transfer and attempt to carry and give birth to the child;

(ii) the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, agree to surrender custody of all resulting children to the intended parent or parents immediately upon birth;

(iii) the surrogacy agreement shall include the name of the attorney representing the person acting as surrogate and, if applicable, the spouse of the person acting as surrogate;

(iv) the surrogacy agreement must include an acknowledgement by the person acting as surrogate and the spouse of the person acting as surrogate, if applicable, that they have received a copy of the Surrogate's Bill of Rights from their legal counsel;

(v) the surrogacy agreement must permit the person acting as surrogate to make all health and welfare decisions regarding themselves and their pregnancy including but not limited to, whether to consent to a cesarean section or multiple embryo transfer, and notwithstanding any other provisions in this chapter, provisions in the agreement to the contrary are void and unenforceable. This article does not diminish the right of the person acting as surrogate to terminate or continue a pregnancy;

(vi) the surrogacy agreement shall permit the person acting as a surrogate to utilize the services of a health care practitioner of the person's choosing;

(vii) the surrogacy agreement shall not limit the right of the person acting as surrogate to terminate or continue the pregnancy or reduce or retain the number of fetuses or embryos the person is carrying;

(viii) the surrogacy agreement shall provide for the right of the person acting as surrogate, upon request, to obtain counseling to address issues resulting from the person's participation in the surrogacy agreement, including, but not limited to, counseling following delivery. The cost of that counseling shall be paid by the intended parent or parents;

(ix) the surrogacy agreement must include a notice that any compensation received pursuant to the agreement may affect the eligibility of the person acting as surrogate and the person acting as surrogate's spouse, if applicable, for public benefits or the amount of such benefits; and

(x) the surrogacy agreement shall provide that, upon the person acting as surrogate's request, the intended parent or parents have or will procure and pay for a disability insurance policy for the person acting as surrogate; the person acting as surrogate may designate the beneficiary of the person's choosing.

(2) As to the intended parent or parents:

(i) the intended parent or parents shall accept custody of all resulting children immediately upon birth regardless of number, gender, or mental or physical condition and regardless of whether the embryo or embryos was or were transferred due to a laboratory error without diminishing the rights, if any, of anyone claiming to have a superior parental interest in the child; and

(ii) the intended parent or parents shall assume responsibility for the support of all resulting children immediately upon birth; and

(iii) the surrogacy agreement shall include the name of the attorney representing the intended parent or parents; and

(iv) the surrogacy agreement shall provide that the rights and obligations of the intended parent or parents under the surrogacy agreement are not assignable; and

(v) the intended parent or parents shall execute a will, prior to the embryo transfer, designating a guardian for all resulting children and authorizing their executor to perform the obligations of the intended parent or parents pursuant to the surrogacy agreement, including filing a proceeding for a judgment of parentage for a child conceived pursuant to a surrogacy agreement pursuant to section 581-203 of this article if there is no intended parent living.

§ 581-404. Surrogacy agreement: effect of subsequent spousal relationship. (a) After the execution of a surrogacy agreement under this article, the subsequent spousal relationship of the person acting as surrogate does not affect the validity of a surrogacy agreement, the consent of the spouse of the person acting as surrogate to the agreement shall not be required, and the spouse of the person acting as surrogate shall not be the presumed parent of any resulting children.

(b) The subsequent separation or divorce of the intended parents does not affect the rights, duties and responsibilities of the intended parents as outlined in the surrogacy agreement. After the execution of a surrogacy agreement under this article, the subsequent spousal relationship of the intended parent does not affect the validity of a surrogacy agreement, and the consent of the new spouse of an intended parent to the agreement shall not be required.

§ 581-405. Termination of surrogacy agreement. After the execution of a surrogacy agreement but before the person acting as surrogate becomes pregnant by means of assisted reproduction, the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, or any intended parent may terminate the surrogacy agreement by giving notice of termination in a record to all other parties. Upon proper termination of the surrogacy agreement the parties are released from all obligations recited in the surrogacy agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement which have been incurred by the person acting as surrogate through the date of termination. If the intended parent or parents terminate the surrogacy agreement pursuant to this section after the person acting as surrogate has taken any medication or commenced treatment to further embryo transfer, such intended parent or parents shall be responsible for paying for or reimbursing the person acting as surrogate for all co-payments, deductibles, any other out-of-pocket medical costs, and any other economic losses incurred within twelve months of the termination of the agreement and associated with taking such medication or undertaking such treatment. Unless the agreement provides otherwise, the person acting as surrogate is entitled to keep all payments received and obtain all payments to which the person is entitled up until the date of termination of the agreement. Neither a person acting as surrogate nor the spouse of the person acting as surrogate, if any, is liable to the intended parent or parents for terminating a surrogacy agreement as provided in this section.

§ 581-406. Parentage under compliant surrogacy agreement. Upon the birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, each intended parent is, by operation of law, a parent of the child and neither the person acting as surrogate nor the person's spouse, if applicable, is a parent of the child.

§ 581-407. Insufficient surrogacy agreement. If a surrogacy agreement does not meet the material requirements of this article, the agreement is not enforceable and the court shall determine parentage based on the intent of the parties, taking into account the best interests of the child. An intended parent's absence of genetic connection to the child is not a sufficient basis to deny that individual a judgment of legal parentage.

§ 581-408. Absence of surrogacy agreement. Where there is no surrogacy agreement, the parentage of the child will be determined based on other laws of this state.

§ 581-409. Dispute as to surrogacy agreement. (a) Any dispute which is related to a surrogacy agreement other than disputes as to parentage, which are not resolved through alternative dispute resolution methods, shall be resolved by the supreme court, which shall determine the respective rights and obligations of the parties. In any proceeding initiated pursuant to this section, the court may, at its discretion, authorize the use of conferencing or mediation at any point in the proceedings.

(b) Except as expressly provided in the surrogacy agreement or subdivision (c) or (d) of this section, if the agreement is breached by the person acting as surrogate, the spouse of the person acting as surrogate, if applicable, or one or more intended parent, the non-breaching party shall be entitled to all remedies available at law or in equity in any dispute related to the surrogacy agreement.

(c) Specific performance shall not be a remedy available for a breach by a person acting as surrogate of a provision in the surrogacy agreement that the person acting as surrogate be impregnated, agree to a multiple embryo transfer, terminate or not terminate a pregnancy, or submit to medical procedures including a cesarean section.

(d) If any intended parent is adjudicated to be the parent of the child, specific performance is a remedy available for: (1) breach of the surrogacy agreement by a person acting as surrogate which prevents the intended parent or parents from exercising the full rights of parentage immediately upon the birth of the child; or (2) breach by the intended parent or parents by failure to accept the duties of parentage immediately upon the birth of the child.

(e) In any proceeding initiated pursuant to this section, where the supreme court determines that the dispute involves both contractual and parentage issues, the court may order that the portion of the proceedings raising parentage issues may be transferred to the family or surrogate's court.

PART 5

PAYMENT TO DONORS AND PERSONS ACTING AS SURROGATES

§ 581-501. Reimbursement. A donor who has entered into a valid agreement to be a donor may receive reimbursement from an intended parent or parents for economic losses incurred in connection with the donation which result from the retrieval or storage of gametes or embryos.

§ 581-502. Compensation. (a) Compensation may be paid to a donor or person acting as surrogate based on medical risks, physical discomfort, inconvenience and the responsibilities they are undertaking in connection with their participation in the assisted reproduction. Under no circumstances may compensation be paid to purchase gametes or embryos or for the release of a parental interest in a child.

(b) The compensation, if any, paid to a donor or person acting as surrogate must be reasonable and negotiated in good faith between the parties. Base compensation paid to a person acting as surrogate shall not exceed the duration of the pregnancy and recuperative period of eight weeks after the birth of any resulting child. Supplemental compensation for any medical procedure associated with complications from the pregnancy or delivery as confirmed by a health care practitioner, and any associated lost wages, may be, but are not required to be, paid after the recuperative period and until twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of the pregnancy, or termination of the pregnancy.

(c) Compensation may not be conditioned upon the purported quality or genome-related traits of the gametes or embryos.

(d) Compensation may not be conditioned on actual genotypic or phenotypic characteristics of the donor or donors or of any resulting children.

(e) Compensation to any embryo donor shall be limited to storage fees, transportation costs and attorneys' fees.

PART 6

SURROGATES' BILL OF RIGHTS

§ 581-601. Applicability. The rights enumerated in this part shall apply to any person acting as surrogate under the laws of the state of New York, notwithstanding any surrogacy agreement, judgment of parentage, memorandum of understanding, verbal agreement or contract to the contrary. Except as otherwise provided by law, any written or verbal agreement purporting to waive or limit any of the rights in this part is void as against public policy. The rights enumerated in this part are not exclusive, and are in addition to any other rights provided by law, regulation, or a surrogacy agreement that meets the requirements of this article.

§ 581-602. Health and welfare decisions. A person acting as surrogate has the right to make all health and welfare decisions regarding them-self and their pregnancy, including but not limited to whether to consent to a cesarean section or multiple embryo transfer, to utilize the services of a health care practitioner of their choosing, whether to terminate or continue the pregnancy, and whether to reduce or retain the number of fetuses or embryos they are carrying.

§ 581-603. Independent legal counsel. A person acting as surrogate, and the spouse of the person acting as surrogate, if applicable, has the right to be represented from the initiation of the contractual process and throughout the duration of the surrogacy agreement by independent legal counsel of their own choosing who is licensed to practice law in the state of New York, to be paid for by the intended parent or parents.

§ 581-604. Health insurance and medical costs. A person acting as surrogate has the right to have a comprehensive health insurance policy that covers preconception care, prenatal care, major medical treatments, hospitalization and behavioral care for a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, to be paid for by the intended parent or parents. The intended parent or parents shall also pay for or reimburse the person acting as surrogate for all co-payments, deductibles and any other out-of-pocket medical costs associated with pregnancy, childbirth, or postnatal care that accrue through twelve months after the birth of the child, a stillbirth, a miscarriage, or the termination of the pregnancy. A person acting as a surrogate who is receiving no compensation may waive the right to have the intended parent or parents make such payments or reimbursements.

§ 581-605. Counseling. A person acting as surrogate has the right to obtain a comprehensive health insurance policy that covers behavioral health care and will cover the cost of psychological counseling to address issues resulting from their participation in a surrogacy and such policy shall be paid for by the intended parent or parents.

§ 581-606. Life insurance. A person acting as surrogate has the right to be provided a life insurance, policy that takes effect prior to taking any medication or commencement of treatment to further embryo transfer, provides a minimum benefit of seven hundred fifty thousand dollars, or the maximum amount the person acting as surrogate qualifying for it less than seven hundred fifty thousand dollars, and has a term that extends throughout the duration of the expected pregnancy and for twelve months after the birth of the child, a stillbirth, a miscarriage resulting in termination of pregnancy, or termination of the pregnancy, with a beneficiary or beneficiaries of their choosing, to be paid for by the intended parent or parents.

§ 581-607. Termination of surrogacy agreement. A person acting as surrogate has the right to terminate a surrogacy agreement prior to becoming pregnant by means of assisted reproduction pursuant to section 581-405 of this article.

PART 7

MISCELLANEOUS PROVISIONS

§ 581-701. Remedial. This legislation is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child.

§ 581-702. Severability. The invalidation of any part of this legislation by a court of competent jurisdiction shall not result in the invalidation of any other part.

§ 581-703. Parent under section seventy of the domestic relations law. The term "parent" in section seventy of the domestic relations law shall include a person established to be a parent under this article or any other relevant law.

§ 581-704. Interpretation. Unless the context indicates otherwise, words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular.

§ 581-705. Adjudication. (a) A court adjudicating the parentage of a child conceived through assisted reproduction or adjudicating the enforceability of an embryo disposition agreement may apply section 581-202 and part three of this article retroactively.

(b) The participants in a surrogacy agreement that involved the payment of compensation prior to February fifteenth, two thousand twenty-one shall not be eligible to receive a judgment of parentage pursuant to section 581-203 or section 581-406 of this article, but shall be entitled to seek a judgment of parentage pursuant to section 581-407 of this article.

(c) This article shall apply retroactively to uncompensated surrogacy agreements entered into prior to February fifteenth, two thousand twenty-one, with regard to a court adjudication the parentage of a child.

(d) Surrogacy agreements that were executed on or after February fifteenth, two thousand twenty-one, but before the effective date of the chapter of the laws of two thousand twenty-four that added this subdivision that were in compliance with this article before it was amended by the chapter of the laws of two thousand twenty-four that added this subdivision shall be deemed a compliant surrogacy agreement pursuant to section 581-406 of this article regardless of any deviations from the current provisions of this article.

ARTICLE 6

PERMANENT TERMINATION OF PARENTAL RIGHTS, ADOPTION, GUARDIANSHIP AND CUSTODY

* - does not conform to headings in Parts 3 and 4.

PART 1

PERMANENT TERMINATION OF PARENTAL CUSTODY BY REASON OF PERMANENT NEGLECT

§ 611. Permanently neglected child; purpose of part. The purpose of this part is to provide the procedures for proceedings initiated in family court, pursuant to section three hundred eighty-four-b of the social services law, for the commitment of the guardianship and custody of a child upon the ground that the child is a permanently neglected child. As used in this part "permanently neglected child" shall mean permanently neglected child as defined in subdivision seven of section three hundred eighty-four-b of the social services law, and unless the context requires otherwise, the provisions of such section three hundred eighty-four-b shall be deemed applicable requirements in addition to the procedures contained in this part. All references in this part to petitions and proceedings initiated "under this part" shall be deemed references to petitions and proceedings initiated under section three hundred eighty-four-b of the social services law upon the ground that the child is a permanently neglected child.

§ 614. Originating proceeding for the commitment of the guardianship and custody of a permanently neglected child. 1. A proceeding for the commitment of the guardianship and custody of a child on the ground of permanent neglect is originated by a petition, alleging:

(a) the child is a person under eighteen years of age;

(b) the child is in the care of an authorized agency;

(c) the authorized agency has made diligent efforts to encourage and strengthen the parental relationship and specifying the efforts made or that such efforts would be detrimental to the best interests of the child and specifying the reasons therefor;

(d) the parent or custodian, notwithstanding the agency's efforts, has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so; and

(e) the best interests of the child require that the guardianship and custody of the child be committed to an authorized agency or to a foster parent authorized to originate this proceeding under section one thousand eighty-nine of this act.

2. Where the petitioner is not the authorized agency, allegations relating to the efforts of the authorized agency may be made upon

information and belief.

§ 616. Issuance of summons. On the filing of a petition under this part, the court may cause a copy of the petition and a summons to be issued, requiring the parent to show cause why the court should not enter an order committing the guardianship and custody of the child to the petitioner for the reason that the child is permanently neglected.

§ 617. Service of summons. (a) Service of a summons and petition under this part shall be made by delivery of a true copy thereof to the person summoned at least twenty days before the time stated therein for appearance. If so requested by the parent or other person legally responsible for the child's care, the court may extend the time for appearance and answer.

(b) If after reasonable effort, personal service is not made, such substituted service or service by publication as may be ordered by the judge shall be sufficient.

(c) Personal service within or without the state or in a foreign country shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act, as the same may be amended from time to time, with respect to service of a citation.

(d) Service of the summons and other process with a notice as specified herein by publication shall be made in accordance with the provisions of CPLR 316, provided, however, that a single publication of the summons or other process with a notice as specified herein in only one newspaper designated in the order shall be sufficient. In no event shall the whole petition be published. The petition shall be delivered to the person summoned at the first court appearance pursuant to section one hundred fifty-four-a of this chapter. The notice to be published with the summons or other process shall state:

1. the date, time, place and purpose of the proceeding,

2. that upon failure of the person summoned to appear, all of his or her parental rights in the child may be terminated, and

3. that his or her failure to appear shall constitute a denial of his or her interest in the child, which denial may result, without further notice, in the transfer or commitment of the child's care, custody or guardianship or in the child's adoption in this or any subsequent proceeding in which such care, custody or guardianship or adoption may be at issue.

§ 622. Definition of "fact-finding hearing". When used in this part, "fact-finding hearing" means in the case of a petition for the commitment of the guardianship and custody of a child, a hearing to determine whether the allegations required by paragraphs (a), (b), (c), and (d) of subdivision one of section six hundred fourteen are supported by clear and convincing proof.

§ 623. Definition of "dispositional hearing". When used in this part, "dispositional hearing" means a hearing to determine what order of disposition should be made in accordance with the best interests of the child. Where the disposition ordered is the commitment of guardianship and custody in accordance with section six hundred thirty-four of this part, an initial freed child permanency hearing and all subsequent permanency hearings shall be held in accordance with article ten-A of this act.

§ 624. Evidence. Only competent, material and relevant evidence may be admitted in a fact-finding hearing; only material and relevant evidence may be admitted in a dispositional hearing. Evidence of parental contact or of failure to maintain contact with a child subsequent to the date of the filing of a petition under this part shall be inadmissible in the fact-finding hearing. Such evidence may be admitted in the dispositional hearing but shall not, of itself, be sufficient as a matter of law to preclude or require an order committing the guardianship and custody of the child.

§ 625. Sequence of hearings. (a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made; provided, however, that if all parties consent the court may, upon motion of any party or upon its own motion, dispense with the dispositional hearing and make an order of disposition on the basis of competent evidence admitted at the fact-finding hearing. Where the disposition ordered is the commitment of guardianship and custody in accordance with section six hundred thirty-four of this part, an initial freed child permanency hearing and all subsequent permanency hearings shall be held in accordance with article ten-A of this act.

(b) Reports prepared by the probation service or a duly authorized agency for use by the court prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole or in part to the child's attorney, counsel, party in interest, or other appropriate person. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing or in the making of an order of disposition without a dispositional hearing pursuant to subdivision (a) of this section.

§ 626. Adjournments. (a) The court may adjourn a fact-finding hearing or a dispositional hearing for good cause shown on its own motion or on motion made on behalf of the child, or on motion of the parent or other person responsible for the care of the child.

(b) At the conclusion of a fact-finding hearing and after it has made findings required before a dispositional hearing may commence, the court may adjourn the proceedings to enable it to make inquiry into the surroundings, conditions, and capacities of the persons involved in the proceedings.

§ 631. Disposition on adjudication of permanent neglect. At the conclusion of a dispositional hearing on a petition for the commitment of the guardianship and custody of a child, the court shall enter an order of disposition:

(a) dismissing the petition in accord with section six hundred thirty-two; or

(b) suspending judgment in accord with section six hundred thirty-three; or

(c) committing the guardianship and custody of the child in accord with section six hundred thirty-four; provided, however, that an order of disposition committing the guardianship and custody of the child may not be entered after the child's eighteenth birthday, unless the child consents.

An order of disposition shall be made, pursuant to this section, 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 disposition.

§ 632. Order dismissing petition. (a) If the allegations of a petition under this part are not established, the court shall dismiss the petition.

(b) If a motion or application has been made in the course of a proceeding under this part to reconsider an underlying order of placement or commitment, or upon the court's own motion on notice to all parties, the court retains jurisdiction to dispose of that motion or application regardless of whether it dismisses the petition.

§ 633. Suspended judgment. (a) Rules of court shall define permissible terms and conditions of a suspended judgment. These terms and conditions shall relate to the acts or omissions of the parent or other person responsible for the care of the child.

(b) The maximum duration of a suspended judgment under this section is one year, unless the court finds at the conclusion of that period that exceptional circumstances require an extension of that period for one additional period of up to one year. Successive extensions may not be granted.

(c) The order of suspended judgment must set forth the duration, terms and conditions of the suspended judgment, and must contain a date certain for a court review not later than thirty days prior to the expiration of the period of suspended judgment. The order of suspended judgment must also state in conspicuous print that a failure to obey the order may lead to its revocation and to the issuance of an order terminating parental rights and committing the guardianship and custody of the child to an authorized agency for the purposes of adoption. A copy of the order of suspended judgment, along with the current permanency plan, must be furnished to the respondent.

(d) Not later than sixty days before the expiration of the period of suspended judgment, the petitioner shall file a report with the family court and all parties, including the respondent and his or her attorney, the child's attorney and intervenors, if any, regarding the respondent's compliance with the terms of suspended judgment. The report shall be reviewed by the court on the scheduled court date. Unless a motion or order to show cause has been filed prior to the expiration of the period of suspended judgment alleging a violation or seeking an extension of the period of the suspended judgment, the terms of the disposition of suspended judgment shall be deemed satisfied and an order committing the guardianship and custody of the child shall not be entered.

(e) If, prior to the expiration of the period of the suspended judgment, a motion or order to show cause is filed that alleges a violation of the terms and conditions of the suspended judgment, or that seeks to extend the period of the suspended judgment for an additional period of up to one year, then the period of the suspended judgment is tolled until entry of the order that disposes of the motion or order to show cause.

(f) Upon finding that the respondent has violated the terms and conditions of the order of suspended judgment, the court may enter an order revoking the order of suspended judgment and terminating the parental rights of the respondent or, where such extension is in the best interests of the child, extend the period of suspended judgment for an additional period of up to one year, if no prior extension has been granted.

(g) If an order of suspended judgment has been satisfied or has been extended, but the child nonetheless remains in foster care pursuant to a placement under article ten of this act or section three hundred fifty-eight-a of the social services law, a permanency hearing shall be completed as previously scheduled pursuant to section one thousand eighty-nine of this act, but no later than six months after the completion of the last permanency hearing. If guardianship and custody of the child have been transferred to the authorized agency upon an order revoking the order of suspended judgment, a permanency hearing shall be completed pursuant to paragraph one of subdivision (a) of section one thousand eighty-nine of this act immediately following, but in no event later than sixty days after, the earlier of the court's statement of its order on the record or issuance of its written order.

§ 634. Commitment of guardianship and custody; further orders. The court may enter an order under section six hundred thirty-one committing the guardianship and custody of the child to the petitioner on such conditions, if any, as it deems proper.

PART 1-A

MODIFICATION OF DISPOSITION; RESTORATION OF PARENTAL RIGHTS

§ 635. Petition to restore parental rights. A petition to modify a disposition ordered pursuant to subdivision (c) of section six hundred thirty-one of this article or paragraph (a) of subdivision three of section three hundred eighty-four-b of the social services law in order to restore parental rights may be filed in accordance with this part where the following conditions are met:

(a) the order committing guardianship and custody of the child had been issued two or more years prior to the date of filing of the petition under this section; and

(b) the order committing guardianship and custody of the child had been based upon an adjudication upon grounds enumerated in paragraph (b), (c) or (d) of subdivision four of section three hundred eighty-four-b of the social services law; and

(c) the petition alleges that the petitioner or petitioners and the respondent or respondents in the proceeding in which guardianship and custody had been committed consent to the relief requested in the petition or that the petitioner or petitioners withheld consent to the relief requested in the petition without good cause; and

(d) the child is fourteen years of age or older, remains under the jurisdiction of the family court, has not been adopted, does not have a permanency goal of adoption and consents to the relief requested in the petition.

§ 636. Originating a proceeding to restore parental rights; service and venue. (a) A proceeding to modify the disposition in order to restore parental rights may be originated by the filing of a petition by the child's attorney, by the agency or individual to whom guardianship and custody of the child had been committed or by the respondent or respondents in the termination of parental rights proceeding. The petition shall be served upon the child's attorney, the agency or individual to whom guardianship and custody of the child had been committed and the respondent or respondents in the termination of parental rights proceeding, as well as the attorney or attorneys who represented the respondent or respondents in the termination of parental rights proceeding. A certified copy of the order committing guardianship and custody shall be attached to the petition.

(b) Upon the filing of a petition under this part, the court may cause a summons to be issued to the child, the agency or individual to whom guardianship and custody of the child had been committed and the respondent or respondents in the termination of parental rights proceeding. The summons shall be served in accordance with section six hundred seventeen of this article, accompanied by a copy of the petition and the certified order of commitment sought to be modified.

(c) The petition shall be filed before the court that exercised jurisdiction over the most recent permanency proceeding involving the child and shall be assigned, wherever practicable, to the family court judge who presided over that proceeding or the proceeding to terminate parental rights.

(d) Wherever practicable, the child shall be represented by the same attorney that represented the child in the most recent permanency proceeding and the parent or parents shall be represented by the same attorney or attorneys who represented the parent or parents in the termination of parental rights proceeding. Where this is not practicable, or where the court grants a request by the attorney or attorneys to be relieved, the court shall immediately assign a new attorney or attorneys, as applicable.

§ 637. Burden of proof, disposition and findings. (a) The petitioner shall have the burden of proof by clear and convincing evidence that restoration of parental rights is in the child's best interests, that the requirements of section six hundred thirty-five of this part have been met and that all of the parties and the child have consented or, if the petitioner in the proceeding in which guardianship and custody have been committed failed to consent to the relief requested, that such failure was without good cause.

(b) The court shall state on the record the reason or reasons for its disposition of the petition. The court may make the following orders of disposition:

(i) The court may grant the petition, modify the order of disposition previously entered in the termination of parental rights proceeding and transfer guardianship and custody of the child to the birth parent or parents, provided, however, that the findings of fact rendered pursuant to section six hundred twenty-two of this article or subdivision four of section three hundred eighty-four-b of the social services law that formed the basis for the adjudication terminating parental rights shall remain; or

(ii) The court may dismiss the petition, in which case the commitment of guardianship and custody of the child to the authorized agency or individual would continue and a permanency hearing would be required to be held as scheduled in accordance with article ten-A of this act; or

(iii) The court may grant the petition conditionally for a designated period of up to six months, during which time guardianship and custody of the child shall remain with the local social services district or authorized agency while the child may visit with, or be placed on a trial discharge with, the birth parent or parents. The court shall direct the district or agency to supervise the child's birth parent or parents, develop a reunification plan and provide appropriate transitional services to the child and birth parent or parents and report to the parties, attorney for the child and the court not later than thirty days prior to the expiration of the designated period. The court shall schedule the proceeding to be heard prior to the expiration of the designated period and shall determine whether to grant the petition permanently in accordance with paragraph (i) of this subdivision or dismiss the petition in accordance with paragraph (ii) of this subdivision. The court shall state its reasons for its determination. If the petition is permanently granted, the child's custody and guardianship shall be transferred to the birth parent or parents. If the child has been removed from the custody of the birth parent or parents prior to the expiration of the designated period by reason of a report of suspected child abuse or maltreatment, the court shall schedule the proceeding to be heard on notice to the parties and attorney for the child, may terminate the trial discharge and may dismiss the petition in accordance with paragraph (ii) of this subdivision.

PART 2

ADOPTION

§ 641. Jurisdiction over adoption proceedings. The family court has original jurisdiction concurrent with the surrogate's courts over adoption proceedings under article seven of the domestic relations law.

§ 642. Rules of court. Rules of court, not inconsistent with any provision of article seven of the domestic relations law, may authorize the probation service to interview such persons and obtain such data as will aid the court in determining a petition under that article.

§ 643. 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.

PART 3

CUSTODY

§ 651. Jurisdiction over habeas corpus proceedings and petitions for custody and visitation of minors. (a) When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivisions one and one-c of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors.

(b) When initiated in the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors, including applications by a grandparent or grandparents for visitation or custody rights pursuant to section seventy-two or two hundred forty of the domestic relations law.

(c) When initiated in the family court pursuant to a petition under part eight of article ten of this act or section three hundred fifty-eight-a of the social services law, the family court has jurisdiction to enforce or modify orders or judgments of the supreme court relating to the visitation of minors in foster care, notwithstanding any limitation contained in subdivision (b) of section four hundred sixty-seven of this act.

(c-1) Where a proceeding filed pursuant to article ten or ten-A of this act is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under article ten or ten-A of this act may jointly hear the hearing on the custody and visitation petition under this article and the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of this act; provided, however, the court must determine the custody and visitation petition in accordance with the terms of this article.

(d) With respect to applications by a grandparent or grandparents for visitation or custody rights, made pursuant to section seventy-two or two hundred forty of the domestic relations law, with a child remanded or placed in the care of a person, official, agency or institution pursuant to the provisions of article ten of this act, the applicant, in such manner as the court shall prescribe, shall serve a copy of the application upon the social services official having care and custody of such child, and the child's attorney, who shall be afforded an opportunity to be heard thereon.

(e) 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 paragraph three of this subdivision.

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 paragraph three of this subdivision, 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 this act, and all warrants issued under this 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 this 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 paragraph three of this subdivision.

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 paragraph three of this subdivision 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 paragraph four of this subdivision 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 family 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 family 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 thirty-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.

(f) 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 paragraph three of this subdivision. 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 paragraph three of this subdivision. 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 purpose, 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 subdivision, 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 subdivision shall not apply to assignments to permanent duty

stations or permanent changes of station.

§ 651-a. Reports of child abuse and maltreatment; admissibility. 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 commenced on or before December thirty-first, two thousand twenty-one has determined that there is some credible evidence of the alleged abuse or maltreatment, or unless an investigation of such report conducted pursuant to title six of article six of the social services law commenced on or after January first, two thousand twenty-two determines that there is a fair preponderance of the evidence of the alleged abuse or maltreatment, 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 section 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.

§ 652. Jurisdiction over applications to fix custody in matrimonial

actions on referral from supreme court. (a) When referred from the supreme court to the family court, the family court has jurisdiction to determine, with the same powers possessed by the supreme court, applications to fix temporary or permanent custody and applications to modify judgments and orders of custody or visitation in actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage. Applications to modify judgments and orders of custody may be granted by the family court under this section only upon the showing to the family court that there has been a subsequent change of circumstances and that modification is required.

(b) In the event no such referral has been made and unless the supreme court provides in the order or judgment awarding custody or visitation in an action for divorce, separation or annulment, that it may be enforced or modified only in the supreme court, the family court may: (i) determine an application to enforce the order or judgment awarding custody or visitation, or (ii) determine an application to modify the order or judgment awarding custody or visitation upon a showing that there has been a subsequent change of circumstances and modification is required.

(c) In any determination of an application pursuant to this section, the family court shall have jurisdiction to determine such applications, in accordance with subdivision one of section two hundred forty of the domestic relations law, with the same powers possessed by the supreme court, and the family court's disposition of any such application is an order of the family court appealable only under article eleven of this act.

§ 653. Rules of court. Rules of court, not inconsistent with any law, may authorize the probation service to interview such persons and obtain such data as will aid the court in determining a habeas corpus or custody proceeding under section six hundred fifty-one.

§ 655. Temporary order of protection. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection which may contain any of the provisions authorized on the making of an order of protection under section six hundred fifty-six of this article.

(b) A temporary order of protection is not a finding of wrongdoing.

(c) The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant directing that the respondent be arrested and brought before the court pursuant to section six hundred seventy-one of this article.

(d) The court shall not require anyone seeking a temporary order of protection under this section to first request that child protective services investigate the allegations or to first request permission to file a petition under article ten of this act.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

§ 656. Order of protection. The court may make an order of protection and an order of probation in assistance or as a condition of any other order made under this part. The order of protection may set forth reasonable conditions of behavior to be observed for a specific time by any petitioner or any respondent, and shall specify if an order of probation is in effect. No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counter-claim in accordance with section one hundred fifty-four-b of this act. Such an order may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse or parent, or the child, 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 eight hundred twelve of this act, 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;

(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 this proceeding or in any other proceeding or action under this act or the domestic relations law;

(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 participate in an educational program and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the state or any political subdivision thereof;

(g) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(h) 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;

(i) 1. 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 petitioner or a minor child residing in the household.

2. "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;

(j) 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 subdivision, "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;

(k) 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 subdivision, "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

(l) to observe such other conditions as are necessary to further the purposes of protection.

The court shall not require anyone seeking an order of protection under this section to first request that child protective services investigate the allegations or to first request permission to file a petition under article ten of this act.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

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.

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.

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.

§ 656-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the 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 section eight hundred forty-two-a of this act.

§ 657. Certain provisions relating to the guardianship and custody of children by persons who are not the parents of such children. (a) Notwithstanding any provision of the 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 guardianship or custody for such child and that the guardian or custodian and the child properly reside in the same household within the school district.

(b) 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 same 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 4 of this article.

(c) Notwithstanding any other provision of law to the contrary, persons possessing a lawful order of guardianship or custody of a child shall have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law.

§ 658. Consideration of blindness during guardianship, custody or visitation proceedings. 1. The court may not deny or decide a petition for custody or visitation under this part or guardianship under part four of this article 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.

§ 659. Consideration of law allowing gender-affirming care. 1. It is the intent of the legislature that children or their parents should be able to obtain necessary medical care, including legally protected health activity, as defined by section 570.17 of the criminal procedure law.

2. A law that authorizes a child to be removed from their parent or guardian based on the parent or guardian allowing their child to engage in legally protected health activity, as defined by section 570.17 of the criminal procedure law, or based on such parent or guardian themself engaging in legally protected health activity, is against the public policy of this state and shall not be enforced or applied in a case pending in a court in this state.

3. No court in this state shall admit or consider a finding of abuse, neglect or maltreatment based on the parent or guardian allowing their child to engage in legally protected health activity, as defined by section 570.17 of the criminal procedure law, or based on such parent or guardian themself engaging in legally protected health activity, as evidence in any proceeding with respect to that parent or guardian and any of their children, unless such conduct would constitute abuse, neglect or maltreatment under the laws of this state.

PART 4

GUARDIANSHIP

§ 661. Jurisdiction. When initiated in the family court, such court has like jurisdiction and authority to determine as county and surrogates courts in proceedings regarding the guardianship of the person of a minor or infant and permanent guardianship of a child. Such jurisdiction shall apply as follows:

(a) Guardianship of the person of a minor or infant. When making a determination regarding the guardianship of the person of a minor or infant, the provisions of the surrogate's court procedure act shall apply to the extent they are applicable to guardianship of the person of a minor or infant and do not conflict with the specific provisions of this act. For purposes of appointment of a guardian of the person pursuant to this part, the terms infant or minor shall include a person who is less than twenty-one years old who consents to the appointment or continuation of a guardian after the age of eighteen.

(b) Permanent guardianship of a child. Where the guardianship and custody of a child have been committed to an authorized agency pursuant to section six hundred fourteen of this article, or section three hundred eighty-three-c, section three hundred eighty-four or section three hundred eighty-four-b of the social services law, or where both parents of a child whose consent to the adoption of the child would have been required pursuant to section one hundred eleven of the domestic relations law or who were entitled to notice of an adoption proceeding pursuant to section one hundred eleven-a of the domestic relations law are dead, the court may appoint a permanent guardian of a child if the court finds that such appointment is in the best interests of the child. The provisions of the surrogate's court procedure act shall apply to the extent that they are applicable to a proceeding for appointment of a permanent guardian of a child and do not conflict with the specific provisions of this act. Such permanent guardian of a child shall have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child, and may consent to the adoption of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law.

(c) Special provisions in relation to guardianship of a foster child. Where the permanency goal for a foster child who is the subject of a proceeding under article ten or ten-A of this act is referral for legal guardianship, a petition under this article filed by a fit and willing relative or other suitable person shall be filed with the court before whom the most recent proceeding under article ten or ten-A of this act is pending. The court presiding over the proceeding pursuant to article ten or ten-A of this act may consolidate the hearing of the guardianship petition or permanent guardianship petition filed by such relative or other suitable person with the dispositional hearing under article ten of this act or a permanency hearing under article ten-A of this act, as applicable. In granting such a petition, the court must make such order in accordance with the procedures and make the findings enumerated in section one thousand fifty-five-b or one thousand eighty-nine-a of this act, as applicable.

§ 662. Rules of court. Rules of court, not inconsistent with any law, may authorize the probation service to interview such persons and obtain such data as will aid the court in exercising its power under section six hundred sixty-one.

§ 663. Guardian of person to file copy of order of appointment. Upon the appointment and qualification of guardian of the person of a minor as provided in section six hundred sixty-one of this act, letters of guardianship shall thereupon issue from this court.

§ 664. Recording in camera interviews of infants. (a) The court shall not conduct an in camera interview of an infant in any action or proceeding to fix temporary or permanent custody or to modify judgments and orders of custody concerning marital separation, divorce, annulment of marriage and dissolution of marriage unless a stenographic record of such interview is made.

(b) If an appeal is taken to the appellate division from a judgment or order of the court on any such action or proceeding, the stenographic record of any such interview shall be made a part of the record and forwarded under seal to the appellate division.

PART 5

WARRANT

Section 671. Issuance of warrant; certificate of warrant.

§ 671. Issuance of warrant; certificate of warrant. (a) The court may issue a warrant, directing that the respondent be arrested, brought before the court, when a petition is presented to the court under sections six hundred fourteen, six hundred fifty-one, six hundred fifty-four, six hundred fifty-five and six hundred fifty-six of this article or section three hundred eighty-four-b of the social services law and it appears that:

(i) the summons cannot be served; or

(ii) the respondent has failed to obey the summons; or

(iii) the respondent is likely to leave the jurisdiction; or

(iv) a summons, in the court's opinion, would be ineffectual; or

(v) the safety of the petitioner or child is endangered; or

(vi) a respondent on bail or on parole has failed to appear.

(b) The petitioner may not serve a warrant upon the respondent unless the court itself grants such permission upon the application of the petitioner. The clerk of the court may issue to the petitioner or to the representative of an incorporated charitable or philanthropic society having a legitimate interest in the family a certificate stating that a warrant for the respondent has been issued by the court. The presentation of such certificate by said petitioner or representative to any peace officer, acting pursuant to his special duties, or police officer authorizes him to arrest the respondent and take him to court.

(c) A certificate of warrant expires ninety days from the date of issue but may be renewed from time to time by the clerk of the court.

(d) Rules of court shall provide that a record of all unserved warrants be kept and that periodic reports concerning unserved warrants be made.

ARTICLE 7

PROCEEDINGS CONCERNING
WHETHER A PERSON IS IN NEED OF SUPERVISION

PART 1
JURISDICTION

§ 711. Purpose. The purpose of this article is to provide a due process of law (a) for considering a claim that a person is in need of supervision and (b) for devising an appropriate order of disposition for any person adjudged in need of supervision.

§ 712. Definitions. As used in this article, the following terms shall have the following meanings:

(a) "Person in need of supervision". A person less than eighteen years of age: (i) who does not attend school in accordance with the provisions of part one of article sixty-five of the education law; (ii) who is ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority; (iii) who violates the provisions of section

230.00 of the penal law; (iv) or who appears to be a sexually exploited child as defined in paragraph (a), (c) or (d) of subdivision one of section four hundred forty-seven-a of the social services law, but only if the child consents to the filing of a petition under this article.

(b) "Pre-dispositional placement". The temporary care and maintenance of children away from their own homes pursuant to section seven hundred twenty of this article.

(c) "Fact-finding hearing". A hearing to determine whether the respondent did the acts alleged to show that he or she violated a law or is ungovernable or habitually disobedient and beyond the control of his or her parents, guardian or legal custodian.

(d) "Dispositional hearing". A hearing to determine whether the respondent requires supervision or treatment.

(e) "Aggravated circumstances". Aggravated circumstances shall have the same meaning as the definition of such term in subdivision (j) of section one thousand twelve of this act.

(f) "Permanency hearing". A hearing held in accordance with paragraph (b) of subdivision two of section seven hundred fifty-four or section seven hundred fifty-six-a of this article for the purpose of reviewing the foster care status of the respondent and the appropriateness of the permanency plan developed by the social services official on behalf of such respondent.

(g) "Diversion services". Services provided to children and families pursuant to section seven hundred thirty-five of this article for the purpose of avoiding the need to file a petition or direct the pre-dispositional placement of the child. Diversion services shall include: efforts to adjust cases pursuant to this article before a petition is filed, or by order of the court, after the petition is filed but before fact-finding is commenced; and preventive services provided in accordance with section four hundred nine-a of the social services law to avert the placement of the child, including crisis intervention and respite services. Diversion services may also include, in cases where any person is seeking to file a petition that alleges that the child has a substance use disorder or is in need of immediate detoxification or substance use disorder services, an assessment for substance use disorder; provided, however, that notwithstanding any other provision of law to the contrary, the designated lead agency shall not be required to pay for all or any portion of the costs of such assessment or substance use disorder or detoxification services, except in cases where medical assistance for needy persons may be used to pay for all or any portion of the costs of such assessment or services.

(h) "Substance use disorder". The misuse of, dependence on, or addiction to alcohol and/or legal or illegal drugs leading to effects that are detrimental to the person's physical and mental health or the welfare of others.

(i) "Assessment for substance use disorder". Assessment by a provider that has been certified by the office of alcoholism and substance abuse services of a person less than eighteen years of age where it is alleged that the youth is suffering from a substance use disorder which could make a youth a danger to himself or herself or others.

(j) "A substance use disorder which could make a youth a danger to himself or herself or others". A substance use disorder that is accompanied by the dependence on, or the repeated use or abuse of, drugs or alcohol to the point of intoxication such that the person is in need of immediate detoxification or other substance use disorder services.

(k) "Substance use disorder services". Substance use disorder services shall have the same meaning as provided for in section 1.03 of the mental hygiene law.

§ 713. Jurisdiction. The family court has exclusive original jurisdiction over any proceeding involving a person alleged to be a person in need of supervision.

§ 714. Determination of age. (a) In determining the jurisdiction of the court under section seven hundred thirteen the age of the respondent at the time the need for supervision allegedly arose is controlling.

(b) If the respondent is within the jurisdiction of the court, but the proceedings were initiated after the respondent's eighteenth birthday, the family court shall dismiss a petition to determine whether a person is in need of supervision.

§ 716. Substitution of petition. On its own motion and at any time in the proceedings, the court may substitute a neglect petition under article ten for a petition to determine whether a person is in need of supervision.

§ 717. Venue. Proceedings under this article are originated in the county in which the act or acts referred to in the petition allegedly occurred. On motion made on behalf of the respondent or by his parent or other person legally responsible for his care or on the court's motion, and for good cause shown, the court may transfer the proceedings to another county.

§ 718. Return of run away. (a) A peace officer, acting pursuant to such peace officer's special duties, or a police officer may return to a parent or other person legally responsible for such child's care any child under the age of eighteen who has run away from home without just cause or who, in the reasonable conclusion of the officer, appears to have run away from home without just cause. For purposes of this action, a police officer or peace officer may reasonably conclude that a child has run away from home when the child refuses to give his or her name or the name and address of a parent or other person legally responsible for such child's care or when the officer has reason to doubt that the name or address given are the actual name and address of the parent or other person legally responsible for the child's care.

(b) A peace officer, acting pursuant to the peace officer's special duties, or a police officer is authorized to take a youth who has run away from home or who, in the reasonable opinion of the officer, appears to have run away from home, to a facility certified or approved for such purpose by the office of children and family services, if the peace officer or police officer is unable, or if it is unsafe, to return the youth to his or her home or to the custody of his or her parent or other person legally responsible for his or her care. Any such facility receiving a youth shall inform a parent or other person responsible for such youth's care.

(c) If a child placed pursuant to this article in the custody of a commissioner of social services or an authorized agency shall run away from the custody of such commissioner or authorized agency, any peace officer, acting pursuant to his special duties, or police officer may apprehend, restrain, and return such child to such location as such commissioner shall direct or to such authorized agency and it shall be the duty of any such officer to assist any representative of the commissioner or agency to take into custody any such child upon the request of such representative.

PART 2

CUSTODY

§ 720. Pre-dispositional placement. 1. No child to whom the provisions of this article may apply, shall be detained in any prison, jail, lockup, or other place used for adults or children convicted of crime or under arrest and charged with a crime.

2. The detention of a child in a secure detention or non-secure facility shall not be directed under any of the provisions of this article.

3. Pre-dispositional placement of a person alleged to be or adjudicated as a person in need of supervision shall be authorized only in a foster care program certified by the office of children and family services or a short-term safe house in accordance with section seven hundred thirty-nine of this article, or a certified or approved family boarding home pursuant to the social services law. The setting of the

placement shall take into account:

(a) The proximity to the community in which the person alleged to be or adjudicated as a person in need of supervision lives with such person's parents or to which such person will be discharged; and

(b) The existing educational setting of such person and the proximity of such setting to the location of the placement setting.

4. (a) The court shall not order or direct pre-dispositional placement under this article, (i) unless the court determines and states in its written order; (1) that there is no substantial likelihood that the youth and his or her family will continue to benefit from diversion services, including but not limited to, any available respite services; and (2) that all available alternatives to detention have been exhausted; and (3) that pre-dispositional placement of the respondent is in the best interest of the respondent; and (4) that it would be contrary to the welfare of the respondent to continue in their own home; or (ii) if the sole basis for the petition is an allegation pursuant to paragraph (i) of subdivision (a) of section seven hundred twelve of this article.

(b) Where the youth is sixteen years of age or older, the court shall not order or direct pre-dispositional placement under this article, unless the court determines and states in its order that special circumstances exist to warrant such placement.

(c) If in addition to the provisions of this section, the respondent may be a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, the court may direct the respondent to an available short-term safe house in accordance with section seven hundred thirty-nine of this article.

§ 723. Duties of private person before and after taking into custody. (a) Before taking into custody, a private person must inform the person to be taken into custody of the cause thereof and require him to submit.

(b) After taking into custody, a private person must take the person, without unnecessary delay, to his home, to a family court judge or deliver him to a peace officer, who is acting pursuant to his special duties, or a police officer.

§ 724. Duties of police officer or peace officer after taking into custody or on delivery by private person. (a) If a peace officer or a police officer takes into custody or if a person is delivered to him under section seven hundred twenty-three, the officer shall immediately notify the parent or other person legally responsible for his care, or the person with whom he is domiciled, that he has been taken into custody.

(b) After making every reasonable effort to give notice under paragraph (a), the officer shall

(i) release the youth to the custody of his or her parent or other person legally responsible for his or her care upon the written promise, without security, of the person to whose custody the youth is released that he or she will produce the youth before the lead agency designated pursuant to section seven hundred thirty-five of this article in that county at a time and place specified in writing; or

(ii) forthwith and with all reasonable speed take the youth directly, and without first being taken to the police station house, to the designated lead agency located in the county in which the act occasioning the taking into custody allegedly was done, unless the officer determines that it is necessary to question the youth, in which case he or she may take the youth to a facility designated by the chief administrator of the courts as a suitable place for the questioning of youth or, upon the consent of a parent or other person legally responsible for the care of the youth, to the youth's residence and there question him or her for a reasonable period of time; or

(iii) take a youth in need of crisis intervention or respite services to a runaway and homeless youth crisis services program or other approved respite or crisis program; or

(iv) take the youth directly to the family court located in the county in which the act occasioning the taking into custody was allegedly done, provided that the officer affirms on the record that he or she attempted to exercise the options identified in paragraphs (i), (ii) and (iii) of this subdivision, was unable to exercise these options, and the reasons therefor.

(c) In the absence of special circumstances, the officer shall release

the child in accord with paragraph (b) (i).
(d) In determining what is a "reasonable period of time" for questioning a child, the child's age and the presence or absence of his parents or other person legally responsible for his care shall be included among the relevant considerations.

§ 725. Summons or warrant on failure to appear. The family court before which a person failed to produce a child pursuant to a written promise given under section seven hundred twenty-four may issue a summons requiring the child and the person who failed to produce him to appear at the court at a time and place specified in the summons or may issue a warrant for either or both of them, directing that either or both be brought to the court at a time and place specified in the warrant.

§ 728. Discharge, release or pre-dispositional placement by judge after hearing and before filing of petition in custody cases. (a) If a child in custody is brought before a judge of the family court before a petition is filed, the judge shall hold a hearing for the purpose of making a preliminary determination of whether the court appears to have jurisdiction over the child. At the commencement of the hearing, the judge shall advise the child of his or her right to remain silent, his or her right to be represented by counsel of his or her own choosing, and of the right to have an attorney assigned in accord with part four of article two of this act. The judge must also allow the child a reasonable time to send for his or her parents or other person or persons legally responsible for his or her care, and for counsel, and adjourn the hearing for that purpose.
(b) After hearing, the judge shall order the release of the child to the custody of his parent or other person legally responsible for his care if the court does not appear to have jurisdiction.
(c) An order of release under this section may, but need not, be conditioned upon the giving of a recognizance in accord with sections seven hundred twenty-four (b) (i).
(d) Upon a finding of facts and reasons which support a

pre-dispositional placement order pursuant to this section, the court shall also determine and state in any order directing pre-dispositional placement:

(i) that there is no substantial likelihood that the youth and his or her family will continue to benefit from diversion services and that all available alternatives to such placement have been exhausted; and

(ii) whether continuation of the child in the child's home would be contrary to the best interests of the child based upon, and limited to, the facts and circumstances available to the court at the time of the hearing held in accordance with this section; and

(iii) where appropriate, whether reasonable efforts were made prior to the date of the court hearing that resulted in the detention order, to prevent or eliminate the need for removal of the child from his or her home or, if the child had been removed from his or her home prior to the court appearance pursuant to this section, where appropriate, whether reasonable efforts were made to make it possible for the child to safely return home; and

(iv) whether the setting of the pre-dispositional placement takes into account the proximity to the community in which the person alleged to be or adjudicated as a person in need of supervision lives with such person's parents or to which such person will be discharged, and the existing educational setting of such person and the proximity of such setting to the location of the detention setting.

PART 3

PRELIMINARY PROCEDURE

§ 732. Originating proceeding to adjudicate need for supervision. A proceeding to adjudicate a person to be in need of supervision is originated by the filing of a petition, alleging:

(a) (i) the respondent is an habitual truant or is ungovernable or habitually disobedient and beyond the lawful control of his or her parents, guardian or lawful custodian, or has been the victim of sexual exploitation as defined in subdivision one of section four hundred forty-seven-a of the social services law, and specifying the acts on which the allegations are based and the time and place they allegedly occurred. Where habitual truancy is alleged or the petitioner is a school district or local educational agency, the petition shall also include the steps taken by the responsible school district or local educational agency to improve the school attendance and/or conduct of the respondent;

(ii) the respondent was under eighteen years of age at the time of the specified acts;

(iii) the respondent requires supervision or treatment; and

(iv) the petitioner has complied with the provisions of section seven hundred thirty-five of this article; or

(b) the respondent appears to be a sexually exploited child as defined in paragraph (a), (c) or (d) of subdivision one of section four hundred forty-seven-a of the social services law but only if the child consents to the filing of a petition under this article.

§ 733. Persons who may originate proceedings. The following persons may originate a proceeding under this article:

(a) a peace officer, acting pursuant to his special duties, or a police officer;

(b) the parent or other person legally responsible for his care;

(c) any person who has suffered injury as a result of the alleged activity of a person alleged to be in need of supervision, or a witness to such activity;

(d) the recognized agents of any duly authorized agency, association, society or institution; or

(e) the presentment agency that consented to substitute a petition alleging the person is in need of supervision for a petition alleging, that the person is a juvenile delinquent pursuant to section 311.4.

§ 735. Preliminary procedure; diversion services. (a) Each county and any city having a population of one million or more shall offer diversion services as defined in section seven hundred twelve of this article to youth who are at risk of being the subject of a person in need of supervision petition. Such services shall be designed to provide an immediate response to families in crisis, to identify and utilize appropriate alternatives to placement and to divert youth from being the subject of a petition in family court. Each county and such city shall designate either the local social services district or the probation department as lead agency for the purposes of providing diversion services.

(b) The designated lead agency shall:

(i) confer with any person seeking to file a petition, the youth who may be a potential respondent, his or her family, and other interested persons, concerning the provision of diversion services before any petition may be filed; and

(ii) diligently attempt to prevent the filing of a petition under this article or, after the petition is filed, to prevent the placement of the youth into foster care; and

(iii) assess whether the youth would benefit from residential respite services; and

(iv) assess whether the youth is a sexually exploited child as defined in section four hundred forty-seven-a of the social services law and, if so, whether such youth should be referred to a safe house in accordance with section seven hundred thirty-nine of this part; and

(v) determine whether alternatives to placement or services provided pursuant to this section are appropriate to avoid remand of the youth to such placement; and

(vi) determine whether an assessment of the youth for substance use disorder by an office of alcoholism and substance abuse services certified provider is necessary when a person seeking to file a petition alleges in such petition that the youth is suffering from a substance use disorder which could make the youth a danger to himself or herself or others. Provided, however, that notwithstanding any other provision of law to the contrary, the designated lead agency shall not be required to pay for all or any portion of the costs of such assessment or for any substance use disorder or detoxification services, except in cases where medical assistance for needy persons may be used to pay for all or any portion of the costs of such assessment or services. The office of alcoholism and substance abuse services shall make a list of its certified providers available to the designated lead agency.

(c) Any person or agency seeking to file a petition pursuant to this article which does not have attached thereto the documentation required by subdivision (g) of this section shall be referred by the clerk of the court to the designated lead agency which shall schedule and hold, on reasonable notice to the potential petitioner, the youth and his or her parent or other person legally responsible for his or her care, at least one conference in order to determine the factual circumstances and determine whether the youth and his or her family should receive diversion services pursuant to this section. Diversion services shall include clearly documented diligent attempts to provide appropriate services to the youth and his or her family unless it is determined that there is no substantial likelihood that the youth and his or her family will benefit from further diversion attempts. Notwithstanding the provisions of section two hundred sixteen-c of this act, the clerk shall not accept for filing under this part any petition that does not have attached thereto the documentation required by subdivision (g) of this section.

(d) Diversion services shall include documented diligent attempts to engage the youth and his or her family in appropriately targeted community-based services, but shall not be limited to:

(i) providing, at the first contact, information on the availability of or a referral to services in the geographic area where the youth and his or her family are located that may be of benefit in avoiding the need to file a petition under this article; including the availability, for up to twenty-one days, of a residential respite program, if the youth and his or her parent or other person legally responsible for his or her care agree, and the availability of other non-residential crisis intervention programs such as family crisis counseling or alternative dispute resolution programs or an educational program as defined in section four hundred fifty-eight-l of the social services law.

(ii) scheduling and holding at least one conference with the youth and his or her family and the person or representatives of the entity seeking to file a petition under this article concerning alternatives to filing a petition and services that are available. Diversion services shall include clearly documented diligent attempts to provide appropriate services to the youth and his or her family before it may be determined that there is no substantial likelihood that the youth and his or her family will benefit from further attempts.

(iii) where the entity seeking to file a petition is a school district or local educational agency or where the parent or other potential petitioner indicates that the proposed petition will include truancy and/or conduct in school as an allegation, the designated lead agency shall review the steps taken by the school district or local educational agency to improve the youth's attendance and/or conduct in school and attempt to engage the school district or local educational agency in further diversion attempts, if it appears from review that such attempts will be beneficial to the youth. Where the school district or local educational agency is not the potential petitioner, the designated lead agency shall contact such district or agency to resolve the truancy or school behavioral problems of the youth in order to obviate the need to file a petition or, at minimum, to remediate the education-related allegations of the proposed petition.

(e) The designated lead agency shall maintain a written record with respect to each youth and his or her family for whom it considers providing or provides diversion services pursuant to this section. The record shall be made available to the court at or prior to the initial appearance of the youth in any proceeding initiated pursuant to this article.

(f) Efforts to prevent the filing of a petition pursuant to this section may extend until the designated lead agency determines that there is no substantial likelihood that the youth and his or her family will benefit from further attempts. Efforts at diversion pursuant to this section may continue after the filing of a petition where the designated lead agency determines that the youth and his or her family will benefit from further attempts to prevent the youth from entering foster care.

(g) (i) The designated lead agency shall promptly give written notice to the potential petitioner whenever attempts to prevent the filing of a petition have terminated, and shall indicate in such notice whether efforts were successful. The notice shall also detail the diligent attempts made to divert the case if a determination has been made that there is no substantial likelihood that the youth will benefit from further attempts. No persons in need of supervision petition may be filed pursuant to this article during the period the designated lead agency is providing diversion services. A finding by the designated lead agency that the case has been successfully diverted shall constitute presumptive evidence that the underlying allegations have been successfully resolved in any petition based upon the same factual allegations. No petition may be filed pursuant to this article by the parent or other person legally responsible for the youth where diversion services have been terminated because of the failure of the parent or other person legally responsible for the youth to consent to or actively participate.

(ii) The clerk of the court shall accept a petition for filing only if it has attached thereto the following:

(A) if the potential petitioner is the parent or other person legally responsible for the youth, a notice from the designated lead agency indicating there is no bar to the filing of the petition as the potential petitioner consented to and actively participated in diversion services; and

(B) a notice from the designated lead agency stating that it has terminated diversion services because it has determined that there is no substantial likelihood that the youth and his or her family will benefit from further attempts, and that the case has not been successfully diverted; and

(C) where the proposed petition contains allegations of truancy and/or school misbehavior, whether or not the school district or local educational agency is the proposed petitioner, a notice from the designated lead agency regarding the diversion efforts undertaken and/or services provided by the designated lead agency and/or by the school district or local educational agency to the youth and the grounds for concluding that the education-related allegations could not be resolved absent the filing of a petition under this article.

(h) No statement made to the designated lead agency or to any agency or organization to which the potential respondent has been referred, prior to the filing of the petition, or if the petition has been filed, prior to the time the respondent has been notified that attempts at diversion will not be made or have been terminated, or prior to the commencement of a fact-finding hearing if attempts at diversion have not terminated previously, may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.

§ 736. Issuance of summons. (1) On the filing of a petition under this article, the court may cause a copy of the petition and a summons to be issued, requiring the respondent and his parent or other person legally responsible for his care, or with whom he is domiciled, to appear at the court at a time and place named to answer the petition. The summons shall be signed by the court or by the clerk or deputy clerk of the court. If those on whom a summons must be served are before the court at the time of the filing of a petition, the provisions of part four of this article shall be followed.

(2) In proceedings originated pursuant to subdivision (b) of section seven hundred thirty-three of this article, the court shall cause a copy of the petition and notice of the time and place to be heard to be served upon any parent of the respondent or other person legally responsible for the respondent's care who has not signed the petition, provided that the address of such parent or other person legally responsible is known to the court or is ascertainable by the court. Such petition shall include a notice that, upon placement of the child in the care and custody of the department of social services or any other agency, said parent may be named as a respondent in a child support proceeding brought pursuant to article four of this act. Service shall be made by the clerk of the court by mailing such notice and petition by ordinary first class mail to such parent or other person legally responsible at such person's last known residence.

(3) In proceedings originated pursuant to subdivision (a), (c), (d) or (e) of section seven hundred thirty-three of this article, the court

shall cause a copy of the petition and notice of the time and place to be heard to be served upon each parent of the respondent or other person legally responsible for the respondent's care, provided that the address of such parent or other person legally responsible is known to the court or is ascertainable by the court. Service shall be made by the clerk of the court by mailing such notice and petition by ordinary first class mail to such parent or other person legally responsible at such person's last known residence.

(4) Where the petition contains allegations of truancy and/or school misbehavior and where the school district or local educational agency is not the petitioner and where, at any stage of the proceeding, the court determines that assistance by the school district or local educational agency may aid in the resolution of the education-related allegations in the petition, the school district or local educational agency may be notified by the court and given an opportunity to be heard.

§ 737. Service of summons. (a) Service of a summons and petition shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance. If so requested by one acting on behalf of the respondent or by a parent or other person legally responsible for his care, the court shall not proceed with the hearing or proceeding earlier than three days after such service.

(b) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in civil process in courts of record.

§ 738. Issuance of warrant for respondent or other person legally responsible for care. The court may issue a warrant, directing that the respondent or other person legally responsible for his care or with whom he is domiciled be brought before the court, when a petition is filed with the court under this article and it appears that

(a) the summons cannot be served; or

(b) the respondent or other person has refused to obey the summons; or

(c) the respondent or other person is likely to leave the jurisdiction; or

(d) a summons, in the court's opinion, would be ineffectual; or

(e) a respondent on bail or on parole has failed to appear.

A warrant issued for a respondent under this section shall expire at the end of six months from the date of its issuance, unless extended for an additional period of not more than six months upon application by the petitioner for good cause shown.

§ 739. Release, pre-dispositional placement or referral after filing of petition and prior to order of disposition. (a) After the filing of a petition under section seven hundred thirty-two of this part, the court in its discretion may release the respondent or direct his or her pre-dispositional placement. If the respondent may be a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, the court may direct the respondent to an available short-term safe house as an alternative to placement. However, the court shall not direct pre-dispositional placement unless it finds and states the facts and reasons for so finding that unless the respondent is placed there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to such placement have been exhausted.

(b) Unless the respondent waives a determination that probable cause exists to believe that he is a person in need of supervision, no pre-dispositional placement under this section may last more than three days (i) unless the court finds, pursuant to the evidentiary standards applicable to a hearing on a felony complaint in a criminal court, that such probable cause exists, or (ii) unless special circumstances exist, in which cases such detention may be extended not more than an additional three days exclusive of Saturdays, Sundays and public holidays.

(c) Upon a finding of facts and reasons which support a detention order pursuant to subdivision (a) of this section, the court shall also determine and state in any order directing detention:

(i) whether continuation of the respondent in the respondent's home would be contrary to the best interests of the respondent based upon, and limited to, the facts and circumstance available to the court at the time of the court's determination in accordance with this section; and

(ii) where appropriate, whether reasonable efforts were made prior to the date of the court order directing pre-dispositional placement in accordance with this section, to prevent or eliminate the need for removal of the respondent from his or her home or, if the respondent had been removed from his or her home prior to the court appearance pursuant to this section, where appropriate, whether reasonable efforts were made to make it possible for the respondent to safely return home.

§ 740. Temporary order of protection. (a) Upon the filing of a petition under this article, the court for good cause shown may issue a temporary order of protection which may contain any of the provisions authorized on the making of an order of protection under section seven hundred fifty-nine.

(b) A temporary order of protection is not a finding of wrongdoing.

(c) The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant directing that the respondent be arrested and brought before the court pursuant to section seven hundred thirty-eight of this part.

PART 4

HEARINGS

§ 741. Notice of rights; general provision. (a) At the initial appearance of a respondent in a proceeding and at the commencement of any hearing under this article, the respondent and his or her parent or other person legally responsible for his or her care shall be advised of the respondent's right to remain silent and of the respondent's right to be represented by counsel chosen by him or her or his or her parent or other person legally responsible for his or her care, or by an attorney assigned by the court under part four of article two. Provided, however, that in the event of the failure of the respondent's parent or other person legally responsible for his or her care to appear, after reasonable and substantial effort has been made to notify such parent or responsible person of the commencement of the proceeding and such initial appearance, the court shall appoint an attorney for the respondent and shall, unless inappropriate also appoint a guardian ad litem for such respondent, and in such event, shall inform the respondent of such rights in the presence of such attorney and any guardian ad litem.

(b) The general public may be excluded from any hearing under this article and only such persons and the representatives of authorized agencies admitted thereto as have a direct interest in the case.

(c) At any hearing under this article, the court shall not be prevented from proceeding by the absence of the respondent's parent or other person responsible for his or her care if reasonable and substantial effort has been made to notify such parent or responsible person of the occurrence of the hearing and if the respondent and his or her attorney are present. The court shall, unless inappropriate, also appoint a guardian ad litem who shall be present at such hearing and any subsequent hearing.

§ 741-a. Notice and right to be heard. The foster parent caring for the child or any pre-adoptive parent or relative providing care for the respondent shall be provided with notice of any permanency hearing held pursuant to this article by the social services official. Such foster parent, pre-adoptive parent or relative shall have the right to be heard at any such hearing; provided, however, no such foster parent, pre-adoptive parent or relative shall be construed to be a party to the hearing solely on the basis of such notice and right to be heard. The failure of the foster parent, pre-adoptive parent, or relative caring for the child to appear at a permanency hearing shall constitute a waiver of the right to be heard and such failure to appear shall not cause a delay of the permanency hearing nor shall such failure to appear be a ground for the invalidation of any order issued by the court pursuant to this section.

§ 742. Diversion attempts. (a) Whenever a petition is filed pursuant to this article, the lead agency designated pursuant to section seven hundred thirty-five of this article shall file a written report with the court indicating any previous actions it has taken with respect to the case.

(b) At the initial appearance of the respondent, the court shall review any termination of diversion services pursuant to such section, and the documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided are sufficient. The court may, at any time, subject to the provisions of section seven hundred forty-eight of this article, order that additional diversion attempts be undertaken by the designated lead agency. The court may order the youth and the parent or other person legally responsible for the youth to participate in diversion services. If the designated lead agency thereafter determines that a case referred for diversion efforts under this section has been successfully resolved, it shall so notify the court, and the court shall dismiss the petition.

§ 743. Acceptance of an admission. (a) Before accepting an admission, the court shall advise the respondent of his or her right to a fact-finding hearing. The court shall also ascertain through allocution of the respondent and his or her parent or person legally responsible for his or her care, if present, that the respondent:

(i) committed the act or acts to which an admission is being entered;

(ii) is voluntarily waiving his or her right to a fact-finding hearing; and

(iii) is aware of the possible specific dispositional orders.

The provisions of this subdivision shall not be waived.

(b) Upon acceptance of an admission, the court shall state the reasons for its determination and shall enter a fact-finding order. The court shall schedule a dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this part.

§ 744. Evidence in fact-finding hearings; required quantum. (a) Only evidence that is competent, material and relevant may be admitted in a fact-finding hearing.

(b) Any determination at the conclusion of a fact-finding hearing that a respondent did an act or acts must be based on proof beyond a reasonable doubt. For this purpose, an uncorroborated confession made out of court by a respondent is not sufficient.

§ 745. Evidence in dispositional hearings; required quantum of proof. (a) Only evidence that is material and relevant may be admitted during a dispositional hearing.

(b) An adjudication at the conclusion of a dispositional hearing must be based on a preponderance of the evidence.

§ 746. Sequence of hearings. Upon completion of the fact-finding hearing the dispositional hearing may commence immediately after the required findings are made.

§ 747. Time of fact-finding hearing. A fact-finding hearing shall commence not more than three days after the filing of a petition under this article if the respondent is in pre-dispositional placement.

§ 748. Adjournment of fact-finding hearing. (a) If the respondent is in pre-dispositional placement, the court may adjourn a fact-finding hearing

(i) on its own motion or on motion of the petitioner for good cause shown for not more than three days;

(ii) on motion on behalf of the respondent or by his or her parent or other person legally responsible for his or her care for good cause shown, for a reasonable period of time.

(b) Successive motions to adjourn a fact-finding hearing may be granted only under special circumstances.

(c) The court shall state on the record the reason for any adjournment of the fact-finding hearing.

§ 749. Adjournment after fact-finding hearing or during dispositional hearing. (a) (i) Upon or after a fact-finding hearing, the court may, upon its own motion or upon a motion of a party to the proceeding, order that the proceeding be "adjourned in contemplation of dismissal". An adjournment in contemplation of dismissal is an adjournment of the proceeding, for a period not to exceed six months with a view to ultimate dismissal of the petition in furtherance of justice. Upon issuing such an order, upon such permissible terms and conditions as the rules of court shall define, the court must release the individual.

(ii) The court may, as a condition of an adjournment in contemplation of dismissal order: (A) in cases where the record indicates that the consumption of alcohol may have been a contributing factor, require the respondent to attend and complete an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law; or (B) in cases where the record indicates that cyberbullying or sexting was the basis of the petition, require an eligible person to complete an education reform program in accordance with section four hundred fifty-eight-l of the social services law.

(iii) Upon application of the petitioner, or upon the court's own motion, made at any time during the duration of the order, the court may restore the matter to the calendar. If the proceeding is not so restored, the petition is at the expiration of the order, deemed to have been dismissed by the court in furtherance of justice.

(b) On its own motion, the court may adjourn the proceedings on conclusion of a fact-finding hearing or during a dispositional hearing to enable it to make inquiry into the surroundings, conditions and capacities of the respondent. An adjournment on the court's motion may not be for a period of more than ten days if the respondent is in pre-dispositional placement, in which case not more than a total of two such adjournments may be granted in the absence of special circumstances. If the respondent is not in pre-dispostional placement, an adjournment may be for a reasonable time, but the total number of adjourned days may not exceed two months.

(c) On motion on behalf of the respondent or by his parent or other person legally responsible for his care, the court may adjourn the proceedings on conclusion of a fact finding hearing or during a dispositional hearing for a reasonable period of time.

§ 750. Probation reports; probation investigation and diagnostic assessment. 1. All reports or memoranda prepared or obtained by the probation service shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided in section seven hundred thirty-five of this article, such reports or memoranda shall not be furnished to the court prior to the completion of the fact-finding hearing and the making of the required findings.

2. After the completion of the fact-finding hearing and the making of the required findings and prior to the dispositional hearing, the reports or memoranda prepared or obtained by the probation service and furnished to the court shall be made available by the court for examination and copying by the child's counsel or by the respondent if he or she is not represented by counsel. All diagnostic assessments and probation investigation reports shall be submitted to the court at least five court days prior to the commencement of the dispositional hearing. In its discretion the court may except from disclosure a part or parts of the reports or memoranda which are not relevant to a proper

disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. In all cases where a part or parts of the reports or memoranda are not disclosed, the court shall state for the record that a part or parts of the reports or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review on any appeal from the order of disposition. If such reports or memoranda are made available to the respondent or his or her counsel, they shall also be made available to the counsel presenting the petition pursuant to section two hundred fifty-four and, in the court's discretion, to any other attorney representing the petitioner.

PART 5

ORDERS

§ 751. Order dismissing petition. If the allegations of a petition under this article are not established, the court shall dismiss the petition. The court may in its discretion dismiss a petition under this article, in the interests of justice where attempts have been made to adjust the case as provided for in sections seven hundred thirty-five and seven hundred forty-two of this article and the probation service has exhausted its efforts to successfully adjust such case as a result of the petition's failure to provide reasonable assistance to the probation service.

§ 752. Findings. If the allegations of a petition under this article are established in accord with part three, the court shall enter an order finding that the respondent is a person in need of supervision. The order shall state the grounds for the finding and the facts upon which it is based.

§ 754. Disposition on adjudication of person in need of supervision. 1. Upon an adjudication of person in need of supervision, the court shall enter an order of disposition:

(a) Discharging the respondent with warning;

(b) Suspending judgment in accord with section seven hundred fifty-five;

(c) Continuing the proceeding and placing the respondent in accord with section seven hundred fifty-six; provided, however, that the court shall not place the respondent in accord with section seven hundred fifty-six where the respondent is sixteen years of age or older, unless the court determines and states in its order that special circumstances exist to warrant such placement; or

(d) Putting the respondent on probation in accord with section seven hundred fifty-seven.

The court may order an eligible person to complete an education reform program in accordance with section four hundred fifty-eight-l of the social services law, as part of a disposition pursuant to paragraph (a), (b) or (d) of this subdivision.

2. (a) The order shall state the court's reasons for the particular disposition. If the court places the child in accordance with section seven hundred fifty-six of this part, the court in its order shall determine: (i) whether continuation in the child's home would be contrary to the best interest of the child and where appropriate, that

reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his or her home and, if the child was removed from his or her home prior to the date of such hearing, that such removal was in the child's best interest and, where appropriate, reasonable efforts were made to make it possible for the child to return safely home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding; and (ii) in the case of a child who has attained the age of fourteen, the services needed, if any, to assist the child to make the transition from foster care to independent living. Nothing in this subdivision shall be construed to modify the standards for directing pre-dispositional placement set forth in section seven hundred thirty-nine of this article.

(b) For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where the court determines that:

(i) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision (g) of section seven hundred twelve of this article;

(ii) the parent of such child has been convicted of (A) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (B) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(iii) the parent of such child has been convicted of an attempt to commit any of the crimes set forth in subparagraphs (i) and (ii) of this paragraph, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(iv) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(v) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph (ii), (iii) or (iv) of this paragraph, and the victim of such offense was the child or another child of the parent; or

(vi) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether and when the child: (A) will be returned to the parent; (B) should be placed for adoption with the social services official filing a petition for termination of parental rights; (C) should be referred for legal guardianship; (D) should be placed permanently with a fit and willing relative; or (E) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and if the requirements of subparagraph (E) of paragraph (iv) of subdivision (d) of section seven hundred fifty-six-a of this part have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

(c) For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(d) For the purpose of this section, a sibling shall include a half-sibling.

§ 755. Suspended judgment. (a) Rules of court shall define permissible terms and conditions of a suspended judgment. The court may order as a condition of a suspended judgment restitution or services for public good pursuant to section seven hundred fifty-eight-a, and, except when the respondent has been assigned to a facility in accordance with subdivision four of section five hundred four of the executive law, in cases wherein the record indicates that the consumption of alcohol by the respondent may have been a contributing factor, the court may order attendance at and completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law.

(b) The maximum duration of any term or condition of a suspended judgment is one year, unless the court finds at the conclusion of that period that exceptional circumstances require an additional period of one year.

§ 756. Placement. (a) For purposes of section seven hundred fifty-four, the court may: (i) place the child in its own home; (ii) order the child be placed in the custody of a suitable relative or other suitable private person; or (iii) order the child be placed in the custody of a commissioner of social services.

(b) Where the child is placed with the commissioner of the local social services district: (i) (A) the child may be placed by the social services district into a foster boarding home; or (B) if the court finds that the respondent is a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, an available long-term safe house; or (ii) the court may direct the commissioner to: place the child with an authorized agency or class of authorized agencies.

(c) Provided, however, that a placement shall not be ordered pursuant to paragraph (iii) of subdivision (a) of this section:

(i) In instances where the only finding made against the respondent is that they meet the definition of a person in need of supervision pursuant to paragraph (i) of subdivision (a) of section seven hundred twelve of this article; or

(ii) Unless the court finds and states in its written order that the placement of the respondent is:

(1) in the best interest of the respondent; and

(2) that it would be contrary to the welfare of the respondent to continue in their own home.

(d) Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the child:

(i) the commissioner shall apply to the court for an order to stay, modify, set aside, or vacate such directive pursuant to the provisions of section seven hundred sixty-two or seven hundred sixty-three; or

(ii) the commissioner shall return the child to the family court for a new dispositional hearing and order.

(e) Placements under paragraph (iii) of subdivision (a) of this section may be for an initial period of no greater than sixty days. The court may extend a placement pursuant to section seven hundred fifty-six-a. In its discretion, the court may recommend restitution or require services for public good pursuant to section seven hundred fifty-eight-a in conjunction with an order of placement.

§ 756-a. Extension of placement. (a) In any case in which the child has been placed pursuant to paragraph (iii) of paragraph (a) of section seven hundred fifty-six of this part, the child, the person with whom the child has been placed or the commissioner of social services may petition the court to extend such placement, as provided for in this section. Such petition shall be filed at least fifteen days prior to the expiration of the initial placement and at least thirty days prior to the expiration of the period of any additional placement authorized pursuant to this section, except for good cause shown, but in no event shall such petition be filed after the original expiration date.

(b) The court shall conduct a permanency hearing concerning the need for continuing the placement. The child, the person with whom the child has been placed and the commissioner of social services shall be notified of such hearing and shall have the right to be heard thereat.

(c) The provisions of section seven hundred forty-five shall apply at such permanency hearing. If the petition is filed within thirty days prior to the expiration of the period of placement, the court shall first determine at such permanency hearing whether good cause has been shown. If good cause is not shown, the court shall dismiss the petition.

(d) (i) At the conclusion of the first permanency hearing the court may, in its discretion, order one extension of the placement for not more than six months;

(ii) At the conclusion of the second permanency hearing, the court may, in its discretion, order one extension of placement for not more than four months unless:

(A) The attorney for the child, at the request of the child, seeks an additional length of stay for the child in such program. If a request is made pursuant to this subparagraph, the court shall determine whether to grant such request based on the best interest of the child; or

(B) The court finds that extenuating circumstances exists that necessitate the child be placed out of the home.

(d-1) If the court orders an extension of placement pursuant to paragraph (d) of this section, the court must consider and determine in its order:

(i) where appropriate, that reasonable efforts were made to make it possible for the child to safely return to his or her home, or if the permanency plan for the child is adoption, guardianship or some other permanent living arrangement other than reunification with the parent or parents of the child, reasonable efforts are being made to make and finalize such alternate permanent placement including consideration of appropriate in-state and out-of-state placements;

(ii) in the case of a child who has attained the age of fourteen, (A) the services needed, if any, to assist the child to make the transition from foster care to successful adulthood; and (B)(1) that the permanency plan developed for the child, and any revision or addition to the plan shall be developed in consultation with the child and, at the option of the child, with up to two additional members of the child's permanency planning team who are selected by the child and who are not a foster parent of, or case worker, case planner or case manager for, the child, except that the local commissioner of social services with custody of the child may reject an individual so selected by the child if such commissioner has good cause to believe that the individual would not act in the best interests of the child, and (2) that one individual so selected by the child may be designated to be the child's advisor and, as necessary, advocate with respect to the application of the reasonable and prudent parent standard;

(iii) in the case of a child placed outside New York state, whether the out-of-state placement continues to be appropriate and in the best interests of the child;

(iv) whether and when the child: (A) will be returned to the parent; (B) should be placed for adoption with the social services official filing a petition for termination of parental rights; (C) should be referred for legal guardianship; (D) should be placed permanently with a fit and willing relative; or (E) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and (1) the social services official has documented to the court: (I) intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the social services district to return the child home or secure a placement for the child with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (II) the steps the social services district is taking to ensure that (A) the child's foster family home or child care facility is following the reasonable and prudent parent standard in accordance with guidance provided by the United States department of health and human services, and (B) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in activities; and (2) the social services district has documented to the court and the court has determined that there are compelling reasons for determining that it continues to not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian; and (3) the court has made a determination explaining why, as of the date of the hearing, another planned living arrangement with a significant connection to an adult willing to be a permanency resource for the child is the best permanency plan for the child; and

(v) where the child will not be returned home, consideration of appropriate in-state and out-of-state placements.

(e) At the permanency hearing, the court shall consult with the respondent in an age-appropriate manner regarding the permanency plan; provided, however, that if the respondent is age sixteen or older and the requested permanency plan for the respondent is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent, the court must ask the respondent about the desired permanency outcome for the respondent.

(f) Pending final determination of a petition to extend such placement filed in accordance with the provisions of this section, the court may, on its own motion or at the request of the petitioner or respondent, enter one or more temporary orders extending a period of placement. The court may order additional temporary extensions only as authorized in this section.

(g) Successive extensions of placement under this section may be granted, only as authorized in this section, provided, however no placement may be made or continued beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday.

(h) Where the respondent remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, the commissioner of the local social services district with legal custody of the respondent shall submit evidence at the permanency hearing with respect to the respondent:

(i) demonstrating that ongoing assessment of the strengths and needs of the respondent continues to support the determination that the needs of the respondent cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals of the respondent, as specified in the respondent's permanency plan;

(ii) documenting the specific treatment or service needs that will be met for the respondent in the placement and the length of time the respondent is expected to need the treatment or services; and

(iii) documenting the efforts made by the local social services district with legal custody of the respondent to prepare the respondent to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.

(i) A youth who was formerly a respondent pursuant to this article shall be eligible to file a motion pursuant to article ten-B of this act and may be subsequently placed into foster care, in a supervised setting as defined in subdivision twenty-two of section three hundred seventy-one of the social services law or placement in a foster family home, which shall include a kinship placement or a placement with fictive kin.

(j) Where placement will end prior to a subsequent permanency hearing due to the respondent's age and/or failure to consent to continuation of placement, court orders made pursuant to this section shall be enforceable against the social services district and/or social services official, as defined in section two of the social services law, with whom such respondent was placed after such respondent was discharged from care.

(i) The court shall maintain jurisdiction over a case for purposes of hearing a motion for contempt against the agency with whom the respondent was placed pursuant to section seven hundred fifty-three of the judiciary law. Such a motion may be brought by such respondent who was formerly placed pursuant to section seven hundred fifty-six of this part or this section. In addition to any other defense, it shall be an affirmative defense to a motion filed in accordance with this paragraph that compliance with the court order was not possible due solely to the youth's refusal to consent to continuation of foster care placement where such refusal is documented in a signed, notarized letter executed by the youth after consultation with their attorney for the child.

(ii) The court shall maintain jurisdiction over a motion described in paragraph (i) of this subdivision if such motion is filed before the respondent attains the age of twenty-three. The court's jurisdiction over any such motion shall continue until such motion and any related appeals are finally resolved.

(iii) If the respondent is eligible to return to foster care pursuant to the provisions of article ten-B of this act, upon the consent of the respondent, the court may convert a motion brought under this subdivision to a motion to return the respondent to foster care.

§ 756-b. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a respondent is placed on or after September twenty-ninth, two thousand twenty-one and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district in accordance with this part.

2. (a) When a respondent is in the care and custody of a local social services district pursuant to this part, such social services district shall report any anticipated placement of the respondent into a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, to the court and the attorneys for the parties, including the attorney for the respondent, forthwith, but not later than one business day following either the decision to place the respondent in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services

district shall subsequently notify the court and the attorneys for the parties, including the attorney for the respondent, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change.

(b) When a respondent whose legal custody was transferred to a local social services district in accordance with this part resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such respondent's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the respondent in the qualified residential treatment program commenced.

3. (a) Within sixty days of the start of a placement of a respondent referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(i) Consider the assessment, determination and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(ii) Determine whether the needs of the respondent can be met through placement in a foster family home and, if not, whether placement of the respondent in a qualified residential treatment program provides the most effective and appropriate level of care for the respondent in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the respondent as specified in the respondent's permanency plan; and

(iii) Approve or disapprove the placement of the respondent in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the respondent in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the respondent in the qualified residential treatment program if:

(A) the court finds, and states in the written order that:

(1) circumstances exist that necessitate the continued placement of the respondent in the qualified residential treatment program;

(2) there is not an alternative setting available that can meet the respondent's needs in a less restrictive environment; and

(3) that it would be contrary to the welfare of the respondent to be placed in a less restrictive setting and that continued placement in the qualified residential treatment program is in the respondent's best interest; and

(B) the court's written order states the specific reasons why the court has made the findings required pursuant to clause (A) of this subparagraph.

(iv) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

(b) At the conclusion of the review, if the court disapproves placement of the respondent in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the respondent and direct the local social services district to make such other arrangements for the respondent's care and welfare that is in the best interest of the respondent and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

4. The court may, on its own motion, or the motion of any of the parties or the attorney for the respondent, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to clause (A) of subparagraph (iii) of paragraph (a) of subdivision three of this

section and provide such written order to the parties and the attorney for the respondent expeditiously, but no later than five days.

5. Documentation of the court's determination pursuant to this section shall be recorded in the respondent's case record.

6. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such respondent, including but not limited to the respondent's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 757. Probation. (a) Rules of court shall define permissible terms and conditions of probation.

(b) The maximum period of probation shall not exceed one year. If the court finds at the conclusion of the original period that exceptional circumstances require an additional year of probation, the court may continue probation for an additional year.

(c) The court may order as a condition of probation restitution or services for public good pursuant to section seven hundred fifty-eight-a.

(d) In cases wherein the record indicates that the consumption of alcohol by the respondent may have been a contributing factor, the court may order as a condition of probation attendance at and completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law.

§ 758-a. Restitution. 1. In cases involving acts of children over twelve and less than eighteen years of age, the court may

(a) recommend as a condition of placement, or order as a condition of probation or suspended judgment, restitution in an amount representing a fair and reasonable cost to replace the property or repair the damage caused by the child, not, however, to exceed one thousand dollars. The court may require that the child pay out of his or her own funds or earnings the amount of replacement or damage, either in a lump sum or in periodic payments in amounts set by the court; and/or

(b) order as a condition of placement, probation, or suspended judgment, services for the public good including in the case of a crime involving willful, malicious, or unlawful damage or destruction to real or personal property maintained as a cemetery plot, grave, burial place, or other place of interment of human remains, services for the maintenance and repair thereof, taking into consideration the age and physical condition of the child.

2. If the court recommends restitution or requires services for the public good in conjunction with an order of placement pursuant to section seven hundred fifty-six, the placement shall be made only to an authorized agency which has adopted rules and regulations for the supervision of such a program, which rules and regulations shall be subject to the approval of the state department of social services. Such rules and regulations shall include, but not be limited to provisions (i) assuring that the conditions of work, including wages, meet the standards therefor prescribed pursuant to the labor law; (ii) affording coverage to the child under the workers' compensation law as an employee of such agency, department or institution; (iii) assuring that the entity receiving such services shall not utilize the same to replace its regular employees; and (iv) providing for reports to the court not less frequently than every six months, unless the order provides otherwise.

3. If the court requires restitution or services for the public good as a condition of probation or suspended judgment, it shall provide that an agency or person supervise the restitution or services and that such agency or person report to the court not less frequently than every six months, unless the order provides otherwise. Upon the written notice sent by a school district to the court and the appropriate probation department or agency which submits probation recommendations or reports to the court, the court may provide that such school district shall supervise the performance of services for the public good.

4. The court, upon receipt of the reports provided for in subdivision two of this section may, on its own motion or the motion of any party or

the agency, hold a hearing to determine whether the placement should be altered or modified.

§ 759. Order of protection. The court may make an order of protection in assistance or as a condition of any order issued under this article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent or other person legally responsible for the child's care or the spouse of the parent or other person legally responsible for the child's care, or respondent or both. Such an order may require any such person

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent or the child, 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 eight hundred twelve of this act, 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;

(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 this proceeding or in any other proceeding or action under this act or the domestic relations law;

(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 participate in family counseling or other professional counseling activities, or other services, including alternative dispute resolution services conducted by an authorized person or an authorized agency to which the youth has been referred or placed, deemed necessary for the rehabilitation of the youth, provided that such family counseling, other counseling activity or other necessary services are not contrary to such person's religious beliefs;

(g) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(h) 1. 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.

2. "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;

(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 subdivision, "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.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his religious faith shall be preserved and protected.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

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.

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.

§ 760. Duties of counsel. 1. If the court has entered a dispositional order pursuant to section seven hundred fifty-four, it shall be the duty of the respondent's counsel to promptly advise such respondent and if his or her parent or other person responsible for his or her care is not the petitioner, such parent or other person responsible for his or her care, in writing of the right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if he or she is unable to pay the cost of an appeal. It shall be the further duty of such counsel to explain to the respondent and if his or her parent or other person responsible for his or her care is not the petitioner, such parent or person responsible for his or her care, the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It shall also be the duty of such counsel to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal.

3. If the respondent has been permitted to waive the appointment of counsel pursuant to section two hundred forty-nine-a, it shall be the duty of the court to provide the notice and explanation pursuant to subdivision one and, if the respondent indicates that he or she wishes

to appeal, the clerk of the court shall file and serve the notice of appeal.

PART 6

NEW HEARING AND RECONSIDERATION OF ORDERS

§ 761. New hearing. On its own motion or on motion of any interested person acting on behalf of the respondent, the court may for good cause grant a new fact-finding or dispositional hearing under this article.

§ 762. Staying, modifying, setting aside or vacating order. For good cause, the court on its own motion or on motion of any interested person acting on behalf of the respondent may stay execution of, arrest, set aside, modify or vacate any order issued in the course of a proceeding under this article.

§ 763. Notice of motion. Notice of motion under sections seven hundred sixty-one or seven hundred sixty-two, including the court's own motion, shall be served upon parties and any agency or institution having custody of the child not less than seven days prior to the return date of the motion. The persons on whom the notice of motion is served shall answer the motion not less than two days before the return date. On examining the motion and answer and, in its discretion, after hearing argument, the court shall enter an order, granting or denying the motion.

§ 764. Petition to terminate placement. Any parent or guardian or duly authorized agency or next friend of a person placed under section seven hundred fifty-six may petition to the court for an order terminating the placement. The petition must be verified and must show:

(a) that an application for release of the respondent was made to the duly authorized agency with which the child was placed;

(b) that the application was denied or was not granted within thirty days from the day application was made; and

(c) the grounds for the petition.

§ 765. Service of petition; answer. A copy of a petition under section seven hundred sixty-four shall be served promptly upon the duly authorized agency or the institution having custody of the person, whose duty it is to file an answer to the petition within five days from the day of service.

§ 766. Examination of petition and answer; hearing. The court shall promptly examine the petition and answer. If the court concludes that a hearing should be had, it may proceed upon due notice to all concerned to hear the facts and determine whether continued placement serves the purposes of this article. If the court concludes that a hearing need not be had, it shall enter an order granting or denying the petition.

§ 767. Orders on hearing. (a) If the court determines after hearing that continued placement serves the purposes of this article, it shall deny the petition. The court may, on its own motion, reduce the duration of the placement, change the agency in which the child is placed, or direct the agency to make such other arrangements for the person's care and welfare as the facts of the case may require.

(b) If the court determines after hearing that continued placement does not serve the purposes of this article, the court shall discharge the person from the custody of the agency and may place the person on probation or under the supervision of the court.

§ 768. Successive petitions. If a petition under section seven hundred sixty-four is denied, it may not be renewed for a period of ninety days after the denial, unless the order of denial permits renewal at an earlier time.

PART 7

COMPLIANCE WITH ORDERS

§ 771. Discontinuation of treatment by agency or institution. If an authorized agency in which a person is placed under section seven hundred fifty-six

(a) discontinues or suspends its work; or

(b) is unwilling to continue to care for the person for the reason that support by the state of New York or one of its political subdivisions has been discontinued; or

(c) so fundamentally alters its program that the person can no longer benefit from it, the person shall be returned by the agency to the court which entered the order of placement.

§ 772. Action on return from agency or institution. If a person is returned to the court under section seven hundred seventy-one, the court may make any order that might have been made at the time the order of placement was made, except that the maximum duration authorized for any such order shall be decreased by the time spent in placement.

§ 773. Petition for transfer. Any institution, society or agency in which a person was placed under section seven hundred fifty-six of this article may petition to the court which made the order of placement for transfer of that person to a society or agency, governed or controlled by persons of the same religious faith or persuasion as that of the child, where practicable, or, if not practicable, to some other suitable institution, or to some other suitable institution on the ground that

(a) the presence of such person is seriously detrimental to the welfare of the applicant institution, society, agency or other persons in its care, or

(b) after placement by the court, such person was released on parole or probation from such institution, society or agency and a term or condition of the release was willfully violated. The petition shall be verified by an officer of the applicant institution, society or agency and shall specify the act or acts bringing the person within this section.

§ 774. Action on petition for transfer. On receiving a petition under section seven hundred seventy-three of this part, the court may proceed under sections seven hundred thirty-seven, seven hundred thirty-eight or seven hundred thirty-nine of this article with respect to the issuance of a summons or warrant. Due notice of the petition and a copy of the petition shall also be served personally or by mail upon the office of the locality chargeable for the support of the person involved and upon the person involved and his or her parents and other persons.

§ 775. Order on hearing. (a) After hearing a petition under section seven hundred seventy-three, the court may:

(i) dismiss the petition;

(ii) grant the petition, making such placement, if the court was authorized to make such placement upon the original adjudication; or

(iii) terminate the prior order of placement and either discharge the respondent or place him on probation.

(b) If the court grants the petition and orders placement, the respondent shall thereupon be transferred to the custody of the person, agency or institution provided by the court's order.

§ 776. Failure to comply with terms and conditions of suspended judgment. A respondent brought before the court for failure to comply with reasonable terms and conditions of an order of suspended judgment shall be subject to section seven hundred seventy-nine-a of this part. If, after hearing, the court determines by competent proof that the respondent without just cause failed to comply with such terms and conditions, the court may adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article. The court may revoke the order of suspended judgment and proceed to make any order that might have been made at the time judgment was suspended.

§ 777. Failure to comply with terms of placement at home. If a person placed in his own home subject to orders of the court leaves home without the court's permission, he may be brought before the court and if, after hearing, the court is satisfied by competent proof that the respondent left home without just cause, the court may revoke the order of placement and proceed to make any order that might have been made at the time the order of placement was made. It may also continue the order of placement and, on due notice and after hearing, enter an order of protection for the duration of the placement.

§ 778. Failure to comply with terms of placement in authorized agency. If a person is placed in the custody of a suitable institution in accord with section seven hundred fifty-six and leaves the institution without permission of the superintendent or person in charge and without permission of the court, and if, after hearing, the court is satisfied by competent proof that the respondent left the institution without just cause, the court may revoke the order of placement and proceed to make any order that might have been made at the time the order of placement was made, or any order authorized under section seven hundred fifty-six.

§ 779. Jurisdiction and supervision of respondent placed on probation; failure to comply with terms of probation. (a) A respondent who is placed on probation in accordance with section seven hundred fifty-seven of this article shall remain under the legal jurisdiction of the court pending expiration or termination of the period of probation.

(b) The probation service shall supervise the respondent during the period of such legal jurisdiction.

(c) A respondent brought before the court for failure to comply with reasonable terms and conditions of an order of probation issued under section seven hundred fifty-seven of this article shall be subject to section seven hundred seventy-nine-a of this article. If, after a hearing pursuant to such section, the court determines by competent proof that the respondent without just cause failed to comply with such terms and conditions, the court may adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article. The court may revoke the order of probation and proceed to make any order that might have been made at the time the order of probation was entered.

§ 779-a. Petition and hearing on violation of order of probation or suspended judgment. (a) If, at any time during the period of probation, the petitioner, probation service or appropriate presentment agency has reasonable cause to believe the respondent has violated a condition of the disposition, the petitioner, probation service or appropriate presentment agency may file a violation petition.

(b) The petition must be verified and subscribed by the petitioner, probation service or the appropriate presentment agency. The petition must specify the condition or conditions of the order violated and a reasonable description of the date, time, place and specific manner in which the violation occurred. Non-hearsay allegations of the factual part of the petition or of any supporting depositions must establish, if true, every violation charged.

(c) Upon the filing of a violation petition, the court must promptly take reasonable and appropriate action to cause the respondent to appear before it for the purpose of enabling the court to make a final determination with respect to the alleged delinquency. Where the respondent is on probation pursuant to section seven hundred fifty-seven of this article, the time for prompt court action shall not be construed against the probation service when the respondent has absconded from probation supervision and the respondent's whereabouts are unknown. The court must be notified promptly of the circumstances of any such probationers.

(d) If a petition is filed under subdivision (a) of this section and the petition satisfies the requirements of subdivision (b) of this section, the period of probation or suspended judgment prescribed by section seven hundred fifty-five or seven hundred fifty-seven of this article shall be interrupted as of the date of the filing of the petition. Such interruption shall continue until a final determination of the petition or until such time as the respondent reaches the maximum age of acceptance into placement with the commissioner of social services. If the court dismisses the violation petition, the period of interruption shall be credited to the period of probation or suspended judgment.

(e) Hearing on violation. (i) The court may not revoke an order of probation or suspended judgment unless the court has found by competent proof that the respondent has violated a condition of such order in an important respect and without just cause and that the respondent has had an opportunity to be heard. The respondent is entitled to a hearing promptly after a violation petition has been filed. The respondent is entitled to counsel at all stages of the proceeding and may not waive representation by counsel except as provided in section two hundred forty-nine-a of this act.

(ii) At the time of the respondent's first appearance following the filing of a violation petition, the court must:

(A) advise the respondent of the contents of the petition and furnish a copy to the respondent;

(B) advise the respondent that he or she is entitled to counsel at all stages of a proceeding under this section and appoint an attorney pursuant to section two hundred forty-nine of this act if independent legal representation is not available to the respondent. If practicable, the court shall appoint the same attorney who represented the respondent in the original proceedings under this article; and

(C) determine whether the respondent should be released or detained pursuant to section seven hundred twenty of this article.

(iii) Upon request, the court shall grant a reasonable adjournment to the respondent to prepare for the hearing.

(iv) At the hearing, the court may receive any evidence that is relevant, competent and material. The respondent may cross-examine witnesses and present evidence on his or her own behalf. The court's determination must be based upon competent evidence.

(v) At the conclusion of the hearing, the court may adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article. The court may revoke, continue or modify the order of probation or suspended judgment. If the court revokes the order, it shall order a different disposition pursuant to subdivision one of section seven hundred fifty-four of this article and shall make findings in accordance with subdivision two of such section. If the court continues the order of probation or suspended judgment, it shall dismiss the petition of violation.

§ 780. Failure to comply with order of protection. If any person is brought before the court for failure to comply with the terms and conditions of an order of protection properly issued under this article and applicable to him and if, after hearing, the court is satisfied by competent proof that that person without just cause failed to comply with such terms and conditions, the court may modify or revoke the order of protection, or commit said person, if he willfully violated the order, to jail for a term not to exceed six months, or both. The court may suspend an order of commitment under this section on condition that the said person comply with the order of protection.

§ 780-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the 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 section eight hundred forty-two-a of this act.

PART 8

EFFECT OF PROCEEDINGS

§ 781. Nature of adjudication. No adjudication under this article may be denominated a conviction, and no person adjudicated a person in need of supervision under this article shall be denominated a criminal by reason of such adjudication.

§ 782. Effect of adjudication. No adjudication under this article shall operate as a forfeiture of any right or privilege or disqualify any person from subsequently holding public office or receiving any license granted by public authority.

§ 782-a. Transfer of records and information to institutions and agencies. Whenever a person is placed with an institution suitable for the placement of a person adjudicated in need of supervision maintained by the state or any subdivision thereof or to an authorized agency, the family court so placing such person shall forthwith transmit a copy of the orders of the family court pursuant to sections seven hundred fifty-two and seven hundred fifty-four, and of the probation report and all other relevant evaluative records in the possession of the family court and probation department related to such child, including but not limited to any diagnostic, educational, medical, psychological and psychiatric records with respect to such person to such institution or agency, notwithstanding any contrary provision of law.

§ 783. Use of records in other court; expungement of records. (a) Neither the fact that a person was before the family court under this article for a hearing nor any confession, admission or statement made by him or her to the court or to any officer thereof in any stage of the proceeding is admissible as evidence against him or her or his or her interests in any other court.

(b) For purposes of this section, "expungement" shall mean that all official records and papers, including judgments and orders of the court, but not including public court decisions or opinions or records and briefs on appeal, relating to the arrest, prosecution and court proceedings and records of the probation service and designated lead agency, including all duplicates or copies thereof, on file with the court, police department and law enforcement agency, probation service, designated lead agency and presentment agency, if any, shall be destroyed and, except for records sealed as provided in paragraphs (v) and (vi) of subdivision (c) of this section, shall not be made available to any person or public or private agency. Provided, however, that foster care and preventive service records maintained by social services departments relating to a proceeding under this article shall not be subject to expungement or sealing under this section and shall be held confidential in accordance with article six of the social services law.

(c) Automatic expungement of records of a proceeding under this article that is terminated in favor of the respondent. (i) Upon termination of a proceeding under this article in favor of the respondent, the clerk of the court shall immediately notify and direct the directors of the appropriate probation department, designated lead agency pursuant to section seven hundred thirty-five of this article, a local educational agency if an official of such agency was the petitioner pursuant to section seven hundred thirty-three of this article and, if a presentment agency represented the petitioner in the proceeding, such agency, that the proceeding has terminated in favor of the respondent and that the records, if any, of such action or proceeding on file with such offices shall be expunged. If the respondent had been the subject of a warrant or an arrest in connection with the proceeding, or law enforcement was the referring agency or petitioner pursuant to section seven hundred thirty-three of this article, the notice shall also be sent to the appropriate police department or law enforcement agency. Upon receipt of such notification, the records shall be expunged in accordance with subdivision (b) of this section. The attorney for the respondent shall be notified by the clerk of the court in writing of the date and agencies and departments to which such notifications were sent.

(ii) For the purposes of this section, a proceeding under this article shall be considered terminated in favor of a respondent where the proceeding has been:

(A) diverted prior to the filing of a petition pursuant to subdivision (g) of section seven hundred thirty-five of this article or subsequent to the filing of a petition pursuant to subdivision (b) of section seven hundred forty-two of this article; or

(B) withdrawn or dismissed for failure to prosecute, or for any other reason at any stage; or

(C) dismissed following an adjournment in contemplation of dismissal pursuant to subdivision (a) of section seven hundred forty-nine of this article; or

(D) resulted in an adjudication where the only finding was for a violation of former section 221.05 or section 230.00 of the penal law; provided, however, that with respect to findings under this paragraph, the expungement required by this section shall not take place until the conclusion of the period of any disposition or extension under this article.

(iii) If, with respect to a respondent who had been the subject of a warrant or an arrest in connection with the proceeding, or law enforcement was the referring agency, the designated lead agency diverts a case either prior to or subsequent to the filing of a petition under this article, the designated lead agency shall notify the appropriate probation service and police department or law enforcement agency in writing of such diversion. Such notification may be on a form prescribed by the chief administrator of the courts. Upon receipt of such notification, the probation service and police department or law enforcement agency shall expunge any records in accordance with subdivision (b) of this section in the same manner as is required thereunder with respect to an order of a court.

(iv) If, following the referral of a proceeding under this article for the filing of a petition, the petitioner or, if represented by a presentment agency, such agency, elects not to file a petition under this article, the petitioner or, if applicable, the presentment agency, shall notify the appropriate probation service and designated lead agency of such determination. Such notification may be on a form prescribed by the chief administrator of the courts and may be transmitted by electronic means. If the respondent had been the subject of a warrant or an arrest in connection with the proceeding, or law enforcement was the referring agency, the notification shall also be sent to the appropriate police department or law enforcement agency. Upon receipt of such notification, the records shall be expunged in accordance with subdivision (b) of this section in the same manner as is required thereunder with respect to an order of a court, provided, however, that the designated lead agency may have access to its own records in accordance with paragraph (v) of this subdivision.

(v) Where a proceeding has been diverted pursuant to subparagraph (A) of paragraph (ii) of this subdivision or where a proceeding has been referred for the filing of a petition but the potential petitioner or, if represented by a presentment agency, such agency, elects not to file a petition in accordance with paragraph (iv) of this subdivision, upon receipt of written notice the designated lead agency shall seal any records related to the proceeding under this section that are in its possession, but shall have access to such records solely for the following purposes:

(A) where there is continuing or subsequent contact with the child under this article; or

(B) where the information is necessary for such department to determine what services had been arranged or provided to the family or where the commissioner determines that the information is necessary in order for the commissioner of such department to comply with section four hundred twenty-two-a of the social services law.

(vi) Records sealed under this section shall be made available to the juvenile or his or her agent and, where the petitioner or potential petitioner is a parent or other person legally responsible for the juvenile's care, such parent or other person. No statement made to a designated lead agency by the juvenile or his or her parent or other person legally responsible that is contained in a record expunged or sealed under this section shall be admissible in any court proceeding, except upon the consent or at the request, respectively, of the juvenile or his or her parent or other person legally responsible for the juvenile's care.

(vii) A respondent in whose favor a proceeding was terminated prior to the effective date of this paragraph may, upon motion, apply to the court, upon not less than twenty days notice to the petitioner or (where the petitioner is represented by a presentment agency) such agency, for an order granting the relief set forth in paragraph (i) of this subdivision. Where a proceeding under this article was terminated in favor of the respondent in accordance with paragraph (iii) or (iv) of this subdivision prior to the effective date of this paragraph, the respondent may apply to the designated lead agency, petitioner or presentment agency, as applicable, for a notification as described in such paragraphs granting the relief set forth therein and such notification shall be granted.

(d) Motion to expunge after an adjudication and disposition. (i) If an action has resulted in an adjudication and disposition under this article, the court may, in the interest of justice and upon motion of the respondent, order the expungement of the records and proceedings.

(ii) Such motion must be in writing and may be filed at any time subsequent to the conclusion of the disposition, including, but not limited to, the expiration of the period of placement, suspended judgment, order of protection or probation or any extension thereof. Notice of such motion shall be served not less than eight days prior to the return date of the motion upon the petitioner or, if the petitioner was represented by a presentment agency, such agency. Answering affidavits shall be served at least two days before the return date.

(iii) The court shall set forth in a written order its reasons for granting or denying the motion. If the court grants the motion, all court records, as well as all records in the possession of the designated lead agency, the probation service, the presentment agency, if any, and, if the respondent had been the subject of a warrant or an arrest in connection with the proceeding, or if the police or law enforcement agency was the referring agency or petitioner pursuant to section seven hundred thirty-three of this article, the appropriate police or law enforcement agency, shall be expunged in accordance with subdivision (b) of this section.

(e) Automatic expungement of court records. All records under this article shall be automatically expunged upon the respondent's twenty-first birthday unless earlier expunged under this section, provided that expungement under this paragraph shall not take place until the conclusion of the period of any disposition or extension under this article.

(f) Expungement of court records; inherent power. Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records.

§ 783-a. Consolidation of records within a city having a population of one million or more. Notwithstanding any other provision of law, in a city having a population of one million or more, an index of the records of the local probation departments located in the counties comprising such city for proceedings under article seven shall be consolidated and filed in a central office for use by the family court and local probation service in each such county. After consultation with the state administrative judge, the commissioner of the division of criminal justice services, in consultation with the director of the office of probation and correctional alternatives shall specify the information to be contained in such index and the organization of such consolidated file.

§ 784. Use of police records. All police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection, but such records shall be open to inspection upon good cause shown by the parent, guardian, next friend or attorney of that person upon the written order of a judge of the family court in the county in which the order was made.

ARTICLE 8
FAMILY OFFENSES PROCEEDINGS

PART 1
JURISDICTION

§ 812. Procedures for family offense proceedings. 1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, unlawful dissemination or publication of an intimate image, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time;

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; and

(f) persons who are related by consanguinity or affinity to parties who are or have been in an intimate relationship as defined in paragraph (e) of this subdivision.

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate persons, including, but not limited to district attorneys, criminal and family court clerks, corporation counsels, county attorneys, victims assistance unit staff, probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this article, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

(a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;

(b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end the family disruption and obtain protection. Referrals for counseling, or counseling services, are available through probation for this purpose;

(c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;

(d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request for arrest, if any;

(f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding; provided, however, that the arrest of an alleged offender shall be made under the circumstances described in subdivision four of section 140.10 of the criminal procedure law;

(g) That notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. Official forms. The chief administrator of the courts shall prescribe an appropriate form to implement subdivision two of this section.

5. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of this act and the criminal procedure law. Such notice shall be available, at minimum, in plain English, Spanish, Chinese and Russian and, if necessary, shall be delivered orally and shall include but not be limited to the information contained in the following statement:

"Are you the victim of domestic violence? If you need help now, you can call 911 for the police to come to you. You can also call a domestic violence hotline. You can have a confidential talk with an advocate at the hotline about help you can get in your community including: where you can get treatment for injuries, where you can get shelter, where you can get support, and what you can do to be safe. The New York State 24-hour Domestic & Sexual Violence Hotline number is (insert the statewide multilingual 800 number). They can give you information in many languages. If you are deaf or hard of hearing, call 711. This is what the police can do:

They can help you and your children find a safe place such as a family or friend's house or a shelter in your community.

You can ask the officer to take you or help you and your children get to a safe place in your community.

They can help connect you to a local domestic violence program.

They can help you get to a hospital or clinic for medical care.

They can help you get your personal belongings.

They must complete a report discussing the incident. They will give you a copy of this police report before they leave the scene. It is free.

They may, and sometimes must, arrest the person who harmed you if you are the victim of a crime. The person arrested could be released at any time, so it is important to plan for your safety.

If you have been abused or threatened, this is what you can ask the police or district attorney to do:

File a criminal complaint against the person who harmed you.

Ask the criminal court to issue an order of protection for you and your child if the district attorney files a criminal case with the court.

Give you information about filing a family offense petition in your local family court.

You also have the right to ask the family court for an order of protection for you and your children.

This is what you can ask the family court to do:

To have your family offense petition filed the same day you go to court.

To have your request heard in court the same day you file or the next day court is open.

Only a judge can issue an order of protection. The judge does that as part of a criminal or family court case against the person who harmed you. An order of protection in family court or in criminal court can say:

That the other person have no contact or communication with you by mail, phone, computer or through other people.

That the other person stay away from you and your children, your home, job or school.

That the other person not assault, harass, threaten, strangle, or commit another family offense against you or your children.

That the other person turn in their firearms and firearms licenses, and not get any more firearms.

That you have temporary custody of your children.

That the other person pay temporary child support.

That the other person not harm your pets or service animals.

If the family court is closed because it is night, a weekend, or a holiday, you can go to a criminal court to ask for an order of protection.

If you do not speak English or cannot speak it well, you can ask the police, the district attorney, or the criminal or family court to get you an interpreter who speaks your language. The interpreter can help you explain what happened.

You can get the forms you need to ask for an order of protection at your local family court (insert addresses and contact information for courts). You can also get them online: www.NYCourts.gov/forms.

You do not need a lawyer to ask for an order of protection.

You have a right to get a lawyer in the family court. If the family court finds that you cannot afford to pay for a lawyer, it must get you one for free.

If you file a complaint or family court petition, you will be asked to swear to its truthfulness because it is a crime to file a legal document that you know is false."

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

§ 813. Transfer to criminal court. 1. At any time prior to a finding on the petition the court may, with the consent of the petitioner and upon reasonable notice to the district attorney, who shall have an opportunity to be heard, order that any matter which is the subject of a proceeding commenced pursuant to this article be prosecuted as a criminal action in an appropriate criminal court if the court determines that the interests of justice so require.

2. The court may simultaneously with the transfer of any matter to the appropriate criminal court, issue or continue a temporary order of protection which, notwithstanding any other provision of law, shall continue in effect, absent action by the appropriate criminal court pursuant to subdivision three of section 530.12 of the criminal procedure law, until the defendant is arraigned upon an accusatory instrument filed pursuant to this section in such criminal court.

3. Nothing herein shall be deemed to limit or restrict a petitioner's rights to proceed directly and without court referral in either criminal or family court, or both, as provided for in section one hundred fifteen of this act and section 100.07 of the criminal procedure law.

§ 814. Rules of court regarding concurrent jurisdiction. The chief administrator of the courts pursuant to paragraph (e) of subdivision two of section two hundred twelve of the judiciary law shall promulgate rules to facilitate record sharing and other communication between the criminal and family courts, subject to applicable provisions of the criminal procedure law and the family court act pertaining to the confidentiality, expungement and sealing of records, where such courts exercise concurrent jurisdiction over family offense proceedings.

§ 814-a. Uniform forms. 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 compatability of such forms with the statewide computerized registry established pursuant to section two hundred twenty-one-a of the executive law.

§ 815. Transcript of family offense proceedings; request by district attorney. The court shall, upon the written request of a district attorney stating that such transcript is necessary in order to conduct a criminal investigation or prosecution involving the petitioner or respondent, provide a copy of the transcript of any proceedings under this article, to such district attorney. Such transcript shall not be redisclosed except as necessary for such investigation or prosecution.

§ 817. Support, paternity and child protection. On its own motion and at any time in proceedings under this article, the court may direct the filing of a child protective petition under article ten of this chapter, a support petition under article four, or a paternity petition under article five of this act and consolidate the proceedings.

§ 818. Venue. Proceedings under this article may be originated in the county in which the act or acts referred to in the petition allegedly occurred or in which the family or household resides or in which any party resides. For the purposes of this section, residence shall include any residential program for victims of domestic violence, as defined in subdivision four of section four hundred fifty-nine-a of the social services law, or facility which provides shelter to homeless persons or families on an emergency or temporary basis.

PART 2

PRELIMINARY PROCEDURE

§ 821. Originating proceedings. 1. A proceeding under this article is originated by the filing of a petition containing the following:

(a) An allegation that the respondent assaulted or attempted to assault his or her spouse, or former spouse, parent, child or other member of the same family or household or engaged in disorderly conduct, harassment, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking, criminal mischief, menacing, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law, toward any such person;

(b) The relationship of the alleged offender to the petitioner;

(c) The name of each and every child in the family or household and the relationship of the child, if any, to the petitioner and to the respondent;

(d) A request for an order of protection or the use of the court's conciliation procedures; and

(e) An allegation as to whether any accusatory instrument alleging an act specified in paragraph (a) of this subdivision has been verified with respect to the same act alleged in the petition. Appended to the copy of the petition provided to the petitioner shall be a copy of the notice described in subdivision five of section eight hundred twelve of this article.

2. When family court is not in session, an arrest and initial appearance by the defendant or respondent may be in a criminal court, as provided in sections one hundred fifty-four-d and one hundred fifty-five of this act.

§ 821-a. Preliminary procedure. 1. Upon the filing of a petition under this article, the court shall advise the petitioner of the right to retain legal representation or if indigent, the right to have counsel appointed pursuant to section two hundred sixty-two of this act.

2. Upon the filing of a petition under this article, the court may:

(a) issue a summons pursuant to section eight hundred twenty-six of this part or issue a warrant pursuant to section eight hundred twenty-seven of this part;

(b) issue a temporary order of protection in favor of the petitioner and, where appropriate, the petitioner's children or any other children residing in the petitioner's household, pursuant to section eight hundred twenty-eight of this part.

3. Where the respondent is brought before the court pursuant to a summons under section eight hundred twenty-six of this part or a warrant issued under section eight hundred twenty-seven of this part, or where a respondent voluntarily appears before the court after such summons or warrant has been issued, the court shall:

(a) advise the parties of the right to retain legal representation or, if indigent, the right to have counsel appointed pursuant to section two hundred sixty-two of this act;

(b) advise the respondent of the allegations contained in the petition before the court; and

(c) provide the respondent with a copy of such petition; and the court may:

(i) order the release of the respondent on his or her own recognizance pending further appearances as required by the court;

(ii) direct that the respondent post bail in a manner authorized pursuant to section one hundred fifty-five-a of this act in an amount set by the court; or

(iii) issue a commitment order directing that the respondent be remanded to the custody of the county sheriff or other appropriate law enforcement official until such time as bail is posted as required by the court.

4. Where the court directs that the respondent post bail or that the respondent be committed to the custody of a law enforcement official as

provided for herein, and the respondent fails to post bail or otherwise remains in custody, a hearing shall be held without unreasonable delay but in no event later than one hundred twenty hours after the arrest of the respondent or in the event that a Saturday, Sunday, or legal holiday occurs during such custody, one hundred forty-four hours after the arrest of the respondent, to determine upon material and relevant evidence whether sufficient cause exists to keep the respondent in custody. If the court determines that sufficient cause does not exist or if no hearing is timely held, the respondent shall immediately be released on the respondent's own recognizance.

5. (a) At such time as the petitioner first appears before the court, the court shall advise the petitioner that the petitioner may: continue with the hearing and disposition of such petition in the family court; or have the allegations contained therein heard in an appropriate criminal court; or proceed concurrently in both family and criminal court.

(b) Where the petitioner seeks to have the petition heard and determined in the family court, the court shall set the matter down for further proceedings pursuant to the provisions of this article. Nothing herein shall be deemed to limit or restrict petitioner's rights to seek to proceed directly in either criminal or family court, or both, as provided for in section one hundred fifteen of this act and section 100.07 of the criminal procedure law.

6. When both parties first appear before the court, the court shall inquire as to the existence of any other orders of protection involving the parties.

§ 822. Person who may originate proceedings. (a) Any person in the relation to the respondent of spouse, or former spouse, parent, child, or member of the same family or household;

(b) A duly authorized agency, association, society, or institution;

(c) A peace officer, acting pursuant to his special duties, or a police officer;

(d) A person on the court's own motion.

§ 823. Rules of court for preliminary procedure. (a) Rules of court may authorize the probation service

(i) to confer with any person seeking to file a petition, the potential petitioner and other interested persons concerning the advisability of filing a petition under this article, and

(ii) to attempt through conciliation and agreement informally to adjust suitable cases before a petition is filed over which the court apparently would have jurisdiction.

(b) The probation service may not prevent any person who wishes to file a petition under this article from having access to the court for that purpose.

(c) Efforts at adjustment pursuant to rules of court under this section may not extend for a period of more than two months without leave of a judge of the court, who may extend the period for an additional sixty days. Two successive extensions may be granted under this section.

(d) The probation service may not be authorized under this section to compel any person to appear at any conference, produce any papers, or visit any place.

(e) If agreement to cease offensive conduct is reached, it must be reduced to writing and submitted to the family court for approval. If the court approves it, the court without further hearing may thereupon enter an order of protection in accordance with the agreement, which shall be binding upon the respondent and shall in all respects be a valid order. The court record shall show that such order was made upon agreement.

§ 824. Admissibility of statements made during preliminary conference. No statement made during a preliminary conference may be admitted into evidence at a fact-finding hearing under this act or in a criminal court at any time prior to conviction.

§ 825. Issuance of summons. On the filing of a petition under this article, the court may cause a copy of the petition and a summons to be issued, requiring the respondent to appear at the court at a time and place to answer the petition.

§ 826. Service of summons. (a) Unless the court issues a warrant pursuant to section eight hundred twenty-seven of this part, service of a summons and petition shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance. If so requested by the respondent, the court shall not proceed with the hearing or proceeding earlier than three days after such service.

(b) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in civil process in courts of record.

§ 827. Issuance of warrant; certificate of warrant. (a) The court may issue a warrant, directing that the respondent be brought before the court, when a petition is presented to the court under section eight hundred twenty-one and it appears that

(i) the summons cannot be served; or

(ii) the respondent has failed to obey the summons; or

(iii) the respondent is likely to leave the jurisdiction; or

(iv) a summons, in the court's opinion, would be ineffectual; or

(v) the safety of the petitioner is endangered; or

(vi) the safety of a child is endangered; or

(vii) aggravating circumstances exist which require the immediate arrest of the respondent. For the purposes of this section aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner's family or household.

(b) The petitioner may not serve a warrant upon the respondent, unless the court itself grants such permission upon the application of the petitioner. The clerk of the court may issue to the petitioner or to the representative of an incorporated charitable or philanthropic society having a legitimate interest in the family a certificate stating that a warrant for the respondent has been issued by the court. The presentation of such certificate by said petitioner or representative to any peace officer, acting pursuant to his special duties, or police officer authorizes him to arrest the respondent and take him to court.

(c) A certificate of warrant expires ninety days from the date of issue but may be renewed from time to time by the clerk of the court.

(d) Rules of court shall provide that a record of all unserved warrants be kept and that periodic reports concerning unserved warrants be made.

§ 828. Temporary order of protection; temporary orders for child support and spousal maintenance. 1. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection, which may contain any of the provisions authorized on the making of an order of protection under section eight hundred forty-two, provided that the court shall make a determination, and the court shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons.

(b) Upon the filing of a petition under this article, or as soon thereafter as the petitioner appears before the court, the court shall advise the petitioner of the right to proceed in both the family and criminal courts, pursuant to the provisions of section one hundred fifteen of this act.

2. A temporary order of protection is not a finding of wrongdoing.

3. The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

4. Notwithstanding the provisions of section eight hundred seventeen of this article the court may, together with a temporary order of protection issued pursuant to this section, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without 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 the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. An order making such award shall be deemed to have been issued pursuant to article four of this act. Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

5. Notwithstanding the provisions of section eight hundred seventeen

of this article, where a temporary order of spousal support has not already been issued, the court may, in addition to the issuance of a temporary order of protection pursuant to this section, issue an order directing the parties to appear within seven business days of the issuance of the order in the family court, in the same action, for consideration of an order for temporary spousal support in accordance with article four of this act. If the court directs the parties to so appear, the court shall direct the parties to appear with information with respect to income and assets, but a temporary order for spousal support may be issued pursuant to article four of this act on the return date notwithstanding the respondent's default upon notice and notwithstanding that information with respect to income and assets of the petitioner or respondent may be unavailable.

PART 3

HEARING

Section 832. Definition of "fact-finding hearing".
833. Definition of "dispositional hearing".
834. Evidence.
835. Sequence of hearings.
836. Adjournments.
838. Petitioner and respondent may have friend or relative present.

§ 832. Definition of "fact-finding hearing". When used in this article, "fact-finding hearing" means a hearing to determine whether the allegations of a petition under section eight hundred twenty-one are supported by a fair preponderance of the evidence.

§ 833. Definition of "dispositional hearing". When used in this article, "dispositional hearing" means in the case of a petition under this article a hearing to determine what order of disposition should be made.

§ 834. Evidence. Only competent, material and relevant evidence may be admitted in a fact-finding hearing; only material and relevant evidence may be admitted in a dispositional hearing.

§ 835. Sequence of hearings. (a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made.

(b) Reports prepared by the probation service for use by the court at any time prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole or in part to the child's attorney, counsel, party in interest, or other appropriate person. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing.

§ 836. Adjournments. (a) The court may adjourn a fact-finding hearing or a dispositional hearing for good cause shown on its own motion or on motion of either party.

(b) At the conclusion of a fact-finding hearing and after it has made findings required before a dispositional hearing may commence, the court may adjourn the proceedings to enable it to make inquiry into the surroundings, conditions, and capacities of the persons involved in the proceedings.

§ 838. Petitioner and respondent may have friend or relative present. Unless the court shall find it undesirable, the petitioner shall be entitled to a non-witness friend, relative, counselor or social worker present in the court room. This section does not authorize any such person to take part in the proceedings. However, at any time during the proceeding, the court may call such person as a witness and take his or her testimony. Unless the court shall find it undesirable, the respondent shall be entitled to a non-witness friend, relative, counselor or social worker present in the court room in the event such respondent is not represented by legal counsel. This section does not authorize any such person to take part in the proceedings. However, at any time during the proceeding, the court may call such person as a witness and take his or her testimony.

PART 4
ORDERS

§ 841. Orders of disposition. At the conclusion of a dispositional hearing under this article, the court may enter an order:

(a) dismissing the petition, if the allegations of the petition are not established; or

(b) suspending judgment for a period not in excess of six months; or

(c) placing the respondent on probation for a period not exceeding one year, and requiring respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if respondent has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; or

(d) making an order of protection in accord with section eight hundred forty-two of this part; or

(e) directing payment of restitution in an amount not to exceed ten thousand dollars. An order of restitution may be made in conjunction with any order of disposition authorized under subdivisions (b), (c), or (d) of this section. In no case shall an order of restitution be issued where the court determines that the respondent has already paid such restitution as part of the disposition or settlement of another proceeding arising from the same act or acts alleged in the petition before the court.

No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counter-claim in accordance with section one hundred fifty-four-b of this act. Nothing in this section shall preclude the issuance of a temporary order of protection ex parte, pursuant to section eight hundred twenty-eight of this article.

Nothing in this section shall preclude the issuance of both an order of probation and an order of protection as part of the order of disposition.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

§ 842. Order of protection. An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(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 eight hundred twelve of this article, 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;

(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 this proceeding or in any other proceeding or action under this act or the domestic relations law;

(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 require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counselling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof;

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(i) 1. 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 petitioner or a minor child residing in the household.

2. "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;

(j) 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 subdivision, "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;

(k) 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 subdivision, "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

(l) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Prior to awarding custody pursuant to this paragraph, the court shall direct a review pursuant to section six hundred fifty-one of this act of the reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law, 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, related decisions in court proceedings conducted pursuant to article ten of this act, and all warrants issued pursuant to this act. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without 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 the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of spousal support has not already been issued, the court may, in addition to the issuance of an order of protection pursuant to this section, issue an order directing the parties to appear within seven business days of the issuance of the order in the family court, in the same action, for consideration of an order for temporary spousal support in accordance with article four of this act. If the court directs the parties to so appear, the court shall direct the parties to appear with information with respect to income and assets, but a temporary order for spousal support may be issued pursuant to article four of this act on the return date notwithstanding the respondent's default upon notice and notwithstanding that information with respect to income and assets of the petitioner or respondent may be unavailable.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his or her counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection is transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or the department of corrections and community supervision where the individual is under probation or parole supervision.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

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.

§ 842-a. Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms; order to seize firearms.

1. Suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight

hundred twenty-eight of this article, or pursuant to article four, five, six, seven or ten of this act the court shall inquire of the respondent and, outside of the presence of the respondent, the petitioner or, if the petitioner is not the protected party, any party protected by such order, if the court has reason to believe that such petitioner or protected party would have actual knowledge or reason to know such information, as to the existence and location of any firearm, rifle or shotgun owned or possessed by the respondent and:

(a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law;

(b) the court shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed; and

(c) the court shall where the defendant willfully refuses to surrender such firearm, rifle or shotgun pursuant to paragraphs (a) and (b) of this subdivision, or may for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of the criminal procedure law, consistent with such rights as the defendant may derive from this article or the constitution of this state or the United States.

2. Revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part, or pursuant to article four, five, six, seven or ten of this act the court shall inquire of the respondent and, outside of the presence of the respondent, the petitioner or, if the petitioner is not the protected party, any party protected by such order, if the court has reason to believe that such petitioner or protected party would have actual knowledge or reason to know such information, as to the existence and location of any firearm, rifle or shotgun owned or possessed by the respondent and:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law;

(b) the court shall, where the court finds a substantial risk that the respondent may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed; and

(c) the court shall where the defendant willfully refuses to surrender such firearm, rifle or shotgun pursuant to paragraphs (a) and (b) of this subdivision, or may for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of the criminal procedure law, consistent with such rights as the defendant may derive from this article or the constitution of this state or the United States.

3. Revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection or temporary order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection or temporary order of protection issued pursuant to this act or the domestic relations law, or by this court or by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part the court shall inquire of the respondent and, outside the presence of the respondent, the petitioner or, if the petitioner is not the protected party, any party protected by such order, if the court has reason to believe that such petitioner or protected party would have actual knowledge or reason to know such information, as to the existence and location of any firearm, rifle or shotgun owned or possessed by the respondent and:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed where the willful failure to obey such order involves (i) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law;

(b) the court shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms, rifles and shotguns owned or possessed; and

(c) the court shall where the defendant willfully refuses to surrender such firearm, rifle or shotgun pursuant to paragraphs (a) and (b) of this subdivision, or may for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of the criminal procedure law, consistent with such rights as the defendant may derive from this article or the constitution of this state or the United States.

4. Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

5. Surrender. (a) Where an order to surrender one or more firearms, rifles or shotguns has been issued, the temporary order of protection or order of protection shall specify the place where such weapons shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such weapons to be surrendered and shall direct the authority receiving such surrendered weapons to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms, rifles or shotguns pursuant to a court order issued pursuant this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such weapons shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law; provided, however that upon the termination of any suspension order issued pursuant to this section, any court of record exercising criminal jurisdiction may order the return of a firearm, rifle or shotgun pursuant to paragraph b of subdivision five of section 530.14 of the criminal procedure law.

(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a respondent pursuant to this act.

6. Notice. (a) Where an order requiring surrender, revocation, suspension, seizure or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the respondent is ineligible for such license, as the case may be, and that the defendant is prohibited from possessing any firearms, rifles or shotguns.

(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender or seizure of any firearm, rifles or shotguns shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility, surrender, or seizure is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The respondent shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility, surrender or seizure order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection.

§ 843. Rules of court. Rules of court shall define permissible terms and conditions of any order issued under section eight hundred forty-one, paragraphs (b), (c) and (d).

§ 844. Reconsideration and modification. For good cause shown, the family court may after hearing reconsider and modify any order issued under paragraphs (b), (c) and (d) of section eight hundred forty-one.

§ 846. Petition; violation of court order. Proceedings under this part shall be originated by the filing of a petition containing an allegation that the respondent has failed to obey a lawful order of this court or an order of protection issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction.

(a) Persons who may originate proceedings. The original petitioner, or any person who may originate proceedings under section eight hundred twenty-two of this article, may originate a proceeding under this part.

(a-1) 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.

(b) Issuance of summons. (i) Upon the filing of a petition under this part, the court may cause a copy of the petition and summons to be issued requiring the respondent to show cause why respondent should not be dealt with in accordance with section eight hundred forty-six-a of this part. The summons shall include on its face, printed or typewritten in a size equal to at least eight point bold type, a notice warning the respondent that a failure to appear in court may result in immediate arrest, and that, after an appearance in court, a finding that the respondent willfully failed to obey the order may result in commitment to jail for a term not to exceed six months, for contempt of court. The notice shall also advise the respondent of the right to counsel, and the right to assigned counsel, if indigent.

(ii) Upon the filing of a petition under this part alleging a violation of a lawful order of this or any other court, as provided in this section, the court may, on its own motion, or on motion of the petitioner:

(A) hear the violation petition and take such action as is authorized under this article; or

(B) retain jurisdiction to hear and determine whether such violation constitutes contempt of court, and transfer the allegations of criminal conduct constituting such violation to the district attorney for prosecution pursuant to section eight hundred thirteen of this article; or

(C) transfer the entire proceeding to the criminal court pursuant to section eight hundred thirteen of this article.

(c) Service of summons. Upon issuance of a summons, the provisions of section eight hundred twenty-six of this article shall apply, except that no order of commitment may be entered upon default in appearance by the respondent if service has been made pursuant to subdivision (b) of such section.

(d) Issuance of warrant. The court may issue a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

§ 846-a. Powers on failure to obey order. If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection or temporary order of protection issued pursuant to this act or issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order or temporary order of protection to add reasonable conditions of behavior to the existing order, make a new order of protection in accordance with section eight hundred forty-two of this part, may order the forfeiture of bail in a manner consistent with article five hundred forty of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for a term not to exceed six months. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. If the court determines that the willful failure to obey such order involves violent behavior constituting the crimes of menacing, reckless endangerment, assault or attempted assault and if such a respondent is licensed to carry, possess, repair and dispose of firearms pursuant to section 400.00 of the penal law, the court may also immediately revoke such license and may arrange for the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, and disposal of any firearm such respondent owns or possesses. If the willful failure to obey such order involves the infliction of physical injury as defined in subdivision nine of section 10.00 of the penal law or the use or threatened use of a deadly weapon or dangerous instrument, as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, such revocation and immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law six and disposal of any firearm owned or possessed by respondent shall be mandatory, pursuant to subdivision eleven of section 400.00 of the penal law.

§ 847. Procedures for violation of orders of protection; certain cases. An assault, attempted assault or other family offense as defined in section eight hundred twelve of this article which occurs subsequent to the issuance of an order of protection under this article shall be deemed a new offense for which the petitioner may file a petition alleging a violation of an order of protection or file a new petition alleging a new family offense and may seek to have an accusatory instrument filed in a criminal court, as authorized by section one hundred fifteen of this act.

ARTICLE 9
CONCILIATION PROCEEDINGS

PART 1
PURPOSE AND JURISDICTION

§ 911. Purpose. This article is designed to implement section thirteen-c, subdivision six, of article six of the constitution by making available an informal conciliation procedure to those whose marriage is in trouble.

§ 912. Jurisdiction. The family court has original jurisdiction over conciliation proceedings under this article.

§ 913. Support and family offense proceedings. On its own motion and at any time in a proceeding under this article, the court may direct the filing of a support petition under article four or a family offense petition under article eight of this act.

§ 914. No effect on marital status. The family court in a proceeding under this article may not issue any order affecting the marital status of the petitioner or of the petitioner's spouse or relieving either of any marital obligation.

§ 915. Confidentiality of statements. All statements made in proceedings under this article are confidential and shall not be admissible in evidence in any subsequent proceeding or action.

PART 2

PROCEDURE

§ 921. Originating proceeding. A spouse may originate a conciliation proceeding under this article by filing a petition stating that his or her marriage is in difficulty and that the conciliation services of the family court are needed.

§ 922. Preliminary procedure. The probation service is authorized to confer with a potential petitioner and may invite the potential petitioner's spouse and any other interested person to attend such conferences as appear to be advisable in conciliating the spouses. The probation service is also authorized after the filing of a petition to confer with the petitioner and to invite the petitioner's spouse to attend such conferences as appear to be advisable in conciliating the spouses.

§ 923. Referral to voluntary agency. (a) The probation service may recommend to the petitioner and to the petitioner's spouse that they consult with interested voluntary social or religious agencies in the community. If they consent, the service may thereupon refer them to any such interested voluntary agency.

(b) The probation service may not prevent any person from having access to the court for the purpose of having conciliation proceedings under this article.

§ 924. Attendance at conference. If the petitioner's spouse does not attend a conference to which he or she has been invited after the filing of a petition under section nine hundred twenty-one, the petitioner may apply to the court for an order directing the petitioner's spouse to attend a conciliation conference. The court may enter an order directing the petitioner's spouse to appear in court on not less than five days' notice and, if the court concludes after hearing that it will serve the purposes of this article to require attendance at a conference, may direct the petitioner's spouse to attend a conference.

§ 925. Continuation of proceeding. If the petitioner's spouse attends a conference to which he or she has been invited under section nine hundred twenty-two or has been directed to attend under section nine hundred twenty-four and thereafter does not attend any conciliation conference, the court, on due notice to both spouses, may hold a hearing to determine whether the proceeding should be continued. If it concludes that conciliation under the auspices of the family court is not feasible, it may refer the parties to interested voluntary social or religious agencies in the community and shall terminate the proceeding under this article. If it concludes that further efforts at conciliation under this article should be undertaken, it may direct the spouses to attend another conciliation conference.

§ 926. Duration of proceeding. Unless both spouses consent to the continuation of a conciliation proceeding under this article, it terminates ninety days after the filing of the petition.

ARTICLE 10

CHILD PROTECTIVE PROCEEDINGS

PART I

JURISDICTION

§ 1011. Purpose. This article is designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being. It is designed to provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met.

§ 1012. Definitions. When used in this article and unless the specific context indicates otherwise:

(a) "Respondent" includes any parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child;

(b) "Child" means any person or persons alleged to have been abused or neglected, whichever the case may be;

(c) "A case involving abuse" means any proceeding under this article in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children;

(d) "Drug" means any substance defined as a controlled substance in section thirty-three hundred six of the public health law;

(e) "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) (A) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; (B) allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30, 230.32 and 230.34-a of the penal law; (C) commits any of the acts described in sections 255.25, 255.26 and 255.27 of the penal law; (D) allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law; or (E) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute; (F) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

(f) "Neglected child" means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so, or, in the case of an alleged failure of the respondent to provide education to the child, notwithstanding the efforts of the school district or local educational agency and child protective agency to ameliorate such alleged failure prior to the filing of the petition; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

(g) "Person legally responsible" includes the child's custodian, guardian, any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

(h) "Impairment of emotional health" and "impairment of mental or emotional condition" includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

(i) "Child protective agency" means the child protective service of the appropriate local department of social services or such other agencies with whom the local department has arranged for the provision of child protective services under the local plan for child protective services or an Indian tribe that has entered into an agreement with the state department of social services pursuant to section thirty-nine of the social services law to provide child protective services.

(j) "Aggravated circumstances" means where a child has been either severely or repeatedly abused, as defined in subdivision eight of section three hundred eighty-four-b of the social services law; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of this section, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of this section, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

(k) "Permanency hearing" means a hearing held in accordance with section one thousand eighty-nine of this act for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district or agency.

(l) "Parent" means a person who is recognized under the laws of the state of New York to be the child's legal parent.

(m) "Relative" means any person who is related to the child by blood, marriage or adoption and who is not a parent, putative parent or relative of a putative parent of the child.

(n) "Suitable person" means any person who plays or has played a significant positive role in the child's life or in the life of the child's family.

§ 1013. Jurisdiction. (a) The family court has exclusive original jurisdiction over proceedings under this article alleging the abuse or neglect of a child.

(b) For the protection of children, the family court has jurisdiction over proceedings under this article notwithstanding the fact that a criminal court also has or may be exercising jurisdiction over the facts alleged in the petition or complaint.

(c) In determining the jurisdiction of the court under this article, the age of the child at the time the proceedings are initiated is controlling.

(d) In determining the jurisdiction of the court under this article, the child need not be currently in the care or custody of the respondent if the court otherwise has jurisdiction over the matter.

§ 1014. Transfer to and from family court; concurrent proceedings. (a) The family court may transfer upon a hearing any proceedings originated under this article to an appropriate criminal court or may refer such proceeding to the appropriate district attorney if it concludes, that the processes of the family court are inappropriate or insufficient. The family court may continue the proceeding under this article after such transfer or referral and if the proceeding is continued, the family court may enter any preliminary order, as authorized by section one thousand twenty-seven, in order to protect the interests of the child pending a final order of disposition.

(b) Any criminal complaint charging facts amounting to abuse or neglect under this article may be transferred by the criminal court in which the complaint was made to the family court in the county in which the criminal court is located, unless the family court has transferred the proceeding to the criminal court. The family court shall then, upon a hearing, determine what further action is appropriate. After the family court makes this determination, any criminal complaint may be transferred back to the criminal court, with or without retention of the proceeding in the family court, or may be retained solely in the family court, or if there appears to be no basis for the complaint, it may be dismissed by the family court. If the family court determines a petition should be filed, proceedings under this act shall be commenced as soon as practicable.

(c) Nothing in this article shall be interpreted to preclude concurrent proceedings in the family court and a criminal court.

(d) In any hearing conducted by the family court under this section, the court may grant the respondent or potential respondent testimonial immunity in any subsequent criminal court proceeding.

§ 1015. Venue. (a) Proceedings under this article may be originated in the county in which the child resides or is domiciled at the time of the filing of the petition or in the county in which the person having custody of the child resides or is domiciled. For the purposes of this section, residence shall include a dwelling unit or facility which provides shelter to homeless persons or families on an emergency or temporary basis.

(b) If in another proceeding under this act the court directs the filing of an abuse or neglect petition, the venue provision of the article under which the other proceeding is brought and the provisions of part seven of article one shall apply.

§ 1015-a. Court-ordered services. In any proceeding under this article, the court may order a social services official to provide or arrange for the provision of services or assistance to the child and their family to facilitate the protection of the child, the rehabilitation of the family and, as appropriate, the discharge of the child from foster care. Such order shall not include the provision of any service or assistance to the child and their family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. In any order issued pursuant to this section the court may require a social services official to make periodic progress reports to the court on the implementation of such order. Nothing in such order shall preclude any party from exercising its rights under this article or any other provision of law relating to the return of the care and custody of the child by a social services official to the parent, parents or guardian. Violation of such order shall be subject to punishment pursuant to section seven hundred fifty-three of the judiciary law. Such order relating to services for a child placed in foster care shall be enforceable after such child is discharged from foster care pursuant to subdivision (d) of section one thousand eighty-eight of this act.

§ 1016. Appointment of attorney for the child. The court shall appoint an attorney to represent a child who has been allegedly abused or neglected upon the earliest occurrence of any of the following: (i) the court receiving notice, pursuant to paragraph (iv) of subdivision (b) of section one thousand twenty-four of this act, of the emergency removal of the child; (ii) an application for an order for removal of the child prior to the filing of a petition, pursuant to section one thousand twenty-two of this act; or (iii) the filing of a petition alleging abuse or neglect pursuant to this article.

Whenever an attorney has been appointed by the family court pursuant to section two hundred forty-nine of this act to represent a child in a proceeding under this article, such appointment shall continue without further court order or appointment during (i) an order of disposition issued by the court pursuant to section one thousand fifty-two of this article directing supervision, protection or suspending judgment, or any extension thereof; (ii) an adjournment in contemplation of dismissal as provided for in section one thousand thirty-nine of this article or any extension thereof; or (iii) the pendency of the foster care placement ordered pursuant to section one thousand fifty-two of this article. All notices and reports required by law shall be provided to such attorney for the child. Such appointment shall terminate upon the expiration of such order, unless another appointment of an attorney for the child has been made by the court or unless such attorney makes application to the court to be relieved of his or her appointment. Upon approval of such application to be relieved, the court shall immediately appoint another attorney for the child to whom all notices and reports required by law shall be provided.

The attorney for the child shall be entitled to compensation pursuant to applicable provisions of law for services rendered up to and including disposition of the petition. The attorney for the child shall, by separate application, be entitled to compensation for services rendered subsequent to the disposition of the petition.

Nothing in this section shall be construed to limit the authority of the court to remove the attorney for the child from his or her assignment.

§ 1017. Placement of children. 1. In any proceeding under this article, when the court determines that a child must be removed from his or her home, pursuant to part two of this article, or placed, pursuant to section one thousand fifty-five of this article:

(a) the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent of the child and any relatives of the child, including all of the child's grandparents, all relatives or suitable persons identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life. The local commissioner shall inform them in writing of the pendency of the proceeding and of the opportunity for non-respondent parents to seek temporary release of the child under this article or custody under article six of this act or for relatives to seek to become foster parents or to provide free care under this article or to seek custody pursuant to article six of this act; or for suitable persons to become foster parents or provide free care under this article or to seek guardianship pursuant to article six of this act. Uniform statewide rules of court shall specify the contents of the notice consistent with the provisions of this section. The local commissioner of social services shall report the results of such investigation, or investigations to the court and parties, including the attorney for the child. The local commissioner shall also record the results of the investigation or investigations, including, but not limited to, the name, last known address, social security number, employer's address and any other identifying information to the extent known regarding any non-respondent parent, in the uniform case record maintained pursuant to section four hundred nine-f of the social services law. For the purpose of this section, "non-respondent parent" shall include a person entitled to notice of the pendency of the proceeding and of the right to intervene as an interested party pursuant to subdivision (d) of section one thousand thirty-five of this article, and a non-custodial parent entitled to notice and the right to enforce visitation rights pursuant to subdivision (e) of section one thousand thirty-five of this article.

(b) The court shall also direct the local commissioner of social services to conduct an investigation to locate any person who is not recognized to be the child's legal parent and does not have the rights of a legal parent under the laws of the state of New York but who (i) has filed with a putative father registry an instrument acknowledging parentage of the child, pursuant to section 4-1.2 of the estates, powers and trusts law, or (ii) has a pending parentage petition, or (iii) has been identified as a parent of the child by the child's other parent in a written sworn statement. The local commissioner of social services shall report the results of such investigation to the court and parties, including the attorney for the child.

(c) The court shall determine:

(i) whether there is a non-respondent parent, relative or suitable person with whom such child may appropriately reside; and

(ii) in the case of a relative or suitable person, whether such individual seeks approval as a foster parent pursuant to the social services law for the purposes of providing care for such child, or wishes to provide free care for the child during the pendency of any orders pursuant to this article.

2. The court shall, upon receipt of the report of the investigation

ordered pursuant to subdivision one of this section:

(a) where the court, after a review of the reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law, 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, related decisions in court proceedings under this article and all warrants issued under this act, determines that the child may appropriately reside with a non-respondent parent or other relative or suitable person, either:

(i) grant a temporary order of custody or guardianship to such non-respondent parent, relative or suitable person pursuant to a petition filed under article six of this act pending further order of the court, or at disposition of the proceeding, grant a final order of custody or guardianship to such non-respondent parent, relative or suitable person pursuant to article six of this act and section one thousand fifty-five-b of this article; or

(ii) temporarily release the child directly to such non-respondent parent or temporarily place the child with a relative or suitable person pursuant to this article during the pendency of the proceeding or until further order of the court, whichever is earlier and conduct such other and further investigations as the court deems necessary. The court may direct the commissioner of social services, pursuant to regulations of the office of children and family services, to commence an investigation of the home of such non-respondent parent, relative or suitable person within twenty-four hours and to report the results to the court and the parties, including the attorney for the child. If the home of a non-respondent parent, relative or suitable person, is found unqualified as appropriate for the temporary release or placement of the child under this article, the local commissioner shall report such fact and the reasons therefor to the court and the parties, including the attorney for the child, forthwith; or

(iii) remand or place the child, as applicable, with the local commissioner of social services and direct such commissioner to have the child reside with such relative or suitable person and further direct such commissioner pursuant to regulations of the office of children and family services, to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter approve such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval, the local commissioner shall report such fact and the reasons thereafter to the court and the parties, including the attorney for the child, forthwith.

(b) where the court determines that a suitable non-respondent parent or other person related to the child cannot be located, remand or place the child with a suitable person, pursuant to subdivision (b) of section one thousand twenty-seven or subdivision (a) of section one thousand fifty-five of this article, or remand or place the child in the custody of the local commissioner of social services pursuant to subdivision (b) of section one thousand twenty-seven or subdivision (a) of section one thousand fifty-five of this article. The court in its discretion may direct that such commissioner have the child reside in a specific certified foster home where the court determines that such placement is in furtherance of the child's best interests.

3. An order temporarily releasing a child to a non-respondent parent or parents, or temporarily placing a child with a relative or relatives or other suitable person or persons pursuant to subparagraph (ii) of paragraph (a) of subdivision two of this section or remanding or placing a child with a local commissioner of social services to reside with a relative or relatives or suitable person or persons as foster parents pursuant to subparagraph (iii) of paragraph (a) of subdivision two of this section may not be granted unless the person or persons to whom the child is released, remanded or placed submits to the jurisdiction of the court with respect to the child. The order shall set forth the terms and conditions applicable to such person or persons and child protective agency, social services official and duly authorized agency with respect to the child and may include, but may not be limited to, a direction for such person or persons to cooperate in making the child available for court-ordered visitation with respondents, siblings and others and for appointments with and visits by the child protective agency, including visits in the home and in-person contact with the child protective agency, social services official or duly authorized agency, and for appointments with the child's attorney, clinician or other individual or

program providing services to the child during the pendency of the proceeding. The court also may issue a temporary order of protection under subdivision (f) of section one thousand twenty-two, section one thousand twenty-three or section one thousand twenty-nine of this article and an order directing that services be provided pursuant to section one thousand fifteen-a of this part.

4. Nothing in this section shall be deemed to limit, impair or restrict the ability of the court to remove a child from his or her home as authorized by law, or the right of a party to a hearing pursuant to section ten hundred twenty-eight of this article.

5. (a) In any case in which an order has been issued pursuant to this article remanding or placing a child in the custody of the local social services district, the social services official or authorized agency charged with custody or care of the child shall report any anticipated change in placement to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision to change the placement or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the placement change is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or authorized agency shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change.

(b) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section one thousand fifty-five-c of this article. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

§ 1018. Conferencing and mediation. In any proceeding initiated pursuant to this article, the court may, at its discretion, authorize the use of conferencing or mediation at any point in the proceedings to further a plan for the child that fosters the child's health, safety, and well-being. Such conferencing or mediation may involve interested relatives or other adults who are significant in the life of the child.

PART 2

TEMPORARY REMOVAL AND PRELIMINARY ORDERS

§ 1021. Temporary removal with consent. A peace officer, acting pursuant to his or her special duties, or a police officer or an agent of a duly authorized agency, association, society or institution may temporarily remove a child from the place where he or she is residing with the written consent of his or her parent or other person legally responsible for his or her care, if the child is suspected to be an abused or neglected child under this article. The officer or agent shall, coincident with consent or removal, give written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this article, and of the right to be represented by counsel and the procedures for those who are indigent to obtain counsel in proceedings brought pursuant to this article. Such notice shall also include the name, title, organization, address and telephone number of the person removing the child; the name, address and telephone number of the authorized agency to which the child will be taken, if available; and the telephone number of the person to be contacted for visits with the child. A copy of the instrument whereby the parent or legally responsible person has given such consent to such removal shall be appended to the petition alleging abuse or neglect of the removed child and made a part of the permanent court record of the proceeding. A copy of such instrument and notice of the telephone number of the child protective agency to contact to ascertain the date, time and place of the filing of the petition and of the hearing that will be held pursuant to section one thousand twenty-seven of this article shall be given to the parent or legally responsible person. Unless the child is returned sooner, a petition shall be filed within three court days from the date of removal. In such a case, a hearing shall be held no later than the next court day after the petition is filed and findings shall be made as required pursuant to section one thousand twenty-seven of this article.

§ 1022. Preliminary orders of court before petition filed. (a) (i) The family court may enter an order directing the temporary removal of a child from the place where he or she is residing before the filing of a petition under this article, if (A) the parent or other person legally responsible for the child's care is absent or, though present, was asked and refused to consent to the temporary removal of the child and was informed of an intent to apply for an order under this section and of the information required by section one thousand twenty-three of this part; and

(B) the child appears so to suffer from the abuse or neglect of his or her parent or other person legally responsible for his or her care that his or her immediate removal is necessary to avoid imminent danger to the child's life or health; and

(C) there is not enough time to file a petition and hold a preliminary hearing under section one thousand twenty-seven of this part.

(ii) When a child protective agency applies to a court for the immediate removal of a child pursuant to this subdivision, the court shall calendar the matter for that day and shall continue the matter on successive subsequent court days, if necessary, until a decision is made by the court.

(iii) In determining whether temporary removal of the child is necessary to avoid imminent risk to the child's life or health, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, whether reasonable efforts were made prior to the date of application for the order directing such temporary removal to prevent or eliminate the need for removal of the child from the home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding.

(iv) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that such efforts were appropriate under the circumstances, the court shall order the child protective agency to provide or arrange for the provision of appropriate services or assistance to the child and the child's family pursuant to section one thousand fifteen-a of this article or subdivision (c) of this section.

(v) The court shall also consider and determine whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection, pursuant to section one thousand twenty-nine of this part, directing the removal of a person or persons from the child's residence.

(vi) Any order directing the temporary removal of a child pursuant to this section shall state the court's findings with respect to the necessity of such removal, whether the respondent was present at the hearing and, if not, what notice the respondent was given of the hearing, whether the respondent was represented by counsel, and, if not, whether the respondent waived his or her right to counsel.

(vii) At the conclusion of a hearing where it has been determined that a child should be removed from his or her parent or other person legally responsible, the court shall set the date certain for an initial permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of this act. The date certain shall be included in the written order issued pursuant to subdivision (b) of this section and shall set forth the date certain scheduled for the permanency hearing.

(b) Any written order pursuant to this section shall be issued immediately, but in no event later than the next court day following the removal of the child. The order shall specify the facility to which the child is to be brought. Except for good cause shown or unless the child is sooner returned to the place where he or she was residing, a petition shall be filed under this article within three court days of the issuance of the order. The court shall hold a hearing pursuant to section one thousand twenty-seven of this part no later than the next court day following the filing of the petition if the respondent was not present, or was present and unrepresented by counsel, and has not waived his or her right to counsel, for the hearing pursuant to this section.

(c) The family court, before the filing of a petition under this article, may enter an order authorizing the provision of services or assistance, including authorizing a physician or hospital to provide emergency medical or surgical procedures, if (i) such procedures are necessary to safeguard the life or health of the child; and

(ii) there is not enough time to file a petition and hold a preliminary hearing under section one thousand twenty-seven. Where the court orders a social services official to provide or contract for services or assistance pursuant to this section, such order shall be limited to services or assistance authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect.

(d) The person removing the child shall, coincident with removal, give written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this act, the name, title, organization, address and telephone number of the person removing the child, the name and telephone number of the child care agency to which the child will be taken, if available, the telephone number of the person to be contacted for visits with the child, and the information required by section one thousand twenty-three of this act. Such notice shall be personally served upon the parent or other person at the residence of the child provided, that if such person is not present at the child's residence at the time of removal, a copy of the notice shall be affixed to the door of such residence and a copy shall be mailed to such person at his or her last known place of residence within twenty-four hours after the removal of the child. If the place of removal is not the child's residence, a copy of the notice shall be personally served upon the parent or person legally responsible for the child's care forthwith, or affixed to the door of the child's residence and mailed to the parent or other person legally responsible for the child's care at his or her last known place of residence within twenty-four hours after the removal. The form of the notice shall be prescribed by the chief administrator of the courts.

(e) Nothing in this section shall be deemed to require that the court order the temporary removal of a child as a condition of ordering services or assistance, including emergency medical or surgical procedures pursuant to subdivision (c) of this section.

(f) The court may issue a temporary order of protection pursuant to section ten hundred twenty-nine of this article as an alternative to or in conjunction with any other order or disposition authorized under this section.

§ 1022-a. Preliminary orders; notice and appointment of counsel. At a hearing held pursuant to section one thousand twenty-two of this part at which the respondent is present, the court shall advise the respondent and any non-respondent parent who is present of the allegations in the application and shall appoint counsel for each in accordance with section two hundred sixty-two of this act, unless waived.

§ 1023. Procedure for issuance of temporary order. Any person who may originate a proceeding under this article may apply for, or the court on its own motion may issue, an order of temporary removal under section one thousand twenty-two or one thousand twenty-seven or an order for the provision of services or assistance, including emergency medical or surgical procedures pursuant to subdivision (c) of section one thousand twenty-two, or a temporary order of protection pursuant to section ten hundred twenty-nine. The applicant or, where designated by the court, any other appropriate person, shall make every reasonable effort, with due regard for any necessity for immediate protective action, to inform the parent or other person legally responsible for the child's care of the intent to apply for the order, of the date and the time that the application will be made, the address of the court where the application will be made, of the right of the parent or other person legally responsible for the child's care to be present at the application and at any hearing held thereon and, of the right to be represented by counsel, including procedures for obtaining counsel, if indigent.

§ 1024. Emergency removal without court order. (a) A peace officer, acting pursuant to his or her special duties, police officer, or a law enforcement official, or a designated employee of a city or county department of social services shall take all necessary measures to protect a child's life or health including, when appropriate, taking or keeping a child in protective custody, and any physician shall notify the local department of social services or appropriate police authorities to take custody of any child such physician is treating, without an order under section one thousand twenty-two of this article and without the consent of the parent or other person legally responsible for the child's care, regardless of whether the parent or other person legally responsible for the child's care is absent, if (i) such person has reasonable cause to believe that the child is in such circumstance or condition that his or her continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child's care presents an imminent danger to the child's life or health; and

(ii) there is not time enough to apply for an order under section one thousand twenty-two of this article.

(b) If a person authorized by this section removes or keeps custody of a child, he shall (i) bring the child immediately to a place approved for such purpose by the local social services department, unless the person is a physician treating the child and the child is or will be presently admitted to a hospital, and

(ii) make every reasonable effort to inform the parent or other person legally responsible for the child's care of the facility to which he has brought the child, and

(iii) give, coincident with removal, written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this act, and of the right to be represented by counsel in proceedings brought pursuant to this article and procedures for obtaining counsel, if indigent. Such notice shall also include the name, title, organization, address and telephone number of the person removing the child, the name, address, and telephone number of the authorized agency to which the child will be taken, if available, the telephone number of the person to be contacted for visits with the child, and the information required by section one thousand twenty-three of this act. Such notice shall be personally served upon the parent or other person at the residence of the child provided, that if such person is not present at the child's residence at the time of removal, a copy of the notice shall be affixed to the door of such residence and a copy shall be mailed to such person at his or her last known place of residence within twenty-four hours after the removal of the child. If the place of removal is not the child's residence, a copy of the notice shall be personally served upon the parent or person legally responsible for the child's care forthwith, or affixed to the door of the child's residence and mailed to the parent or other person legally responsible for the child's care at his or her last known place of residence within twenty-four hours after the removal. An affidavit of such service shall be filed with the clerk of the court within twenty-four hours of serving such notice exclusive of weekends and holidays pursuant to the provisions of this section. The form of the notice shall be prescribed by the chief administrator of the courts. Failure to file an affidavit of service as required by this subdivision shall not constitute grounds for return of the child.

(iv) inform the court and make a report pursuant to title six of the social services law, as soon as possible.

(c) Any person or institution acting in good faith in the removal or keeping of a child pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or keeping.

(d) Where the physician keeping a child in his custody pending action by the local department of social services or appropriate police authorities does so in his capacity as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution, or his designated agent, who shall then become responsible for the further care of such child.

(e) Any physician keeping a child in his custody pursuant to this section shall have the right to keep such child in his custody until such time as the custody of the child has been transferred to the appropriate police authorities or the social services official of the city or county in which the physician maintains his place of business. If the social services official receives custody of a child pursuant to the provisions of this section, he shall promptly inform the parent or other person responsible for such child's care and the family court of his action.

§ 1026. Action by the appropriate person designated by the court and child protective agency upon emergency removal. (a) The appropriate person designated by the court or a child protective agency when informed that there has been an emergency removal of a child from his or her home without court order shall (i) make every reasonable effort to communicate immediately with the child's parent or other person legally responsible for his or her care, and

(ii) except in cases involving abuse, cause a child thus removed to be returned, if it concludes there is not an imminent risk to the child's health in so doing. In cases involving abuse, the child protective agency may recommend to the court that the child be returned or that no petition be filed.

(b) The child protective agency may, but need not, condition the return of a child under this section upon the giving of a written promise, without security, of the parent or other person legally responsible for the child's care that he or she will appear at the family court at a time and place specified in the recognizance and may also require him or her to bring the child with him or her.

(c) If the child protective agency for any reason does not return the child under this section after an emergency removal pursuant to section one thousand twenty-four of this part on the same day that the child is removed, or if the child protective agency concludes it appropriate after an emergency removal pursuant to section one thousand twenty-four of this part, it shall cause a petition to be filed under this part no later than the next court day after the child was removed. The court may order an extension, only upon good cause shown, of up to three court days from the date of such child's removal. A hearing shall be held no later than the next court day after the petition is filed and findings shall be made as required pursuant to section one thousand twenty-seven of this part.

§ 1027. Hearing and preliminary orders after filing of petition. (a) (i) In any case where the child has been removed without court order or where there has been a hearing pursuant to section one thousand twenty-two of this part at which the respondent was not present, or was not represented by counsel and did not waive his or her right to counsel, the family court shall hold a hearing. Such hearing shall be held no later than the next court day after the filing of a petition to determine whether the child's interests require protection, including whether the child should be returned to the parent or other person legally responsible, pending a final order of disposition and shall continue on successive court days, if necessary, until a decision is made by the court.

(ii) In any such case where the child has been removed, any person originating a proceeding under this article shall, or the attorney for the child may apply for, or the court on its own motion may order, a hearing at any time after the petition is filed to determine whether the child's interests require protection pending a final order of disposition. Such hearing must be scheduled for no later than the next court day after the application for such hearing has been made.

(iii) In any case under this article in which a child has not been removed from his or her parent or other person legally responsible for his or her care, any person originating a proceeding under this article or the attorney for the child may apply for, or the court on its own motion may order, a hearing at any time after the petition is filed to determine whether the child's interests require protection, including whether the child should be removed from his or her parent or other person legally responsible, pending a final order of disposition. Such hearing must be scheduled for no later than the next court day after the application for such hearing has been made.

(iv) Notice of a hearing shall be provided pursuant to section one thousand twenty-three of this part.

(b) (i) Upon such hearing, if the court finds that removal is necessary to avoid imminent risk to the child's life or health, it shall remove or continue the removal of the child. If the court makes such a determination that removal is necessary, the court shall immediately inquire as to the status of any efforts made by the local social services district to locate relatives of the child, including any non-respondent parent and all of the child's grandparents, as required pursuant to section one thousand seventeen of this article. The court shall also inquire as to whether the child, if over the age of five, has identified any relatives who play or have played a significant positive role in his or her life and whether any respondent parent or any non-respondent parent has identified any suitable relatives. Such inquiry shall include whether any relative who has been located has expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child. Upon completion of such inquiry, the court shall remand or place the child:

(A) with the local commissioner of social services and the court may direct such commissioner to have the child reside with a relative or other suitable person who has indicated a desire to become a foster parent for the child and further direct such commissioner, pursuant to regulations of the office of children and family services, to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter expedite approval or certification of such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval or certification, the local commissioner shall report such fact to the court forthwith so that the court may make a placement determination that is in the best interests of the child;

(B) to a place approved for such purpose by the social services district; or

(C) with a relative or suitable person other than the respondent.

(ii) Such order shall state the court's findings which support the necessity of such removal, whether the respondent was present at the hearing and, if not, what notice the respondent was given of the hearing, and, where a pre-petition removal has occurred, whether such removal took place pursuant to section one thousand twenty-one, one thousand twenty-two or one thousand twenty-four of this part. If the parent or other person legally responsible for the child's care is physically present at the time the child is removed, and has not previously been served with the summons and petition, the summons and petition shall be served upon such parent or person coincident with such removal. If such parent or person is not physically present at the time the child is removed, service of the summons and petition shall be governed by section one thousand thirty-six of this article. In determining whether removal or continuing the removal of a child is necessary to avoid imminent risk to the child's life or health, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, whether reasonable efforts were made prior to the date of the hearing held under subdivision (a) of this section to prevent or eliminate the need for removal of the child from the home and, if the child was removed from his or her home prior to the date of the hearing held under subdivision (a) of this section, where appropriate, that reasonable efforts were made to make it possible for the child to safely return home.

(iii) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding.

(iv) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that such efforts were appropriate under the circumstances, the court shall order the child protective agency to provide or arrange for the provision of appropriate services or assistance to the child and the child's family pursuant to section one thousand fifteen-a or as enumerated in subdivision (c) of section one thousand twenty-two of this article, notwithstanding the fact that a petition has been filed.

(v) The court shall also consider and determine whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection, pursuant to section one thousand twenty-nine of this part, directing the removal of a person or persons from the child's residence.

(c) Upon such hearing, the court may, for good cause shown, issue a preliminary order of protection which may contain any of the provisions authorized on the making of an order of protection under section one thousand fifty-six of this act.

(d) Upon such hearing, the court may, for good cause shown, release the child to his or her parent or other person legally responsible for his or her care, pending a final order of disposition, in accord with subparagraph (ii) of paragraph (a) of subdivision two of section one thousand seventeen of this article.

(e) Upon such hearing, the court may authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

(f) If the court grants or denies a preliminary order requested pursuant to this section, it shall state the grounds for such decision.

(g) In all cases involving abuse the court shall order, and in all cases involving neglect the court may order, an examination of the child pursuant to section two hundred fifty-one of this act or by a physician appointed or designated for the purpose by the court. As part of such examination, the physician shall arrange to have colored photographs taken as soon as practical of the areas of trauma visible on such child and may, if indicated, arrange to have a radiological examination performed on the child. The physician, on the completion of such examination, shall forward the results thereof together with the color photographs to the court ordering such examination. The court may dispense with such examination in those cases which were commenced on the basis of a physical examination by a physician. Unless colored photographs have already been taken or unless there are no areas of visible trauma, the court shall arrange to have colored photographs taken even if the examination is dispensed with.

(h) At the conclusion of a hearing where it has been determined that a child should be removed from his or her parent or other person legally responsible, the court shall set a date certain for an initial permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of this act. The date certain shall be included in the written order issued pursuant to subdivision (b) of this section and shall set forth the date certain scheduled for the permanency hearing. A copy of such order shall be provided to the parent or other person legally responsible for the child's care.

§ 1027-a. Placement of siblings; contact with siblings. (a) When a social services official removes a child pursuant to this part, such official shall place such child with his or her minor siblings or half-siblings who have been or are being remanded to or placed in the care and custody of such official unless, in the judgment of such official, such placement is contrary to the best interests of the children. Placement with siblings or half-siblings shall be presumptively in the child's best interests unless such placement would be contrary to the child's health, safety, or welfare. If such placement is not immediately available at the time of the removal of the child, such official shall provide or arrange for the provision of such placement within thirty days.

(b) If placement of a child removed pursuant to this part together with his or her minor siblings is not in the best interests of the child, the social services official shall arrange appropriate and regular contact by the child with his or her minor siblings and half-siblings unless such contact would not be in the child's and the siblings' best interests.

(c) If a child removed pursuant to this part is not placed together or afforded regular contact with his or her siblings, the child, through his or her attorney or through a parent on his or her behalf, may move for an order regarding placement or contact. The motion shall be served upon: (i) the respondent in the proceeding under this article; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the siblings to be visited or with whom contact is sought; (v) any non-respondent parent in the proceeding under this article; (vi) such sibling himself or herself if ten years of age or older; and (vii) such sibling's attorney, if any. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent. The court may order that the child be placed together with or have regular contact with his or her siblings if the court determines it to be in the best interests of the child and his or her siblings.

§ 1028. Application to return child temporarily removed. (a) Upon the application of the parent or other person legally responsible for the care of a child temporarily removed under this part or upon the application of the child's attorney for an order returning the child, the court shall hold a hearing to determine whether the child should be returned (i) unless there has been a hearing pursuant to section one thousand twenty-seven of this article on the removal of the child at which the parent or other person legally responsible for the child's care was present and had the opportunity to be represented by counsel, or (ii) upon good cause shown. Except for good cause shown, such hearing shall be held within three court days of the application and shall not be adjourned. Upon such hearing, the court shall grant the application, unless it finds that the return presents an imminent risk to the child's life or health. If a parent or other person legally responsible for the care of a child waives his or her right to a hearing under this section, the court shall advise such person at that time that, notwithstanding such waiver, an application under this section may be made at any time during the pendency of the proceedings.

(b) In determining whether temporary removal of the child is necessary to avoid imminent risk to the child's life or health, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, whether reasonable efforts were made prior to the date of the hearing to prevent or eliminate the need for removal of the child from the home and where appropriate, whether reasonable efforts were made after removal of the child to make it possible for the child to safely return home.

(c) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding.

(d) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that such efforts were appropriate under the circumstances, the court shall order the child protective agency to provide or arrange for the provision of appropriate services or assistance to the child and the child's family pursuant to section one thousand fifteen-a or as enumerated in subdivision (c) of section one thousand twenty-two of this article, notwithstanding the fact that a petition has been filed.

(e) The court may issue a temporary order of protection pursuant to section ten hundred twenty-nine of this article as an alternative to or in conjunction with any other order or disposition authorized under this section.

(f) The court shall also consider and determine whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection, pursuant to section ten hundred twenty-nine of this article, directing the removal of a person or persons from the child's residence.

§ 1028-a. Application of a relative to become a foster parent. (a) Upon the application of a relative to become a foster parent of a child in foster care, the court shall, subject to the provisions of this subdivision, hold a hearing to determine whether the child should be placed with a relative in foster care. Such hearing shall only be held if:

(i) the person is related to the child as described under paragraph (a), (b), or (c) of subdivision three of section four hundred fifty-eight-a of the social services law;

(ii) the child has been temporarily removed under this part, or placed pursuant to section one thousand fifty-five of this article, and placed in non-relative foster care;

(iii) the relative indicates a willingness to become the foster parent for such child and has not refused previously to be considered as a foster parent or custodian of the child, provided, however, that an inability to provide immediate care for the child due to a lack of resources or inadequate housing, educational or other arrangements necessary to care appropriately for the child shall not constitute a previous refusal;

(iv) the local social services district has refused to place the child with the relative for reasons other than the relative's failure to qualify as a foster parent pursuant to the regulations of the office of children and family services; and

(v) the application is brought within six months from the date the relative received notice that the child was being removed or had been removed from his or her home and no later than twelve months from the date that the child was removed.

(b) The court shall give due consideration to such application and shall make the determination as to whether the child should be placed in foster care with the relative based on the best interests of the child.

(c) After such hearing, if the court determines that placement in foster care with the relative is in the best interests of the child, the court shall direct the local commissioner of social services, pursuant to regulations of the office of children and family services, to commence an investigation of the home of the relative within twenty-four hours and thereafter expedite approval or certification of such relative, if qualified, as a foster parent. No child, however, shall be placed with a relative prior to final approval or certification of such relative as a foster parent.

§ 1029. Temporary order of protection. (a) The family court, upon the application of any person who may originate a proceeding under this article, for good cause shown, may issue a temporary order of protection, before or after the filing of such petition, which may contain any of the provisions authorized on the making of an order of protection under section one thousand fifty-six. If such order is granted before the filing of a petition and a petition is not filed under this article within ten days from the granting of such order, the order shall be vacated. In any case where a petition has been filed and an attorney for the child has been appointed, such attorney may make application for a temporary order of protection pursuant to the provisions of this section.

(b) A temporary order of protection is not a finding of wrongdoing.

(c) The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant directing that the respondent be arrested and brought before the court pursuant to section ten hundred thirty-seven of this article.

(d) Nothing in this section shall: (i) limit the power of the court to order removal of a child pursuant to this article where the court finds that there is imminent danger to a child's life or health; or (ii) limit the authority of authorized persons to remove a child without a court order pursuant to section one thousand twenty-four of this article; or (iii) be construed to authorize the court to award permanent custody of a child to a parent or relative pursuant to a temporary order of protection.

§ 1030. Order of visitation by a respondent. (a) A respondent shall have the right to reasonable and regularly scheduled visitation with a child in the temporary custody of a social services official pursuant to this part or pursuant to subdivision (d) of section one thousand fifty-one of this article, unless limited by an order of the family court.

(b) A respondent who has not been afforded such visitation may apply to the court for an order requiring the local social services official having temporary custody of the child pursuant to this part or pursuant to subdivision (d) of section one thousand fifty-one of this article, to permit the respondent to visit the child at stated periods. Such application shall be made upon notice to the local social services official and to any attorney appointed to represent the child, who shall be afforded an opportunity to be heard thereon.

(c) A respondent shall be granted reasonable and regularly scheduled visitation unless the court finds that the child's life or health would be endangered thereby, but the court may order visitation under the supervision of an employee of a local social services department upon a finding that such supervised visitation is in the best interest of the child.

(d) An order made under this section may be modified by the court for good cause shown, upon application by any party or the child's attorney, and upon notice of such application to all other parties and the child's attorney, who shall be afforded an opportunity to be heard thereon.

(e) An order made under this section shall terminate upon the entry of an order of disposition pursuant to part five of this article.

PART 3
PRELIMINARY PROCEDURE

§ 1031. Originating proceeding to determine abuse or neglect. (a) A proceeding under this article is originated by the filing of a petition in which facts sufficient to establish that a child is an abused or neglected child under this article are alleged.

(b) Allegations of abuse and neglect may be contained in the same petition. Where more than one child is the legal responsibility of the respondent, it may be alleged in the same petition that one or more children are abused children, or that one or more children are neglected children, or both.

(c) On its own motion and at any time in the proceedings, the court may substitute for a petition to determine abuse a petition to determine neglect if the facts established are not sufficient to make a finding of abuse, as defined by this article.

(d) A proceeding under this article may be originated by a child protective agency pursuant to section one thousand thirty-two, notwithstanding that the child is in the care and custody of such agency. In such event, the petition shall allege facts sufficient to establish that the return of the child to the care and custody of his parent or other person legally responsible for his care would place the child in imminent danger of becoming an abused or neglected child.

(e) In any case where a child has been removed prior to the filing of a petition, the petition alleging abuse or neglect of said child shall state the date and time of the removal, the circumstances necessitating such removal, whether the removal occurred pursuant to section ten hundred twenty-one, ten hundred twenty-two or ten hundred twenty-four of this act, and if the removal occurred without court order, the reason there was not sufficient time to obtain a court order pursuant to section ten hundred twenty-two of this act.

(f) A petition alleging abuse shall contain a notice in conspicuous print that a fact-finding that a child is severely or repeatedly abused as defined in subdivision eight of section three hundred eighty-four-b of the social services law, by clear and convincing evidence, could constitute a basis to terminate parental rights in a proceeding pursuant to section three hundred eighty-four-b of the social services law.

(g) Where a petition under this article contains an allegation of a failure by the respondent to provide education to the child in accordance with article sixty-five of the education law, regardless of whether such allegation is the sole allegation of the petition, the petition shall recite the efforts undertaken by the petitioner and the school district or local educational agency to remediate such alleged failure prior to the filing of the petition and the grounds for concluding that the education-related allegations could not be resolved absent the filing of a petition under this article.

§ 1032. Persons who may originate proceedings. The following may originate a proceeding under this article:

(a) a child protective agency, or

(b) a person on the court's direction.

§ 1033. Access to the court for the purpose of filing a petition. Any person seeking to file a petition at the court's direction, pursuant to subdivision (b) of section one thousand thirty-two shall have access to the court for the purpose of making an ex parte application therefor. Nothing in this section, however, is intended to prevent a family court judge from requiring such person to first report to an appropriate child protective agency.

§ 1033-a. Initial appearance. For the purposes of this section, "initial appearance" means the proceeding on the date the respondent first appears before the court after the petition has been filed and any adjournments thereof.

§ 1033-b. Initial appearance; procedures. 1. (a) At the initial appearance, the court shall appoint an attorney to represent the interests of any child named in a petition who is alleged to be abused or neglected, unless an attorney has already been appointed for such child pursuant to section one thousand sixteen of this act.

(b) At the initial appearance, the court shall advise the respondent of the allegations in the petition and further advise the respondent of the right to an adjournment of the proceeding in order to obtain counsel. The recitation of such rights shall not be waived except that the recitation of the allegations in the petition may be waived upon the consent of the counsel for the respondent and such counsel's representation on the record that he or she has explained such allegations to the respondent and has provided the respondent with a copy of the petition and the respondent's acknowledgement of receipt of the petition and such explanation.

(c) At the initial appearance, the court shall appoint counsel for indigent respondents pursuant to section two hundred sixty-two of this act.

(d) In any case where a child has been removed, the court shall advise the respondent of the right to a hearing, pursuant to section ten hundred twenty-eight of this act, for the return of the child and that such hearing may be requested at any time during the proceeding. The recitation of such rights shall not be waived.

(e) At the initial appearance, the court shall inquire of the child protective agency whether such agency intends to prove that the child is a severely or repeatedly abused child as defined in subdivision eight of section three hundred eighty-four-b of the social services law, by clear and convincing evidence. Where the agency advises the court that it intends to submit such proof, the court shall so advise the respondent.

§ 1034. Power to order investigations. 1. A family court judge may order the child protective service of the appropriate social services district to conduct a child protective investigation as described by the social services law and report its findings to the court:

(a) in any proceedings under this article, or

(b) in order to determine whether a proceeding under this article should be initiated.

2. (a)(i) Before a petition is filed and where there is reasonable cause to suspect that a child or children's life or health may be in danger, child protective services may seek a court order based upon:

(A) a report of suspected abuse or maltreatment under title six of article six of the social services law as well as any additional information that a child protective investigator has learned in the investigation; and

(B) the fact that the investigator has been unable to locate the child named in the report or any other children in the household or has been denied access to the child or children in the household sufficient to determine their safety; and

(C) the fact that the investigator has advised the parent or other persons legally responsible for the child or children that, when denied sufficient access to the child or other children in the household, the child protective investigator may consider seeking an immediate court order to gain access to the child or children without further notice to the parent or other persons legally responsible.

(ii) Where a court order has been requested pursuant to this paragraph the court may issue an order under this section requiring that the parent or other persons legally responsible for the child or children produce the child or children at a particular location which may include a child advocacy center, or to a particular person for an interview of the child or children, and for observation of the condition of the child, outside of the presence of the parent or other person responsible.

(b)(i) Before a petition is filed and where there is probable cause to believe that an abused or neglected child may be found on the premises, child protective services may seek a court order based upon:

(A) a report of suspected abuse or maltreatment under title six of article six of the social services law as well as any additional information that a child protective investigator has learned in the investigation; and

(B) the fact that the investigator has been denied access to the home of the child or children in order to evaluate the home environment; and

(C) the fact that the investigator has advised the parent or other person legally responsible for the child or children that, when denied access to the home environment, the child protective investigator may consider seeking an immediate court order to gain access to the home environment without further notice to the parent or other person legally responsible.

(ii) Where a court order has been requested pursuant to this paragraph the court may issue an order under this section authorizing the person conducting the child protective investigation to enter the home in order to determine whether such child or children are present and/or to conduct a home visit and evaluate the home environment of the child or children.

(c) The procedure for granting an order pursuant to this subdivision shall be the same as for a search warrant under article six hundred ninety of the criminal procedure law. If an order is issued in accordance with this subdivision the court shall specify which action may be taken and by whom in the order.

(d) In determining if such orders shall be made, the court shall consider all relevant information, including but not limited to:

(i) the nature and seriousness of the allegations made in the report;

(ii) the age and vulnerability of the child or children;

(iii) the potential harm to the child or children if a full investigation is not completed;

(iv) the relationship of the source of the report to the family, including the source's ability to observe that which has been alleged; and

(v) the child protective or criminal history, if any, of the family and any other relevant information that the investigation has already obtained.

(e) The court shall assess which actions are necessary in light of the child or children's safety, provided, however, that such actions shall be the least intrusive to the family.

(f) The court shall be available at all hours to hear such requests by the social services district which shall be permitted to make such requests either in writing or orally, pursuant to section 690.36 of the criminal procedure law, in person to the family court during hours that the court is open and orally by telephone or in person, pursuant to section 690.36 of the criminal procedure law, to a family court judge when the court is not open. While the request is being made, law enforcement shall remain where the child or children are or are believed to be present if the child protective services investigator has requested law enforcement assistance. Provided, however, that law enforcement may not enter the premises where the child or children are believed to be present without a search warrant or another constitutional basis for such entry.

(g) Where the court issues an order under this section, the child protective investigator shall within three business days prepare a report to the court detailing his or her findings and any other actions that have been taken pertaining to the child named in the report and any other children in the household.

(h) Nothing in this section shall limit the court's authority to issue any appropriate order in accordance with the provisions of this article after a petition has been filed.

§ 1035. Issuance of summons; notice to certain interested persons and intervention.

(a) On the filing of a petition under this article where the child has been removed from his or her home, unless a warrant is issued pursuant to section one thousand thirty-seven of this part, the court shall cause a copy of the petition and a summons to be issued the same day the petition is filed, clearly marked on the face thereof "Child Abuse Case", as applicable, requiring the parent or other person legally responsible for the child's care or with whom he or she had been residing to appear at the court within three court days to answer the petition, unless a shorter time for a hearing to occur is prescribed in part two of this article.

(b) In a proceeding to determine abuse or neglect, the summons shall contain a statement in conspicuous print informing the respondent that:

(i) the proceeding may lead to the filing of a petition under the social services law for the termination of respondent's parental rights and commitment of guardianship and custody of the child for the purpose of adoption; and

(ii) if the child is placed and remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition for termination of respondent's parental rights and commitment of guardianship and custody of the child for the purposes of adoption.

(c) On the filing of a petition under this article where the child has not been removed from his or her home, the court shall forthwith cause a copy of the petition and a summons to be issued, clearly marked on the face thereof "Child Abuse Case", as applicable, requiring the parent or other person legally responsible for the child's care or with whom the child is residing to appear at the court to answer the petition within seven court days. The court may also require the person thus summoned to produce the child at the time and place named.

(d) Where the respondent is not the child's parent, service of the summons and petition shall also be ordered on both of the child's parents; where only one of the child's parents is the respondent, service of the summons and petition shall also be ordered on the child's other parent. The summons and petition shall be accompanied by a notice of pendency of the child protective proceeding advising the parents or parent of the right to appear and participate in the proceeding as an interested party intervenor for the purpose of seeking temporary and permanent release of the child under this article or custody of the child under article six of this act, and to participate thereby in all arguments and hearings insofar as they affect the temporary release or custody of the child during fact-finding proceedings, and in all phases of dispositional proceedings. The notice shall also advise the parent or parents of the right to counsel, including assigned counsel, pursuant to section two hundred sixty-two of this act, and also indicate that:

(i) upon good cause, the court may order an investigation pursuant to section one thousand thirty-four of this part to determine whether a petition should be filed naming such parent or parents as respondents;

(ii) if the court determines that the child must be removed from his or her home, the court may order an investigation to determine whether the non-respondent parent or parents would be suitable custodians for the child; and

(iii) if the child is placed and remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition for termination of the parental rights of the parent or parents and commitment of guardianship and custody of the child for the purposes of adoption, even if the parent or parents were not named as a respondent or as respondents in the child abuse or neglect proceeding.

(e) The summons, petition and notice of pendency of a child protective proceeding served on the child's non-custodial parent in accordance with subdivision (d) of this section shall, if applicable, be served together with a notice that the child was removed from his or her home by a social services official. Such notice shall also include the name and address of the official to whom temporary custody of the child has been transferred, the name and address of the agency or official with whom the child has been temporarily placed, if different, and shall advise such parent of the right to request temporary and permanent custody and to seek enforcement of visitation rights with the child as provided for in part eight of this article.

(f) The child's adult sibling, grandparent, aunt or uncle not named as respondent in the petition, may, upon consent of the child's parent appearing in the proceeding, or where such parent has not appeared then without such consent, move to intervene in the proceeding as an interested party intervenor for the purpose of seeking temporary or permanent custody of the child, and upon the granting of such motion shall be permitted to participate in all arguments and hearings insofar as they affect the temporary custody of the child during fact-finding proceedings, and in all phases of dispositional proceedings. Such motions for intervention shall be liberally granted.

(g) Where the petition filed under this article contains an allegation of a failure by the respondent to provide education to the child in accordance with article sixty-five of the education law, and where at any stage of the proceeding, the court determines that assistance by the school district or local educational agency would aid in the resolution of the education-related allegation, the school district or local educational agency may be notified by the court and given an opportunity to be heard.

§ 1036. Service of summons. (a) Except as provided for in subdivision (c) of this section, in cases involving abuse, the petition and summons shall be served within two court days after their issuance. If they cannot be served within that time, such fact shall be reported to the court with the reasons thereof within three court days after their issuance and the court shall thereafter issue a warrant in accordance with the provisions of section one thousand thirty-seven. The court shall also, unless dispensed with for good cause shown, direct that the child be brought before the court. Issuance of a warrant shall not be required where process is sent without the state as provided for in subdivision (c) of this section.

(b) Service of a summons and petition shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance.

(c) In cases involving either abuse or neglect, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules, notwithstanding that such person is not a resident or domiciliary of the state, where the allegedly abused or neglected child resides or is domiciled within the state and the alleged abuse or neglect occurred within the state. In cases involving abuse where service of a petition and summons upon a non-resident or non-domiciliary respondent is required, such service shall be made within ten days after its issuance. If service can not be effected in ten days, an extension of the period to effect service may be granted by the court for good cause shown upon application of any party or the child's attorney. Where service is effected on an out of state respondent and the respondent defaults by failing to appear to answer the petition, the court may on its own motion, or upon application of any party or the child's attorney proceed to a fact finding hearing thereon.

(d) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in civil process in courts of record.

§ 1037. Issuance of warrant and reports to court. (a) The court may issue a warrant directing the parent, or other person legally responsible for the child's care or with whom he is residing to be brought before the court, when a petition is filed with the court under this article and it appears that (i) the summons cannot be served; or

(ii) the summoned person has refused to obey the summons; or

(iii) the parent or other person legally responsible for the child's care is likely to leave the jurisdiction; or

(iv) a summons, in the court's opinion, would be ineffectual; or

(v) the safety of the child is endangered; or

(vi) the safety of a parent, person legally responsible for the child's care or with whom he is residing, foster parent or temporary custodian is endangered.

(b) When issuing a warrant under this section, the court may also direct that the child be brought before the court.

(c) In any case involving abuse, the warrant shall be clearly marked on the face thereof "Child Abuse Case". If a warrant is not executed within two court days of its issuance, such fact shall be reported to the court within three court days of its issuance. Rules of court shall provide that reports of unexecuted warrants issued under this article shall be periodically made to the court.

(d) In a proceeding to determine abuse, the warrant shall contain a statement clearly marked on the face thereof, that the proceeding could lead to a proceeding under the social services law for the commitment of guardianship and custody of the child and that the rights of the respondent with respect to said child may be terminated in such proceeding under such law.

§ 1038. Records and discovery involving abuse and neglect. (a) Each hospital and any other public or private agency having custody of any records, photographs or other evidence relating to abuse or neglect, upon the subpoena of the court, the corporation counsel, county attorney, district attorney, counsel for the child, or one of the parties to the proceeding, shall be required to send such records, photographs or evidence to the court for use in any proceeding relating to abuse or neglect under this article. Notwithstanding any other provision of law to the contrary, service of any such subpoena on a hospital may be made by certified mail, return receipt requested, to the director of the hospital. The court shall establish procedures for the receipt and safeguarding of such records.

(b) Pursuant to a demand made under rule three thousand one hundred twenty of the civil practice law and rules, a petitioner or social services official shall provide to a respondent or the child's attorney any records, photographs or other evidence demanded relevant to the proceeding, for inspection and photocopying. The petitioner or social services official may delete the identity of the persons who filed reports pursuant to section four hundred fifteen of the social services law, unless such petitioner or official intends to offer such reports into evidence at a hearing held pursuant to this article. The petitioner or social services official may move for a protective order to withhold records, photographs or evidence which will not be offered into evidence and the disclosure of which is likely to endanger the life or health of the child.

(c) A respondent or the child's attorney may move for an order directing that any child who is the subject of a proceeding under this article be made available for examination by a physician, psychologist or social worker selected by such party or the child's attorney. In determining the motion, the court shall consider the need of the respondent or child's attorney for such examination to assist in the preparation of the case and the potential harm to the child from the examination. Nothing in this section shall preclude the parties from agreeing upon a person to conduct such examination without court order.

Any examination or interview, other than a physical examination, of a child who is the subject of a proceeding under this article, for the purposes of offering expert testimony to a court regarding the sexual abuse of the child, as such term is defined by section one thousand twelve of this article, may, in the discretion of the court, be videotaped in its entirety with access to be provided to the court, the child's attorney and all parties. In determining whether such examination or interview should be videotaped, the court shall consider the effect of the videotaping on the reliability of the examination, the effect of the videotaping on the child and the needs of the parties, including the attorney for the child, for the videotape. Prior to admitting a videotape of an examination or interview into evidence, the person conducting such examination or the person operating the video camera shall submit to the court a verified statement confirming that such videotape is a complete and unaltered videographic record of such examination of the child. The proponent of entry of the videotape into evidence must establish that the potential prejudicial effect is substantially outweighed by the probative value of the videotape in assessing the reliability of the validator in court. Nothing in this section shall in any way affect the admissibility of such evidence in any other court proceeding. The chief administrator of the courts shall promulgate regulations protecting the confidentiality and security of such tapes, and regulating the access thereto, consistent with the provisions of this section.

(d) Unless otherwise proscribed by this article, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to proceedings under this article. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay.

§ 1038-a. Discovery; upon court order. Upon motion of a petitioner or attorney for the child, the court may order a respondent to provide nontestimonial evidence, only if the court finds probable cause that the evidence is reasonably related to establishing the allegations in a petition filed pursuant to this article. Such order may include, but not be limited to, provision for the taking of samples of blood, urine, hair or other materials from the respondent's body in a manner not involving an unreasonable intrusion or risk of serious physical injury to the respondent.

§ 1039. Adjournment in contemplation of dismissal. (a) Prior to or upon a fact-finding hearing, the court may upon a motion by the petitioner with the consent of the respondent and the child's attorney or upon its own motion with the consent of the petitioner, the respondent and the child's attorney, order that the proceeding be "adjourned in contemplation of dismissal". Under no circumstances shall the court order any party to consent to an order under this section. The court may make such order only after it has apprised the respondent of the provisions of this section and it is satisfied that the respondent understands the effect of such provisions.

(b) An adjournment in contemplation of dismissal is an adjournment of the proceeding for a period not to exceed one year with a view to ultimate dismissal of the petition in furtherance of justice. Upon the consent of the petitioner, the respondent and the child's attorney, the court may issue an order extending such period for such time and upon such conditions as may be agreeable to the parties.

(c) Such order may include terms and conditions agreeable to the parties and to the court, provided that such terms and conditions shall include a requirement that the child and the respondent be under the supervision of a child protective agency during the adjournment period.

In any order issued pursuant to this section, such agency shall be directed to make a progress report to the court, the parties and the child's attorney on the implementation of such order, no later than ninety days after the issuance of such order, unless the court determines that the facts and circumstances of the case do not require such reports to be made. The child protective agency shall make further reports to the court, the parties and the child's attorney in such manner and at such times as the court may direct.

(d) Upon application of the respondent, the petitioner, the child's attorney or upon the court's own motion, made at any time during the duration of the order, if the child protective agency has failed substantially to provide the respondent with adequate supervision or to observe the terms and conditions of the order, the court may direct the child protective agency to observe such terms and conditions and provide adequate supervision or may make any order authorized pursuant to section two hundred fifty-five of this act.

(e) Upon application of the petitioner or the child's attorney or upon the court's own motion, made at any time during the duration of the order, the court may restore the matter to the calendar, if the court finds after a hearing that the respondent has failed substantially to observe the terms and conditions of the order or to cooperate with the supervising child protective agency. In such event, unless the parties consent to an order pursuant to section one thousand fifty-one of this act or unless the petition is dismissed upon the consent of the petitioner, the court shall thereupon proceed to a fact-finding hearing under this article no later than sixty days after such application unless such period is extended by the court for good cause shown.

(f) If the proceeding is not so restored to the calendar, the petition is, at the expiration of the adjournment period, deemed to have been dismissed by the court in furtherance of justice unless an application is pending pursuant to subdivision (e) of this section. If such application is granted the petition shall not be dismissed and shall proceed in accordance with the provisions of such subdivision (e).

(g) Notwithstanding the provisions of this section, the court, may, at any time prior to dismissal of the petition pursuant to subdivision (f), issue an order authorized pursuant to section one thousand twenty-seven.

§ 1039-a. Procedures following adjournment in contemplation of dismissal. The local child protective service shall notify the child's attorney of an indicated report of child abuse or maltreatment in which the respondent is a subject of the report or another person named in the report, as such terms are defined in section four hundred twelve of the social services law, while any order issued pursuant to section one thousand thirty-nine or extension thereof remains in effect.

§ 1039-b. Termination of reasonable efforts. (a) In conjunction with, or at any time subsequent to, the filing of a petition under section ten hundred thirty-one of this chapter, the social services official may file a motion upon notice requesting a finding that reasonable efforts to return the child to his or her home are no longer required.

(b) For the purpose of this section, reasonable efforts to make it possible for the child to return safely to his or her home shall not be required where the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision (j) of section ten hundred twelve of this article;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in paragraph two, three or four of this subdivision, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

(c) If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether or when the child: (i) will be returned to the parent; (ii) should be placed for adoption with the social services official filing a petition for termination of parental rights; (iii) should be referred for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and if the requirements of clause (E) of subparagraph (i) of paragraph two of subdivision (d) of section one thousand eighty-nine of this chapter have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements, and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

(d) For the purpose of this section, in determining reasonable effort to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern; and

(e) For the purpose of this section, a sibling shall include a half-sibling.

§ 1040. Notice and right to be heard. The foster parent caring for the child or any pre-adoptive parent or relative providing care for the child shall be provided with notice of any permanency hearing held pursuant to this article by the social services official. Such foster parent, pre-adoptive parent or relative shall have the right to be heard at any such hearing; provided, however, no such foster parent, pre-adoptive parent or relative shall be construed to be a party to the hearing solely on the basis of such notice and right to be heard. The failure of the foster parent, pre-adoptive parent, or relative caring for the child to appear at a permanency hearing shall constitute a waiver of the right to be heard and such failure to appear shall not cause a delay of the permanency hearing nor shall such failure to appear be a ground for the invalidation of any order issued by the court pursuant to this section.

PART 4

HEARINGS

§ 1041. Required findings concerning notice. No factfinding hearing may commence under this article unless the court enters a finding:

(a) that the parent or other person legally responsible for the child's care is present at the hearing and has been served with a copy of the petition; or

(b) if the parent or other person legally responsible for the care of the child is not present, that every reasonable effort has been made to effect service under section ten hundred thirty-six or ten hundred thirty-seven.

§ 1042. Effect of absence of parent or other person responsible for care. If the parent or other person legally responsible for the child's care is not present, the court may proceed to hear a petition under this article only if the child is represented by counsel. The parent or other person legally responsible for the child's care shall be served with a copy of the order of disposition with written notice of its entry pursuant to section one thousand thirty-six of this article. Within one year of such service or substituted service pursuant to section one thousand thirty-six of this article, the parent or other person legally responsible for the child's care may move to vacate the order of disposition and schedule a rehearing. Such motion shall be granted on an affidavit showing such relationship or responsibility and a meritorious defense to the petition, unless the court finds that the parent or other person willfully refused to appear at the hearing, in which case the court may deny the motion.

§ 1043. Hearings not open to the public. The general public may be excluded from any hearing under this article and only such persons and the representatives of authorized agencies admitted thereto as have an interest in the case.

§ 1044. Definition of "fact-finding hearing". When used in this article, "fact-finding hearing" means a hearing to determine whether the child is an abused or neglected child as defined by this article.

§ 1045. Definition of "dispositional hearing". When used in this article, "dispositional hearing" means a hearing to determine what order of disposition should be made.

§ 1046. Evidence. (a) In any hearing under this article and article ten-A of this act:

(i) proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the legal responsibility of, the respondent; and

(ii) proof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the care of such child shall be prima facie evidence of child abuse or neglect, as the case may be, of the parent or other person legally responsible; and

(iii) proof that a person repeatedly misuses a drug or drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence that a child of or who is the legal responsibility of such person is a neglected child except that such drug, or alcoholic beverage misuse shall not be prima facie evidence of neglect when such person is voluntarily and regularly participating in a recognized rehabilitative program. Provided however, the sole fact that an individual consumes cannabis, without a separate finding that the child's physical mental or emotional condition was impaired or is in imminent danger of becoming impaired established by a fair preponderance of the evidence shall not be sufficient to establish prima facie evidence of neglect; and

(iv) any writing, record or photograph, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a child in an abuse or neglect proceeding of any hospital or any other public or private agency shall be admissible in evidence in proof of that condition, act, transaction, occurrence or event, if the judge finds that it was made in the regular course of the business of any hospital, or any other public or private agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head of or by a responsible employee of the hospital or agency that the writing, record or photograph is the full and complete record of said condition, act, transaction, occurrence or event and that it was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the condition, act, transaction, occurrence or event, or within a reasonable time thereafter, shall be prima facie evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. All other circumstances of the making of the memorandum, record or photograph, including lack of personal knowledge of the maker, may be proved to affect its weight, but they shall not affect its admissibility; and

(v) any report filed with the statewide central register of child abuse and maltreatment by a person or official required to do so pursuant to section four hundred thirteen of the social services law shall be admissible in evidence; and

(vi) previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence, but if uncorroborated, such statements shall not be sufficient to make a fact-finding of abuse or neglect. Any other evidence tending to support the reliability of the previous statements, including, but not limited to the types of evidence defined in this subdivision shall be sufficient corroboration. The testimony of the child shall not be necessary to make a fact-finding of abuse or neglect; and

(vii) neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, nor the rape crisis counselor-client privilege, as set forth in section forty-five hundred ten of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(viii) proof of the "impairment of emotional health" or "impairment of mental or emotional condition" as a result of the unwillingness or inability of the respondent to exercise a minimum degree of care toward a child may include competent opinion or expert testimony and may include proof that such impairment lessened during a period when the child was in the care, custody or supervision of a person or agency other than the respondent.

(b) In a fact-finding hearing: (i) any determination that the child is an abused or neglected child must be based on a preponderance of evidence;

(ii) whenever a determination of severe or repeated abuse is based upon clear and convincing evidence, the fact-finding order shall state that such determination is based on clear and convincing evidence; and

(iii) except as otherwise provided by this article, only competent, material and relevant evidence may be admitted.

(c) In a dispositional hearing and during all other stages of a proceeding under this article, except a fact-finding hearing, and in permanency hearings and all other proceedings under article ten-A of this act, only material and relevant evidence may be admitted.

§ 1047. Sequence of hearings. (a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made.

(b) Reports prepared by the probation service or a duly authorized association, agency, society or institution for use by the court at any time for the making of an order of disposition shall be deemed confidential information furnished to the court which the court shall make available for inspection and copying by all counsel. The court may, in its discretion, withhold from disclosure, a part or parts of the reports which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interests of justice or in the best interests of the child. In all cases where a part or parts of the reports are not disclosed, the court shall state for the record that a part or parts of the reports have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review on appeal from the order of disposition. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing.

§ 1048. Adjournments. (a) The court may adjourn a fact-finding hearing or a dispositional hearing for good cause shown on its own motion, or on motion of the corporation counsel, county attorney or district attorney, or on motion of the petitioner or on motion of the child or on his behalf or of the parent or other person legally responsible for the care of the child. If so requested by the parent or other person legally responsible for the care of the child, the court shall not proceed with a fact-finding hearing earlier than three days after service of summons and petition, unless emergency medical or surgical procedures are necessary to safeguard the life or health of the child.

(b) At the conclusion of a fact-finding hearing and after the court has made findings required before a dispositional hearing may commence, the court may on its own motion or motion of the respondent, the petitioner or the child's attorney order a reasonable adjournment of the proceedings to enable the court to make inquiry into the surroundings, conditions and capacities of the persons involved in the proceedings.

(c) Whenever a child has been remanded to the care of an agency or institution under section ten hundred fifty-one of this article, notice of any dispositional hearing shall be served upon the agency or institution with whom the child was placed and upon the agency supervising the care of the child on behalf of the agency with whom the child was placed. Service of notice of the adjourned hearing shall be made in such manner and on such notice as the court may, in its discretion, prescribe. Any such agency or institution served with notice pursuant to this subdivision may apply to the court for leave to be heard.

§ 1049. Special consideration in certain cases. In scheduling hearings and investigations, the court shall give priority to proceedings under this article involving abuse or in which a child has been removed from home before a final order of disposition. Any adjournment granted in the course of such a proceeding should be for as short a time as is practicable.

PART 5

ORDERS

§ 1051. Sustaining or dismissing petition. (a) If facts sufficient to sustain the petition are established in accord with part four of this article, or if all parties and the attorney for the child consent, the court shall, subject to the provisions of subdivision (c) of this section, enter an order finding that the child is an abused child or a neglected child and shall state the grounds for the finding.

(b) If the proof does not conform to the specific allegations of the petition, the court may amend the allegations to conform to the proof; provided, however, that in such case the respondent shall be given reasonable time to prepare to answer the amended allegations.

(c) If facts sufficient to sustain the petition under this article are not established, or if, in a case of alleged neglect, the court concludes that its aid is not required on the record before it, the court shall dismiss the petition and shall state on the record the grounds for the dismissal.

(d) If the court makes a finding of abuse or neglect, it shall determine, based upon the facts adduced during the fact-finding hearing and any other additional facts presented to it, whether a preliminary order pursuant to section one thousand twenty-seven is required to protect the child's interests pending a final order of disposition. The court shall state the grounds for its determination. In addition, a child found to be abused or neglected may be removed and remanded to a place approved for such purpose by the local social services department or be placed in the custody of a suitable person, pending a final order of disposition, if the court finds that there is a substantial probability that the final order of disposition will be an order of placement under section one thousand fifty-five. In determining whether substantial probability exists, the court shall consider the requirements of subdivision (b) of section one thousand fifty-two.

(e) If the court makes a finding of abuse, it shall specify the paragraph or paragraphs of subdivision (e) of section one thousand twelve of this act which it finds have been established. If the court makes a finding of abuse as defined in paragraph (iii) of subdivision (e) of section one thousand twelve of this act, it shall make a further finding of the specific sex offense as defined in article one hundred thirty of the penal law. In addition to a finding of abuse, the court may enter a finding of severe abuse or repeated abuse, as defined in subparagraphs (i), (ii) and (iii) of paragraph (a) or subparagraphs (i) and (ii) of paragraph (b) of subdivision eight of section three hundred eighty-four-b of the social services law, which shall be admissible in a proceeding to terminate parental rights pursuant to paragraph (e) of subdivision four of section three hundred eighty-four-b of the social services law; provided, however, that a finding of severe or repeated abuse under this section may be made against any respondent as defined in subdivision (a) of section one thousand twelve of this act. If the court makes such additional finding of severe abuse or repeated abuse, the court shall state the grounds for its determination, which shall be based upon clear and convincing evidence.

(f) Prior to accepting an admission to an allegation or permitting a respondent to consent to a finding of neglect or abuse, the court shall inform the respondent that such an admission or consent will result in the court making a fact-finding order of neglect or abuse, as the case may be, and shall further inform the respondent in substantially the following terms of the potential consequences of such order, including but not limited to the following:

(i) that the court will have the power to make an order of disposition, which may include an order placing the subject child or children in foster care until completion of the initial permanency hearing scheduled pursuant to section one thousand eighty-nine of this act and subject to successive extensions of placement at any subsequent permanency hearings;

(ii) that the placement of the children in foster care may, if the parent fails to maintain contact with or plan for the future of the child, lead to proceedings for the termination of parental rights and to the possibility of adoption of the child if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights;

(iii) that any report made to the state central register of child abuse and maltreatment of allegations on which the court makes a finding of abuse or neglect will remain indicated in the register until ten years after the eighteenth birthday of the youngest child named in such report unless such finding is vacated or dismissed, and that:

(A) the respondent will be unable to amend such report in the state central register; and

(B) the existence of such report may be made known to employers required to screen employee or volunteer applicants for positions where the individual has the potential for regular and substantial contact with children, and to child care agencies if the respondent applies to become a foster parent or adoptive parent unless:

(1) the court finding is for neglect and the report is eight or more years old; or

(2) the report was determined not to be relevant to positions involving contact with children in an earlier administrative proceeding.

Any finding upon such an admission or consent made without such notice being given by the court shall be vacated upon motion of any party. In no event shall a person other than the respondent, either in person or in writing, make an admission or consent to a finding of neglect or abuse.

§ 1052. Disposition on adjudication. (a) At the conclusion of a dispositional hearing under this article, the court shall enter an order of disposition directing one or more of the following:

(i) suspending judgment in accord with section one thousand fifty-three of this part; or

(ii) releasing the child to a non-respondent parent or parents or legal custodian or custodians or guardian or guardians, who is not or are not respondents in the proceeding, in accord with section one thousand fifty-four of this part; or

(iii) placing the child in accord with section one thousand fifty-five of this part; or

(iv) making an order of protection in accord with section one thousand fifty-six of this part; or

(v) releasing the child to the respondent or respondents or placing the respondent or respondents under supervision, or both, in accord with section one thousand fifty-seven of this part; or

(vi) granting custody of the child to a respondent parent or parents, a relative or relatives or a suitable person or persons pursuant to article six of this act and section one thousand fifty-five-b of this part; or

(vii) granting custody of the child to a non-respondent parent or parents pursuant to article six of this act.

However, the court shall not enter an order of disposition combining placement of the child under paragraph (iii) of this subdivision with a disposition under paragraph (i) or (ii) of this subdivision. An order granting custody of the child pursuant to paragraph (vi) or (vii) of this subdivision shall not be combined with any other disposition under this subdivision.

(b) (i) The order of the court shall state the grounds for any disposition made under this section. If the court places the child in accord with section one thousand fifty-five of this part, the court in its order shall determine:

(A) whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his or her home and if the child was removed from the home prior to the date of such hearing, that such removal was in the child's best interests and, where appropriate, reasonable efforts were made to make it possible for the child to safely return home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding, or if the permanency plan for the child is adoption, guardianship or another permanent living arrangement other than reunification with the parent or parents of the child, the court order shall include a finding that reasonable efforts, including consideration of appropriate in-state and out-of-state placements, are being made to make and finalize such alternate permanent placement.

For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where, upon motion with notice by the social services official, the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision (j) of section one thousand twelve of this article;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements

of any crime specified in clause two, three or four of this subparagraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

(7) If the court determines that reasonable efforts are not to be required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether or when the child: (i) will be returned to the parent; (ii) should be placed for adoption with the social services official filing a petition for termination of parental rights; (iii) should be referred for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child, if the child is age sixteen or older and if the requirements of clause (E) of subparagraph (i) of paragraph two of subdivision (d) of section one thousand eighty-nine of the chapter have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements, and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

For the purpose of this section, in determining reasonable effort to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

For the purpose of this section, a sibling shall include a half-sibling;

(B) if the child has attained the age of sixteen, the services needed, if any, to assist the child to make the transition from foster care to independent living. Where the court finds that the local department of social services has not made reasonable efforts to prevent or eliminate the need for placement, and that such efforts would be appropriate, it shall direct the local department of social services to make such efforts pursuant to section one thousand fifteen-a of this article, and shall adjourn the hearing for a reasonable period of time for such purpose when the court determines that additional time is necessary and appropriate to make such efforts; and

(C) whether the local social services district made a reasonable search to locate relatives of the child as required pursuant to section one thousand seventeen of this article. In making such determination, the court shall consider whether the local social services district engaged in a search to locate any non-respondent parent and whether the local social services district attempted to locate all of the child's grandparents, all suitable relatives identified by any respondent parent and any non-respondent parent and all relatives identified by a child over the age of five as relatives who play or have played a significant positive role in the child's life.

(ii) The court shall also consider and determine whether the need for placement of the child would be eliminated by the issuance of an order of protection, as provided for in paragraph (iv) of subdivision (a) of this section, directing the removal of a person or persons from the child's residence. Such determination shall consider the occurrence, if any, of domestic violence in the child's residence.

(c) Prior to granting an order of disposition pursuant to subdivision (a) of this section following an adjudication of child abuse, as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of this act or a finding of a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65 and 130.70 of the penal law, the court shall advise the respondent that any subsequent adjudication of child abuse, as defined in paragraph (i) of subdivision (e) of section one thousand twelve of this act or any subsequent finding of a felony sex offense as defined in those sections of the penal law herein enumerated, arising out of acts of the respondent may result in the commitment of the guardianship and custody of the child or another child pursuant to section three hundred eighty-four-b of the social services law. The order in such cases shall contain a statement that any subsequent adjudication of child abuse or finding of a felony sex offense as described herein may result in the commitment of the guardianship and custody of the child, or another child pursuant to section three hundred eighty-four-b of the social services law.

§ 1052-a. Post-dispositional procedures. The local child protective service shall notify the child's attorney of an indicated report of child abuse or maltreatment in which the respondent is a subject of the report or another person named in the report, as such terms are defined in section four hundred twelve of the social services law, while any order issued pursuant to paragraph (i), (iii), (iv) or (v) of subdivision (a) of section one thousand fifty-two remains in effect against the respondent.

§ 1052-b. Duties of counsel. 1. If the court has entered a dispositional order pursuant to section one thousand fifty-two it shall be the duty of the respondent's counsel promptly to advise such respondent in writing of his or her right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if the respondent is unable to pay the cost of an appeal. It shall be the further duty of such counsel to explain to the respondent the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It also shall be the duty of such counsel to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal.

§ 1052-c. Duty to report investigations to locate non-respondent parents or relatives. Upon a determination by the court to enter an order of disposition placing the child in accordance with section one thousand fifty-five of this part, the court shall immediately require the local social services district to report to the court the results of any investigation to locate any non-respondent parent or relatives of the child, including all of the child's grandparents, all suitable relatives identified by any respondent parent and any non-respondent parent and all relatives identified by a child over the age of five as relatives who play or have played a significant positive role in the child's life, as required pursuant to section one thousand seventeen of the article. Such report shall include whether any non-respondent parent has expressed an interest in seeking custody of the child or whether any relative who has been located has expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child.

§ 1053. Suspended judgment. (a) Rules of court shall define permissible terms and conditions of a suspended judgment. These terms and conditions shall relate to the acts or omissions of the parent or other person legally responsible for the care of the child.

(b) The maximum duration of any term or condition of a suspended judgment is one year, unless the court finds at the conclusion of that period, upon a hearing, that exceptional circumstances require an extension thereof for an additional year.

(c) Except as provided for herein, in any order issued pursuant to this section, the court may require the child protective agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order. Where the order of disposition is issued upon the consent of the parties and the child's attorney, such agency shall report to the court, the parties and the child's attorney no later than ninety days after the issuance of the order, unless the court determines that the facts and circumstances of the case do not require such report to be made.

§ 1054. Release to non-respondent parent or legal custodian or guardian. (a) An order of disposition may release the child for a designated period of up to one year to a non-respondent parent or parents or a person or persons who had been the child's legal custodian or guardian at the time of the filing of the petition, and who is not or are not respondents in the proceeding under this article. An order under this section may be extended upon a hearing for a period of up to one year for good cause.

(b) The court may require the person or persons to whom the child is released under this section to submit to the jurisdiction of the court with respect to the child for the period of the disposition or an extension thereof. The order may include, but is not limited to, a direction for such person or persons to cooperate in making the child available for court-ordered visitation with respondents, siblings and others and for appointments with and visits by the child protective agency, including visits in the home and in-person contact with the child protective agency, social services official or duly authorized agency, and for appointments with the child's attorney, clinician or other individual or program providing services to the child. The order shall set forth the terms and conditions applicable to such non-respondent and child protective agency, social services official and duly authorized agency with respect to the child.

(c) In conjunction with an order releasing the child to a non-respondent parent, legal custodian or guardian under this subdivision, the court may also issue any or all of the following orders: an order of supervision of a respondent parent under section one thousand fifty-seven, an order directing that services be provided to the respondent parent under section one thousand fifteen-a or an order of protection under section one thousand fifty-six of this article. An order of supervision of the respondent entered under this subdivision may be extended upon a hearing for a period of up to one year for good cause.

(d) Except as provided for herein, in any order issued pursuant to this section, the court may require the child protective agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order. Where the order of disposition is issued upon the consent of the parties and the child's attorney, such agency shall report to the court, the parties and the child's attorney no later than ninety days after the issuance of the order and no later than sixty days prior to the expiration of the order, unless the court determines that the facts and circumstances of the case do not require such report to be made.

§ 1055. Placement. (a) (i) For purposes of section one thousand fifty-two of this part the court may place the child in the custody of a relative or other suitable person pursuant to this article, or of the local commissioner of social services or of such other officer, board or department as may be authorized to receive children as public charges, or a duly authorized association, agency, society or in an institution suitable for the placement of a child. The court may also place a child who it finds to be a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law with the local commissioner of social services for placement in an available long-term safe house. The court may also place the child in the custody of the local commissioner of social services and may direct such commissioner to have the child reside with a relative or other suitable person who has indicated a desire to become a foster parent for the child and further direct such commissioner, pursuant to regulations of the office of children and family services, to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter expedite approval or certification of such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval or certification, the local commissioner shall report such fact to the court forthwith so that the court may make a placement determination that is in the best interests of the child.

(ii) An order placing a child directly with a relative or other suitable person pursuant to this part may not be granted unless the relative or other suitable person consents to the jurisdiction of the court. The court may place the person with whom the child has been directly placed under supervision of a child protective agency, social services official or duly authorized agency during the pendency of the proceeding. The court also may issue an order of protection under section one thousand fifty-six of this part. An order of supervision issued pursuant to this subdivision shall set forth the terms and conditions that the relative or suitable person must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision.

(b) (i) The court shall state on the record its findings supporting the placement in any order of placement made under this section. The order of placement shall include, but not be limited to:

(A) a description of the visitation plan;

(B) a direction that the respondent or respondents shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of the social services law, of their right to attend the conference, and of their right to have counsel or another representative or companion with them;

(C) a date certain for the permanency hearing, which may be the previously-scheduled date certain, but in no event more than eight months from the date of removal of the child from his or her home. Provided, however, that if there is a sibling or half-sibling of the child who was previously removed from the home pursuant to this article, the date certain for the permanency hearing shall be the date certain previously scheduled for the sibling or half-sibling of the child who was the first child removed from the home, where such sibling or half-sibling has a permanency hearing date certain scheduled within the next eight months, but in no event later than eight months from the date of removal of the child from his or her home;

(D) a notice that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. A copy of the court's order and the service plan shall be given to the respondent; and

(E) where the permanency goal is return to the parent and it is anticipated that the child may be finally discharged to his or her parent before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and the attorney for the child. If the court on its own motion or the attorney for the child on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a youth aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the youth, the local social services district may also discharge the youth on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a youth aging out of foster care shall mean that a youth is physically discharged but the local social services district retains care and custody or custody and guardianship of the youth and there remains a date certain for the scheduled permanency hearing. Trial discharge for a youth aging out of foster care may be extended at each scheduled permanency hearing, until the child reaches the age of twenty-one, if a child over the age of eighteen consents to such extension. Prior to finally discharging a youth aging out of foster care to another planned permanent living arrangement, the local social services official shall give the youth notice of the right to apply to reenter foster care within the earlier of twenty-four months of the final discharge or the youth's twenty-first birthday in accordance with article ten-B of this act. Such notice shall also advise the youth that reentry into foster care will only be available where the former foster care youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program in accordance with paragraph two of subdivision (a) of section one thousand ninety-one of this act. Children placed under this section shall be placed until the court completes the initial permanency hearing scheduled pursuant to article ten-A of this act. Should the court determine pursuant to article ten-A of this act that placement shall be extended beyond completion of the scheduled permanency hearing, such extended placement and any such successive extensions of placement shall expire at the completion of the next scheduled permanency hearing, unless the court shall determine, pursuant to article ten-A of this act, to continue to extend such placement.

(ii) Upon placing a child under the age of one, who has been abandoned, with a local commissioner of social services, the court shall, where either of the parents do not appear after due notice, include in its order of disposition pursuant to section one thousand fifty-two of this part, a direction that such commissioner shall promptly commence a diligent search to locate the child's non-appearing parent or parents or other known relatives who are legally responsible for the child, and to commence a proceeding to commit the guardianship and custody of such child to an authorized agency pursuant to section three hundred eighty-four-b of the social services law, six months from the date that care and custody of the child was transferred to the commissioner, unless there has been communication and visitation between such child and such parent or parents or other known relatives or persons legally responsible for the child. In addition to such diligent search the local commissioner of social services shall provide written notice to the child's parent or parents or other known relatives or persons legally responsible as provided for in this paragraph. Such notice shall be served upon such parent or parents or other known relatives or persons legally responsible in the manner required for service of process pursuant to section six hundred seventeen of this act. Information regarding such diligent search, including, but not limited to, the name, last known address, social security number, employer's address and any other identifying information to the extent known regarding the non-appearing parent, shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of the social services law.

(iii) Notice as required by paragraph (ii) of this subdivision shall state:

(A) that the local commissioner of social services shall initiate a proceeding to commit the guardianship and custody of the subject child to an authorized agency and that such proceeding shall be commenced six months from the date the child was placed in the care and custody of such commissioner with such date to be specified in the notice;

(B) that there has been no visitation and communication between the parent and the child since the child has been placed with the local commissioner of social services and that if no such visitation and communication with the child occurs within six months of the date the child was placed with such commissioner the child will be deemed an abandoned child as defined in section three hundred eighty-four-b of the social services law and a proceeding will be commenced to commit the guardianship and custody of the subject child to an authorized agency;

(C) that it is the legal responsibility of the local commissioner of social services to reunite and reconcile families whenever possible and to offer services and assistance for that purpose;

(D) the name, address and telephone number of the caseworker assigned to the subject child who can provide information, services and assistance with respect to reuniting the family;

(E) that it is the responsibility of the parent, relative or other person legally responsible for the child to visit and communicate with the child and that such visitation and communication may avoid the necessity of initiating a petition for the transfer of custody and guardianship of the child.

Such notice shall be printed in both Spanish and English and contain in conspicuous print and in plain language the information set forth in this paragraph.

(c) In addition to or in lieu of an order of placement made pursuant to subdivision (b) of this section, the court may make an order directing a child protective agency, social services official or other duly authorized agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the best interests of the child. Such efforts shall include encouraging and facilitating visitation with the child by the parent or other person legally responsible for the child's care. Such order may include a specific plan of action for such agency or official including, but not limited to, requirements that such agency or official assist the parent or other person responsible for the child's care in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment. Such order shall also include encouraging and facilitating visitation with the child by the non-custodial parent and grandparents who have obtained orders pursuant to part eight of this article, and may include encouraging and facilitating visitation with the child by the child's siblings. The order may incorporate an order, if any, issued pursuant to subdivision (c) of section one thousand twenty-seven-a or one thousand eighty-one of this article, provided that such visitation or contact is in the best interests of the child and his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights of death of a parent. Nothing in this subdivision shall be deemed to limit the authority of the court to make an order pursuant to section two hundred fifty-five of this act.

(d) In addition to or in lieu of an order of placement made pursuant to subdivision (b) of this section, the court may make an order directing a social services official or other duly authorized agency to institute a proceeding to legally free the child for adoption, if the court finds reasonable cause to believe that grounds therefor exist. Upon a failure by such official or agency to institute such a proceeding within ninety days after entry of such order, the court shall permit the foster parent or parents in whose home the child resides to institute such a proceeding unless the social services official or other duly authorized agency caring for the child, for good cause shown and upon due notice to all parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the children in a subsequent adoption proceeding.

(e) No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. However, a former foster care youth under the age of twenty-one who was previously discharged from foster care due to a failure to consent to continuation of placement may make a motion pursuant to section one thousand ninety-one of this act to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges. In such motion, the youth must consent to enrollment in and attendance at a vocational or educational program in accordance with paragraph two of subdivision (a) of section one thousand ninety-one of this act.

(f) If a child is placed in the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, such person shall provide for such child as authorized by law, including, but not limited to section three hundred ninety-eight of the social services law.

(g) If the parent or person legally responsible for the care of any such child or with whom such child resides receives public assistance and care, any portion of which is attributable to such child, a copy of the order of the court providing for the placement of such child from his or her home shall be furnished to the appropriate social services official, who shall reduce the public assistance and care furnished such parent or other person by the amount attributable to such child, provided, however, that when the child service plan prepared pursuant to section four hundred nine-e of the social services law includes a goal of discharge of the child to the parent or person legally responsible for the care of the child or other member of the household, such social services official shall not, to the extent that federal reimbursement is available therefor, reduce the portion attributable to such child which is intended to meet the cost of shelter and fuel for heating.

(h) Any order made under this section shall be suspended upon the entry of an order of disposition with respect to a child whose custody and guardianship have been committed pursuant to section three hundred eighty-four-b of the social services law, and shall expire upon the expiration of the time for appeal of such order or upon the final determination of any such appeal and any subsequent appeals authorized by law; provided, however, that where custody and guardianship have been committed pursuant to section three hundred eighty-four-b of the social services law or where the child has been surrendered pursuant to section three hundred eighty-three-c or three hundred eighty-four of the social services law, the child shall nonetheless be deemed to continue in foster care until such time as an adoption or other alternative living arrangement is finalized. A permanency hearing or hearings regarding such child shall be conducted in accordance with article ten-A of this act. Nothing in this subdivision shall cause such order of placement to be suspended or to expire with respect to any parent or other person whose consent is required for an adoption against whom an order of disposition committing guardianship and custody of the child has not been made.

(i) In making an order under this section, the court may direct a local commissioner of social services to place the subject child together with minor siblings or half-siblings who have been placed in the custody of the commissioner, or to provide or arrange for regular visitation and other forms of communication between such child and siblings where the court finds that such placement or visitation and communication is in the child's best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

(j) (i) In any case in which an order has been issued pursuant to this section placing a child in the custody or care of the commissioner of social services, the social services official or authorized agency charged with custody of the child shall report any anticipated change in placement to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision to change the placement or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the placement change is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or authorized agency shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change.

(ii) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (i) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section one thousand fifty-five-c of this part. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

§ 1055-a. Substantial failure of a material condition of surrender; enforcement of a contact agreement. (a) In case of a substantial failure of a material condition in a surrender executed pursuant to section three hundred eighty-three-c of the social services law prior to finalization of the adoption of the child, the court shall possess continuing jurisdiction in accordance with subdivision six of such section to rehear the matter upon the filing of a petition by the authorized agency, the parent or the attorney for the child or whenever the court deems necessary. In such case, the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure to comply with a material condition of the surrender prior to the finalization of the adoption of the child. In such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the attorney for the child in accordance with this section within thirty days of such failure, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or child's attorney must be filed prior to the adoption of the child.

(b) If an agreement for continuing contact and communication pursuant to paragraph (b) of subdivision two of section three hundred eighty-three-c of the social services law is approved by the court, and the child who is the subject of the approved agreement has not yet been adopted, any party to the approved agreement may file a petition with the family court in the county where the agreement was approved to enforce such agreement. A copy of the approved agreement shall be annexed to such petition. The court shall enter an order enforcing communication or contact pursuant to the terms and conditions of the agreement unless the court finds that enforcement would not be in the best interests of the child.

(c) Nothing in this section shall limit the rights and remedies available to the parties and the attorney for the child pursuant to section one hundred twelve-b of the domestic relations law with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

§ 1055-b. Custody or guardianship with a parent or parents, relatives or suitable persons pursuant to article six of this act or guardianship with relatives or suitable persons pursuant to article seventeen of the surrogate's court procedure act. (a) Custody or guardianship with respondent parent or parents, relatives or suitable persons. At the conclusion of the dispositional hearing under this article, the court may enter an order of disposition granting custody or guardianship of the child to a respondent parent or parents, as defined in subdivision (1) of section one thousand twelve of this article, or a relative or relatives or other suitable person or persons pursuant to article six of this act or an order of guardianship of the child to a relative or relatives or suitable person or persons under article seventeen of the surrogate's court procedure act if the following conditions have been met:

(i) the respondent parent or parents, relative or relatives or suitable person or persons has or have filed a petition for custody or guardianship of the child pursuant to article six of this act or, in the case of a relative or relatives or suitable person or persons, a petition for guardianship of the child under article seventeen of the surrogate's court procedure act; and

(ii) the court finds that granting custody or guardianship of the child to such person or persons is in the best interests of the child and that the safety of the child will not be jeopardized if the respondent or respondents under the child protective proceeding are no longer under supervision or receiving services. In determining whether the best interests of the child will be promoted by the granting of guardianship of the child to a relative who has cared for the child as a foster parent, the court shall give due consideration to the permanency goal of the child, the relationship between the child and the relative, and whether the relative and the social services district have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, and, if so, whether the fact-finding hearing pursuant to section one thousand fifty-one of this part and a permanency hearing pursuant to section one thousand eighty-nine of this chapter have occurred and whether compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options; and

(iii) the court finds that granting custody or guardianship of the child to the respondent parent, relative or suitable person under article six of this act or granting guardianship of the child to the relative or suitable person under article seventeen of the surrogate's court procedure act will provide the child with a safe and permanent home; and

(iv) all parties to the child protective proceeding consent to the granting of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act; or, if any of the parties object to the granting of custody or guardianship, the court has made the following findings after a joint dispositional hearing on the child protective petition and the petition under article six of this act or under article seventeen of the surrogate's court procedure act:

(A) if a relative or relatives or suitable person or persons have filed a petition for custody or guardianship and a parent or parents fail to consent to the granting of the petition, the court finds that the relative or relatives or suitable person or persons have demonstrated that extraordinary circumstances exist that support granting an order of custody or guardianship to the relative or relatives or suitable person or persons and that the granting of the order will serve the child's best interests; or

(B) if a relative or relatives or suitable person or persons have filed a petition for custody or guardianship and a party other than the parent or parents fail to consent to the granting of the petition, the court finds that granting custody or guardianship of the child to the relative or relatives or suitable person or persons is in the best interests of the child; or

(C) if a respondent parent has filed a petition for custody under article six of this act and a party who is not a parent of the child objects to the granting of the petition, the court finds either that the objecting party has failed to establish extraordinary circumstances, or, if the objecting party has established extraordinary circumstances, that granting custody to the petitioning respondent parent would nonetheless be in the child's best interests; or

(D) if a respondent parent has filed a petition for custody under article six of this act and the other parent objects to the granting of the petition, the court finds that granting custody to the petitioning respondent parent is in the child's best interests.

(a-1) Custody and visitation petition of non-respondent parent under article six of this act. Where a proceeding filed by the non-respondent parent pursuant to article six of this act is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under this article may jointly hear the dispositional hearing on the child protective petition under this article and the hearing on the custody and visitation petition under article six of this act; provided however, the court must determine the non-respondent parent's custody and visitation petition filed under article six of this act in accordance with the terms of that article.

(a-2) Custody and visitation petition of non-respondent parent under section two hundred forty of the domestic relations law. Where a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under this article may jointly hear the dispositional hearing on the child protective petition under article ten of this 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 the non-respondent parent's custodial rights in accordance with the terms of paragraph (a) of subdivision one of section two hundred forty of the domestic relations law.

(b) An order made in accordance with the provisions of this section shall set forth the required findings as described in subdivision (a) of this section where applicable, including, if the guardian and the local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, that a fact-finding hearing pursuant to section one thousand fifty-one of this part and a permanency hearing pursuant to section one thousand eighty-nine of this chapter have occurred, and the compelling reasons that exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options for the child, and shall constitute the final disposition of the child protective proceeding. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department of social services to provide services to the respondent or respondents when granting custody or guardianship pursuant to article six of this act under this section or granting guardianship under article seventeen of the surrogate's court procedure act.

(c) As part of the order granting custody or guardianship pursuant to article six of this act or granting guardianship under article seventeen of the surrogate's court procedure act, the court may require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any subsequent proceeding to modify the order of custody or guardianship granted pursuant to the article six proceeding or the order of guardianship granted pursuant to article seventeen of the surrogate's court procedure act; provided, however, if the guardian and the local department of social services had entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, the order must require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any such subsequent proceeding regarding custody or guardianship of the child.

(d) An order entered in accordance with this section shall conclude the court's jurisdiction over the proceeding held pursuant to this article and the court shall not maintain jurisdiction over the parties for the purposes of permanency hearings held pursuant to article ten-A of this act.

(e) The court shall hold age appropriate consultation with the child, however, if the youth has attained fourteen years of age, the court shall ascertain his or her preference for a suitable guardian. Notwithstanding any other section of law, where the youth is over the age of eighteen, he or she shall consent to the appointment of a suitable guardian.

§ 1055-c. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a child is placed on or after September twenty-ninth, two thousand twenty-one and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to the commissioner of a local social services district in accordance with this article.

2. Within sixty days of the start of a placement of a child referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(b) Determine whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan; and

(c) Approve or disapprove the placement of the child in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the child in the qualified residential treatment program if:

(i) the court finds, and states in the written order that:

(A) circumstances exist that necessitate the continued placement of the child in the qualified residential treatment program;

(B) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and

(C) that continued placement in the qualified residential treatment program is in the child's best interest; and

(ii) the court's written order states the specific reasons why the court has made the findings required pursuant to subparagraph (i) of this paragraph.

(d) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

3. At the conclusion of the review, if the court disapproves placement of the child in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

4. The court may, on its own motion, or the motion of any of the parties or the attorney for the child, proceed with the court review required pursuant to this section on the basis of the written records

received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to subparagraph (i) of paragraph (c) of subdivision two of this section and provide such written order to the parties and the attorney for the child expeditiously, but no later than five days.

5. Documentation of the court's determination pursuant to this section shall be recorded in the child's case record.

6. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such child, including but not limited to the child's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

§ 1056. Order of protection. 1. The court may issue an order of protection in assistance or as a condition of any other order made under this part. Such order of protection shall remain in effect concurrently with, shall expire no later than the expiration date of, and may be extended concurrently with, such other order made under this part, except as provided in subdivision four and subdivision four-a of this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent or a person legally responsible for the child's care or the spouse of the parent or other person legally responsible for the child's care, or both. Such an order may require any such person:

(a) to stay away from the home, school, business or place of employment of the other spouse, parent or person legally responsible for the child's care or the child, 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 eight hundred twelve of this act, 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;

(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 this proceeding or in any other proceeding or action under this act or the domestic relations law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child;

(f) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;

(g) 1. 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.

2. "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.

2. The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his religious faith shall be preserved and protected.

3. Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this act.

4. The court may enter an order of protection independently of any

other order made under this part, against a person who was a member of the child's household or a person legally responsible as defined in section one thousand twelve of this chapter, and who is no longer a member of such household at the time of the disposition and who is not related by blood or marriage to the child or a member of the child's household. An order of protection entered pursuant to this subdivision may be for any period of time up to the child's eighteenth birthday and upon such conditions as the court deems necessary and proper to protect the health and safety of the child and the child's caretaker.

4-a. The court may issue an order of protection against a person who was a member of the child's household or a person legally responsible as defined in section one thousand twelve of this article and who is not a parent of the child, independently of any other order made under this part which may contain any provision authorized under subdivision one of this section. Such order of protection issued under this section may remain in effect for a period of up to two years or, if the court finds special circumstances, a period of up to five years. For purposes of this section, "special circumstances" shall mean physical injury or serious physical injury caused by the respondent to the protected person or persons or any minor child, the use of a dangerous instrument by the respondent against the protected person or persons or any minor child, a history of violations of orders of protection by the respondent, prior convictions for crimes against the protected person or persons or a minor child by the respondent or the exposure by the respondent of the protected person or persons or a minor child or any family or household member to physical injury or acts constituting a sex offense as defined in subdivision (e) of section one thousand twelve of this article and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the protected person or persons or a minor child or any family or household member. Such order of protection may be extended independently or concurrently with, any order issued under this article or article ten-A of this chapter. Such order shall be subject to annual review, modification or vacatur by the court, upon motion by any party as provided herein. The total period of such order shall be no more than two years, or if there was a special circumstances finding, five years from the date of the initial order.

5. 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.

6. 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.

7. 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.

§ 1056-a. Firearms; surrender and license suspension, revocation and ineligibility. Upon the issuance of an order of protection or temporary order of protection, or upon a violation of such order, the court shall make an order in accordance with section eight hundred forty-two-a of this act.

§ 1057. Release of the child to the respondent or respondents; supervision of the respondent or respondents.

(a) The court may release the child to the respondent or respondents for a period of up to one year, which may be extended pursuant to subdivision (d) of this section.

(b) In conjunction with an order releasing a child under this section or an order under paragraph (ii), (iii) or (iv) of subdivision (a) of section one thousand fifty-two of this part, the court may place the respondent or respondents under supervision of a child protective agency or of a social services official or duly authorized agency. An order of supervision entered under this section shall set forth the terms and conditions of such supervision that the respondent or respondents must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision.

(c) Except as provided for herein, in any order issued pursuant to subdivision (a) or (b) of this section, the court may require the child protective agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order. Where the order of disposition is issued upon the consent of the parties and the child's attorney, such agency shall report to the court, the parties and the child's attorney no later than ninety days after the issuance of the order and no later than sixty days prior to the expiration of the order, unless the court determines that the facts and circumstances of the case do not require such report to be made. Uniform statewide rules of court shall define permissible terms and conditions of supervision of the respondent or respondents under this section.

(d) The duration of any period of release of the child to the respondent or respondents or supervision of the respondent or respondents or both shall be for an initial period of no more than one year. The court may at the expiration of that period, upon a hearing and for good cause shown, extend such release or supervision or both for a period of up to one year.

§ 1058. Expiration of orders. No later than sixty days prior to the expiration of an order issued pursuant to paragraph (i), (ii), (iv), or (v) of subdivision (a) of section one thousand fifty-two of this part or prior to the conclusion of the period of an adjournment in contemplation of dismissal pursuant to section one thousand thirty-nine of this article, where no application has been made seeking extension of such orders or adjournments and, with respect to an adjournment in contemplation of dismissal, no violations of the court's order are before the court, the child protective agency shall, whether or not the child has been or will be returned to the family, report to the court, the parties, including any non-respondent parent and the child's attorney on the status and circumstances of the child and family and any actions taken or contemplated by such agency with respect to such child and family.

PART 6

NEW HEARING AND RECONSIDERATION OF ORDERS

§ 1061. Staying, modifying, setting aside or vacating order. For good cause shown and after due notice, the court on its own motion, on motion of the corporation counsel, county attorney or district attorney or on motion of the petitioner, or on motion of the child or on his behalf, or on motion of the parent or other person responsible for the child's care may stay execution, of arrest, set aside, modify or vacate any order issued in the course of a proceeding under this article.

§ 1062. Motion to terminate placement. Any interested person acting on behalf of a child placed under section one thousand fifty-five of this article, the child's parent, or the person legally responsible for the child may make a motion to the court for an order terminating the placement. The motion must:

(a) show that an application for the child's return to his or her home was made to an appropriate person in the place in which the child was placed;

(b) show that the application was denied or was not granted within thirty days from the day application was made; and

(c) be accompanied by a sworn affidavit stating the grounds for the motion.

§ 1063. Service of motion; answer. A copy of a motion under section one thousand sixty-two of this part shall promptly be served by regular mail upon the duly authorized agency or the institution having custody of the child and upon the child's attorney, each of whose duty it is to file an answer to the motion within five days of the receipt of the motion.

§ 1064. Examination of motion and answers; hearing. The court shall promptly examine the motion and answers. If the court concludes that a hearing should be had, it may proceed upon due notice to all concerned to hear the facts and determine whether continued placement serves the purposes of this article. If the court concludes that a hearing need not be had, it shall enter an order granting or denying the motion.

§ 1065. Orders on hearing. (a) If the court determines after hearing that continued placement serves the purposes of this article, it shall deny the motion. The court may, on its own motion, determine a schedule for the return of the child, change the agency or institution in which the child is placed, or direct the agency or institution to make such other arrangements for the child's care and welfare as the facts of the case may require.

(b) If the court determines after hearing that continued placement does not serve the purposes of this article, the court shall discharge the child from the custody of the agency or the institution in accord with section one thousand fifty-four of this article.

§ 1066. Successive motions. If a motion under section one thousand sixty-two of this part is denied, it may not be renewed for a period of ninety days after the denial, unless the order of denial permits renewal at an earlier time.

§ 1067. Discontinuation of treatment by agency or institution. A child placed with an authorized agency under section one thousand fifty-five shall be returned to the court which entered the order of placement, if the agency (a) discontinues or suspends its work; or

(b) is unwilling to continue to care for the child for the reason that support by the state of New York or one of its political subdivisions has been discontinued; or

(c) so fundamentally alters its program that the child can no longer benefit from it.

§ 1068. Action on return from agency or institution. If a person is returned to the court under section one thousand sixty-seven of this part, the court may make any order that might have been made at the time of the order of placement.

§ 1069. Rules of court. Rules of court may authorize an agency with which a child is placed pursuant to section three hundred fifty-five to arrange for the child's care by another person or authorized agency. In the event such an arrangement is made, the agency making the arrangement shall, within one week of the making of the arrangement, advise the court of the change and reason therefor.

PART 7

COMPLIANCE WITH ORDERS

§ 1071. Failure to comply with terms and conditions of suspended judgment. If, prior to the expiration of the period of the suspended judgment, a motion or order to show cause is filed that alleges that a parent or other person legally responsible for a child's care violated the terms and conditions of a suspended judgment issued under section one thousand fifty-three of this article, the period of the suspended judgment shall be tolled pending disposition of the motion or order to show cause. If, after hearing, the court is satisfied by competent proof that the parent or other person violated the order of suspended judgment, the court may revoke the suspension of judgment and enter any order that might have been made at the time judgment was suspended.

§ 1072. Failure to comply with terms and conditions of supervision. If, prior to the expiration of the period of an order of supervision pursuant to section one thousand fifty-four or one thousand fifty-seven of this article, a motion or order to show cause is filed that alleges that a parent or other person legally responsible for a child's care violated the terms and conditions of an order of supervision issued under section one thousand fifty-four or one thousand fifty-seven of this article, the period of the order of supervision shall be tolled pending disposition of the motion or order to show cause. If, after hearing, the court is satisfied by competent proof that the parent or other person violated the order of supervision willfully and without just cause, the court may:

(a) revoke the order of supervision or of protection and enter any order that might have been made at the time the order of supervision or of protection was made, or

(b) commit the parent or other person who willfully and without just cause violated the order to jail for a term not to exceed six months.

§ 1073. Effect of running away from place of placement. If a child placed under section one thousand fifty-five runs away from the place of placement the court may, after hearing, revoke the order of placement and make any order, including an order of placement, that might have been made at the time the order of placement was made. The court may require that the child be present at such hearing and shall appoint an attorney to represent him or her.

§ 1074. Release from responsibility under order of placement. Those responsible for the operation of a place where a child has been placed under section one thousand fifty-five may petition the court for leave to return the child to the court and for good cause shown be released from responsibility under the order of placement. After hearing, the court may grant the petition and make any order, including an order of placement, that might have been made at the time the order of placement was made.

§ 1075. Special duties of attorney for the child. In addition to all other duties and responsibilities necessary to the representation of a child who is the subject of a proceeding under this article, an attorney for a child shall upon receipt of a report from a child protective agency pursuant to sections one thousand thirty-nine, one thousand thirty-nine-a, one thousand fifty-two-a, one thousand fifty-three, one thousand fifty-four, one thousand fifty-five, one thousand fifty-seven and one thousand fifty-eight, review the information contained therein and make a determination as to whether there is reasonable cause to suspect that the child is at risk of further abuse or neglect or that there has been a substantive violation of a court order. Where the attorney for the child makes such a determination, the attorney shall apply to the court for appropriate relief pursuant to section one thousand sixty-one. Nothing contained in this section shall relieve a child protective agency or social services official of its duties pursuant to this act or the social services law.

PART 8
VISITATION OF MINORS IN FOSTER CARE

§ 1081. Visitation rights. 1. A non-custodial parent or grandparent shall have the visitation rights with a child remanded or placed in the care of a social services official pursuant to this article as conferred by order of the family court or by any order or judgment of the supreme court, or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law, subject to the provisions of section one thousand eighty-two of this part.

2. (a) A non-custodial parent or any grandparent or grandparents who have not been afforded the visitation rights described in subdivision one of this section shall have the right to petition the court for enforcement of visitation rights with a child remanded or placed in the care of a social services official pursuant to this article, as such visitation rights have been conferred by order of the family court or by any order or judgment of the supreme court, or by written agreement between the parents as described in section two hundred thirty-six of the domestic relations law.

(b) A child remanded or placed in the care of a social services official pursuant to this article or article ten-A or ten-C of this act shall have the right to move for visitation and contact with his or her siblings. The siblings of a child remanded or placed in the care of a social services official pursuant to this article or article ten-A or ten-C of this act shall have a right to petition the court for visitation and contact with such child. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent.

3. (a) The petition by a non-custodial parent shall allege that such parent has visitation rights conferred by order of the family court or by any order or judgment of the supreme court or by written agreement between the parents as described in section two hundred thirty-six of

the domestic relations law, shall have a copy of such order, judgment or agreement attached thereto, shall request enforcement of such rights pursuant to this part, and shall state, when known by the petitioner, that visitation rights with the child by any grandparent or grandparents have been conferred by order of the supreme court or family court pursuant to section seventy-two or two hundred forty of the domestic relations law, and shall provide the name and address of such grandparent or grandparents.

(b) A petition by a grandparent or grandparents shall allege that such grandparent or grandparents have been granted visitation rights with the child pursuant to section seventy-two or two hundred forty of the domestic relations law, or subdivision (b) of section six hundred fifty-one of this act, shall have a copy of such order or judgment attached thereto, and shall request enforcement of such rights pursuant to this part.

(c) A motion by a child remanded or placed in the care of a social services official pursuant to this article or article ten-A or ten-C of this act or a petition by a sibling of such child shall allege that visitation and contact would be in the best interests of both the child who has been remanded or placed and the child's sibling.

4. (a) A petition filed under paragraphs (a) or (b) of subdivision three of this section shall be served upon the respondent in a proceeding under this article, the local social services official having the care of the child, any grandparent or grandparents named in the petition as having visitation rights conferred by court order pursuant to section seventy-two or two hundred forty of the domestic relations law, and upon the child's attorney. The petition shall be served in such manner as the court may direct.

(b) A petition or motion filed under paragraph (b) of subdivision two of this section shall be served upon: (i) the respondent in the proceeding under this article or article ten-A or ten-C of this act; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the sibling to be visited or with whom contact is sought; (v) any non-respondent parent in the proceeding under this article or article ten-A or ten-C of this act; (vi) such sibling himself or herself if ten years of age or older; and (vii) such sibling's attorney, if any. The petition or motion shall be served in such manner as the court may direct.

5. (a) Upon receipt of a petition filed under paragraphs (a) or (b) of subdivision two of this section, the court shall, subject to the provisions of section one thousand eighty-two of this part, require that any order of a family court or order or judgment of the supreme court, or any agreement between the parents as described in subdivision one of this section, granting visitation rights to the non-custodial parent, grandparent or grandparents, be incorporated in any preliminary order or order of placement made under this article to the extent that such order, judgment or agreement confers visitation rights. In any case where a dispositional hearing has not been held or will not be held within thirty days of the filing of such petition the court shall order the person, official, agency or institution caring for the child pursuant to this article to comply with such part of the order, judgment or agreement granting visitation rights.

(b) Upon receipt of a petition or motion filed under paragraph (c) of subdivision three of this section, the court shall determine, after giving notice and an opportunity to be heard to persons served under subdivision four of this section, whether visitation and contact would be in the best interests of the child and his or her sibling. The court's determination may be included in the dispositional order issued pursuant to section one thousand fifty-two or one thousand ninety-five of this chapter or in a permanency hearing order issued pursuant to section one thousand eighty-nine of this chapter.

(c) Violation of an order issued under this section shall be punishable pursuant to section seven hundred fifty-three of the judiciary law.

§ 1082. Approval, modification or denial of visitation rights. 1. (a) Upon receipt of a petition pursuant to subdivision four of section one thousand eighty-one of this part, the local department of social services shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the petitioner is a subject of an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of the social services law, and shall further ascertain whether or not the petitioner is a respondent in a proceeding under this article whereby the child with whom visitation is sought has been allegedly abused or neglected or has been adjudicated as an abused or neglected child.

(b) The department, the child's attorney and the respondent in a proceeding under this article, shall have the right to be heard with respect to a petition for an order to enforce visitation rights under this part.

2. Where the local department of social services or the child's attorney opposes a petition described in section one thousand eighty-one of this part, the department or the child's attorney as appropriate shall serve and file an answer to the petition. The court shall, upon the filing of such answer, set a date for a hearing on such petition and shall notify the parents, grandparent or grandparents, the department and the child's attorney of such hearing date.

3. Whenever a hearing described in subdivision two of this section is to be held within ten court days of a dispositional hearing authorized under this article, the court may in its discretion hear such petition as part of such dispositional hearing.

4. In any hearing under this section, the court shall approve such petition unless the court finds upon competent, relevant and material evidence that enforcement of visitation rights as described in the order, judgment or agreement would endanger the child's life or health. Upon such a finding, the court shall make an order denying such petition or make such other order affecting enforcement of visitation rights as the court deems to be in the best interests of the child.

5. (a) Where a petition is approved pursuant to this section the parties may agree in writing to an alternative schedule of visitation equivalent to and consistent with the original or modified visitation order or agreement where such alternative schedule reflects changed

circumstances of the parties and is consistent with the best interests of the child.

(b) In the absence of such an agreement between the parties, the court may, in its discretion, order an alternative schedule of visitation as defined herein, where it determines that such schedule is necessary to facilitate visitation and to protect the best interests of the child.

§ 1083. Duration of orders affecting visitation rights. 1. Where an order of the court has been made incorporating an order, judgment or agreement conferring visitation rights with a child on a non-custodial parent or grandparent into a dispositional order under this article, or where the court otherwise orders compliance by a person, official, agency or institution caring for the child, with an order, judgment or agreement granting visitation rights, such order shall remain in effect for the length of time the child remains in such care pursuant to this article, unless such order is subsequently modified by the court for good cause shown.

2. Where the court makes an order denying a petition seeking enforcement of visitation rights or makes an order modifying visitation rights, pursuant to the provisions of section one thousand eighty-two of this part, such order shall remain in effect for the length of time the child is placed with a person, official, agency or institution caring for the child pursuant to this article, unless such order is subsequently modified by the court for good cause shown.

§ 1084. Out-of-wedlock children; paternity. No visitation right shall be enforceable under this part concerning any person claiming to be a parent of an out-of-wedlock child without an adjudication of the paternity of such person by a court of competent jurisdiction, or without an acknowledgement of the paternity of such person executed pursuant to applicable provisions of law.

§ 1085. Visitation and custody rights unenforceable; murder of parent,

custodian, guardian, or child. 1. No visitation or custody order shall be enforceable under this part by 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 the child unless:

(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; and

(ii) the court finds that such visitation or custody is in the best interest of the child.

2. 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, legal guardian or legal custodian who has been convicted of murder in the first or second degree in this state, or an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of the other parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of such child, without the consent of such child's custodian or legal guardian.

3. Nothing contained in this section shall be construed to require a court, without petition from any of the interested parties, to review a previously issued order of visitation or custody or denial of such petition.

4. For the purposes of making a determination pursuant to subparagraph (C) of paragraph (i) of subdivision one of this section, 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.

ARTICLE 10-A

PERMANENCY HEARINGS FOR CHILDREN PLACED OUT OF THEIR HOMES

§ 1086. Purpose. The purpose of this article is to establish uniform procedures for permanency hearings for all children who are placed in foster care pursuant to section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-a of the social services law or pursuant to section one thousand twenty-two, one thousand twenty-seven, one thousand fifty-two, one thousand eighty-nine, one thousand ninety-one, one thousand ninety-four or one thousand ninety-five of this act; children who are directly placed with a relative pursuant to section one thousand seventeen or one thousand fifty-five of this act; and children who are freed for adoption. It is meant to provide children placed out of their homes timely and effective judicial review that promotes permanency, safety and well-being in their lives.

§ 1087. Definitions. When used in this article, the following terms shall have the following meanings:

(a) "Child" shall mean a person under the age of eighteen who is placed in foster care pursuant to section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-a of the social services law or pursuant to section one thousand twenty-two, one thousand twenty-seven, one thousand fifty-two, one thousand eighty-nine, one thousand ninety-one, one thousand ninety-four or one thousand ninety-five of this act; or directly placed with a relative pursuant to section one thousand seventeen or one thousand fifty-five of this act; or who has been freed for adoption or a person between the ages of eighteen and twenty-one who has consented to continuation in foster care or trial discharge status; or a former foster care youth under the age of twenty-one for whom a court has granted a motion to permit the former foster care youth to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges.

(b) "Child freed for adoption" shall mean a person whose custody and guardianship has been committed to an authorized agency pursuant to section three hundred eighty-three-c, three hundred eighty-four, or three hundred eighty-four-b of the social services law. Such category shall include a person whose parent or parents have died during the period in which the child was in foster care and for whom there is no surviving parent who would be entitled to notice or consent pursuant to section one hundred eleven or one hundred eleven-a of the domestic relations law. Such category shall not include a child who has been freed for adoption with respect to one parent but who has another parent whose consent to an adoption is required pursuant to section one hundred eleven of the domestic relations law.

(c) "Foster care" shall mean care provided by an authorized agency to a child in a foster family, free or boarding home; agency boarding home;

group home; child care institution, health care facility or any combination thereof.

(d) "Agency" means an authorized agency as defined in paragraphs (a) and (b) of subdivision ten of section three hundred seventy-one of the social services law, to which the care and custody or custody and guardianship of a child has been transferred or committed.

(e) "Permanency hearing report" shall mean a sworn report submitted by the social services district to the court and the parties prior to each permanency hearing regarding the health and well-being of the child, the reasonable efforts that have been made since the last hearing to promote permanency for the child, and the recommended permanency plan for the child.

§ 1088. Continuing court jurisdiction. (a) If a child is placed pursuant to section three hundred fifty-eight-a, three hundred eighty-four, or three hundred eighty-four-a of the social services law, or pursuant to section one thousand seventeen, one thousand twenty-two, one thousand twenty-seven, one thousand fifty-two, one thousand eighty-nine, one thousand ninety-one, one thousand ninety-four or one thousand ninety-five of this act, or directly placed with a relative pursuant to section one thousand seventeen or one thousand fifty-five of this act; or if the child is freed for adoption pursuant to section six hundred thirty-one of this act or section three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law, the case shall remain on the court's calendar and the court shall maintain jurisdiction over the case until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

(b) The court shall rehear the matter whenever it deems necessary or desirable, or upon motion by any party entitled to notice in proceedings under this article, or by the attorney for the child, and whenever a permanency hearing is required by this article. While the court maintains jurisdiction over the case, the provisions of section one thousand thirty-eight of this act shall continue to apply.

(c) The court shall also maintain jurisdiction over a case for purposes of hearing a motion to permit a former foster care youth, as defined in article ten-B of this act, to return to the custody of the social services district from which the youth was most recently discharged or, in the case of a youth previously placed with the office of children and family services for placement, to be placed in the custody of the social services district of the child's residence or, in the case of a child freed for adoption, the authorized agency into whose custody and guardianship the child has been placed.

(d) (i) Subject to the provisions of paragraph (ii) of this subdivision, the court shall also maintain jurisdiction over a case for purposes of hearing a motion brought by a former foster care youth, as defined in article ten-B of this act, or by a young adult who left foster care upon or after attaining the age of twenty-one, for contempt pursuant to section seven hundred fifty-three of the judiciary law, against a social services district and/or social services official, as defined in section two of the social services law. In addition to any other defense, it shall be an affirmative defense to a motion filed in accordance with this paragraph that compliance with the court order was not possible due solely to the youth's refusal to consent to continuation of foster care placement where such refusal is documented in a signed, notarized letter executed by the youth after consultation with their attorney for the child.

(ii) The court shall maintain jurisdiction over a motion described in paragraph (i) of this subdivision if such motion is filed before the former foster care youth or young adult attains the age of twenty-three. The court's jurisdiction over any such motion shall continue until such motion and any related appeals are finally resolved.

(iii) If the youth is eligible to return to foster care pursuant to the provisions of article ten-B of this act, upon the consent of the youth, the court may convert a motion brought under this subdivision to a motion to return the youth to foster care.

§ 1089. Permanency hearings. (a) Scheduling, commencement and completion of permanency hearings. (1) Children freed for adoption. (i) At the conclusion of the dispositional hearing at which the child was freed for adoption in a proceeding pursuant to section three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law, the court shall set a date certain for the initial freed child permanency hearing and advise all parties in court of the date set, except for the respondent or respondents. The permanency hearing shall be commenced no later than thirty days after the hearing at which the child was freed and shall be completed within thirty days, unless the court determines to hold the permanency hearing immediately upon completion of the hearing at which the child was freed, provided adequate notice has been given.

(ii) At the conclusion of the hearing pursuant to section one thousand ninety-one of this act where the court has granted the motion for a former foster care youth who was discharged from foster care due to a failure to consent to continuation of placement to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, the court shall set a date certain for a permanency hearing and advise all parties in court of the date set. The permanency hearing shall be commenced no later than thirty days after the hearing at which the former foster care youth was returned to foster care.

(2) All other permanency hearings. At the conclusion of the hearing pursuant to section one thousand twenty-two, one thousand twenty-seven, one thousand fifty-two, one thousand eighty-nine, one thousand ninety-one, one thousand ninety-four or one thousand ninety-five of this act at which the child was remanded or placed and upon the court's approval of a voluntary placement instrument pursuant to section three hundred fifty-eight-a of the social services law, the court shall set a date certain for an initial permanency hearing, advise all parties in court of the date set and include the date in the order. Orders issued in subsequent court hearings prior to the permanency hearing, including, but not limited to, the order of placement issued pursuant to section one thousand fifty-five of this act, shall include the date certain for the permanency hearing. The initial permanency hearing shall be commenced no later than six months from the date which is sixty days after the child was removed from his or her home; provided, however, that if a sibling or half-sibling of the child has previously been removed from the home and has a permanency hearing date certain scheduled within the next eight months, the permanency hearing for each child subsequently removed from the home shall be scheduled on the same

date certain that has been set for the first child removed from the home, unless such sibling or half-sibling has been removed from the home pursuant to article three or seven of this act. The permanency hearing shall be completed within thirty days of the scheduled date certain.

(3) Subsequent permanency hearings for a child who continues in out-of-home placement or who is freed for adoption shall be scheduled for a date certain which shall be no later than six months from the completion of the previous permanency hearing and such subsequent permanency hearings shall be completed within thirty days of the date certain set for such hearings.

(b) Notice of permanency hearings. (1) No later than fourteen days before the date certain for a permanency hearing scheduled pursuant to this section, the local social services district shall serve the notice of the permanency hearing and the permanency hearing report by regular mail upon:

(i) the child's parent, including any non-respondent parent, unless the parental rights of the parent have been terminated or surrendered and any other person legally responsible for the child's care at the most recent address or addresses known to the local social services district or agency, and the foster parent in whose home the child currently resides, each of whom shall be a party to the proceeding;

(ii) the agency supervising the care of the child on behalf of the social services district with whom the child was placed, the child's attorney, and the attorney for the respondent parent; and

(iii) the attorney for the child.

(1-a) If the child is age ten or older, no later than fourteen days before the date certain for a permanency hearing scheduled pursuant to this section, the local social services district shall serve the notice of the permanency hearing by regular mail upon the child. Nothing herein shall be deemed to prevent an attorney for the child from consulting with the child about the child's participation in the permanency hearing as required by section one thousand ninety-a of this article prior to the service of the notice required pursuant to this paragraph.

(2) The notice and the permanency hearing report shall also be provided to any pre-adoptive parent or relative providing care for the child and shall be submitted to the court. The notice of the permanency hearing only shall be provided to a former foster parent in whose home

the child previously had resided for a continuous period of twelve months in foster care, if any, unless the court, on motion of any party or on its own motion, dispenses with such notice on the basis that such notice would not be in the child's best interests. However, such pre-adoptive parent, relative, or former foster parent, on the basis of such notice, shall have the right to be heard but shall not be a party to the permanency hearing. The failure of such pre-adoptive parent, relative or former foster parent to appear at a permanency hearing shall constitute a waiver of the right to be heard. Such failure to appear shall not cause a delay of the permanency hearing nor be a ground for the invalidation of any order issued by the court pursuant to this section.

(c) Content of the permanency hearing report. The permanency hearing report shall include, but need not be limited to, up-to-date and accurate information regarding:

(1) the child's current permanency goal, which may be:

(i) return to the parent or parents;

(ii) placement for adoption with the local social services official filing a petition for termination of parental rights;

(iii) referral for legal guardianship;

(iv) permanent placement with a fit and willing relative; or

(v) placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child if the child is age sixteen or older, including documentation of: (A) intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts to return the child home or secure a placement for the child with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (B) the steps being taken to ensure that (I) the child's foster family home or child care facility is following the reasonable and prudent parent standard in accordance with the guidance provided by the United States department of health and human services, and (II) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in activities, and (C) the compelling reasons for determining that it continues to not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative;

(2) the health, well-being, and status of the child since the last hearing including:

(i) a description of the child's health and well-being;

(ii) information regarding the child's current placement;

(iii) an update on the educational and other progress the child has made since the last hearing including a description of the steps that have been taken by the local social services district or agency to enable prompt delivery of appropriate educational and vocational services to the child, including, but not be limited to:

(A) where the child is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled or to continue enrollment in an appropriate school or educational program leading to a high school diploma;

(B) where the child is eligible to be enrolled in a pre-kindergarten program pursuant to section thirty-six hundred two-e of the education law, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled in an appropriate pre-kindergarten program, if available;

(C) where the child is under three years of age and is involved in an indicated case of child abuse or neglect, or where the local social services district suspects that the child may have a disability as defined in subdivision five of section twenty-five hundred forty-one of the public health law or if the child has been found eligible to receive early intervention or special educational services prior to or during the foster care placement, in accordance with title two-A of article twenty-five of the public health law or article eighty-nine of the education law, the steps that the local social services district or agency has taken to make any necessary referrals of the child for early intervention, pre-school special educational or special educational evaluations or services, as appropriate, and any available information regarding any evaluations and services which are being provided or are scheduled to be provided in accordance with applicable law; and

(D) where the child is at least sixteen and not subject to article sixty-five of the education law and elects not to participate in an educational program leading to a high school diploma, the steps that the local social services district has taken to assist the child to become gainfully employed or enrolled in a vocational program;

(iv) a description of the visitation plan or plans describing the persons with whom the child visits, including any siblings, and the frequency, duration and quality of the visits;

(v) where a child has attained the age of fourteen, a description of the services and assistance that are being provided to enable the child to learn independent living skills; and

(vi) a description of any other services being provided to the child;

(3) the status of the parent, including:

(i) the services that have been offered to the parent to enable the child to safely return home;

(ii) the steps the parent has taken to use the services;

(iii) any barriers encountered to the delivery of such services;

(iv) the progress the parent has made toward reunification; and

(v) a description of any other steps the parent has taken to comply with and achieve the permanency plan, if applicable.

(4) a description of the reasonable efforts to achieve the child's permanency plan that have been taken by the local social services district or agency since the last hearing. The description shall include:

(i) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to section one thousand thirty-nine-b of this act, the reasonable efforts that have been made by the local social services district or agency to eliminate the need for placement of the child and to enable the child to safely return home, including a description of any services that have been provided;

(ii) where the permanency plan is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, the reasonable efforts that have been made by the local social services district or agency to make and finalize such alternate permanent placement, including a description of any services that have been provided and a description of the consideration of appropriate in-state and out-of-state placements;

(iii) where return home of the child is not likely, the reasonable efforts that have been made by the local social services district or agency to evaluate and plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements, and any steps taken to further a permanent plan other than return to the child's parent; or

(iv) where a child has been freed for adoption, a description of the reasonable efforts that will be taken to facilitate the adoption of the child; and

(5) the recommended permanency plan including:

(i) a recommendation regarding whether the child's current permanency goal should be continued or modified, the reasons therefor, and the anticipated date for meeting the goal;

(ii) a recommendation regarding whether the child's placement should be extended and the reasons for the recommendation;

(iii) any proposed changes in the child's current placement, trial discharge or discharge that may occur before the next permanency hearing;

(iv) a description of the steps that will be taken by the local social services district or agency to continue to enable prompt delivery of appropriate educational and vocational services to the child in his or her current placement and during any potential change in the child's foster care placement, during any trial discharge, and after discharge of the child in accordance with the plans for the child's placement until the next permanency hearing;

(v) whether any modification to the visitation plan or plans is recommended and the reasons therefor;

(vi) where a child has attained the age of fourteen or will attain the age of fourteen before the next permanency hearing, a description of the services and assistance that will be provided to enable the child to learn independent living skills;

(vii) where a child has been placed outside this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child;

(viii) where return home of the child is not likely, the efforts that will be made to evaluate or plan for another permanent plan, including

consideration of appropriate in-state and out-of-state placements; and
(ix) in the case of a child who has been freed for adoption:
(A) a description of services and assistance that will be provided to the child and the prospective adoptive parent to expedite the adoption of the child;
(B) information regarding the child's eligibility for adoption subsidy pursuant to title nine of article six of the social services law; and
(C) if the child is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances regarding the child's decision to withhold consent and the reasons therefor; and
(6) Where the child remains placed in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, the commissioner of the social services district with legal custody of the child shall submit evidence at the permanency hearing with respect to the child:
(i) demonstrating that ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment, and that the placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan;
(ii) documenting the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and
(iii) documenting the efforts made by the local social services district to prepare the child to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home.
(d) Evidence, court findings and order. The provisions of subdivisions (a) and (c) of section one thousand forty-six of this act shall apply to all proceedings under this article. The permanency hearing shall include an age appropriate consultation with the child; provided, however that if the child is age sixteen or older and the requested permanency plan for the child is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a

permanency resource for the child, the court must ask the child about the desired permanency outcome for the child. At the conclusion of each permanency hearing, the court shall, upon the proof adduced, and in accordance with the best interests and safety of the child, including whether the child would be at risk of abuse or neglect if returned to the parent or other person legally responsible, determine and issue its findings, and enter an order of disposition in writing:

(1) directing that the placement of the child be terminated and the child returned to the parent or other person legally responsible for the child's care with such further orders as the court deems appropriate; or

(2) where the child is not returned to the parent or other person legally responsible:

(i) whether the permanency goal for the child should be approved or modified and the anticipated date for achieving the goal. The permanency goal may be determined to be:

(A) return to parent;

(B) placement for adoption with the local social services official filing a petition for termination of parental rights;

(C) referral for legal guardianship;

(D) permanent placement with a fit and willing relative; or

(E) placement in another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and the court has determined that as of the date of the permanency hearing, another planned permanency living arrangement with a significant connection to an adult willing to be a permanency resource for the child is the best permanency plan for the child and there are compelling reasons for determining that it continues to not be in the best interests of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian;

(ii) placing the child in the custody of a fit and willing relative or other suitable person, or continuing the placement of the child until the completion of the next permanency hearing, provided, however, that no placement may be continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past the child's twenty-first birthday; provided, however, that a former foster youth who was previously discharged from foster care due to a failure to consent to continuation of placement may be returned to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges if the court has granted the motion of the former foster care youth or local social services official upon a finding that the youth has no reasonable alternative to foster care and has consented to enrollment in and attendance at a vocational or educational program in accordance with section one thousand ninety-one of this act;

(iii) determining whether reasonable efforts have been made to effectuate the child's permanency plan as follows:

(A) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to section one thousand thirty-nine-b of this act, whether reasonable efforts have been made to eliminate the need for placement of the child and to enable the child to safely return home;

(B) where the permanency plan is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, whether reasonable efforts have been made to make and finalize such alternate permanent placement, including consideration of appropriate in-state and out-of-state placements;

(iv) where return home of the child is not likely, what efforts should be made to evaluate or plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements;

(v) the steps that must be taken by the local social services official or agency to implement the educational and vocational program components of the permanency hearing report submitted pursuant to subdivision (c) of this section, and any modifications that should be made to such plan;

(vi) specifying the date certain for the next scheduled permanency hearing;

(vii) where placement of the child is extended, such order shall also include:

(A) a description of the visitation plan or plans;

(B) where the child is not freed for adoption, a direction that the child's parent or parents, including any non-respondent parent or other person legally responsible for the child's care shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of the social services law and notification of their right to attend such conference or conferences and their right to have counsel or another representative with them;

(C) where the child is not freed for adoption, a direction that the parent or other person legally responsible for the child's care keep the local social services district or agency apprised of his or her current whereabouts and a current mailing address;

(D) where the child is not freed for adoption, a notice that if the child remains in foster care for fifteen of the most recent twenty-two months, the local social services district or agency may be required by law to file a petition to terminate parental rights;

(E) where a child has been freed for adoption and is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances with regard to the child's decision to withhold consent and the reasons therefor;

(F) where a child has been placed outside of this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child;

(G) where a child has or will before the next permanency hearing reach the age of fourteen, (I) the services and assistance necessary to assist the child in learning independent living skills to assist the child to make the transition from foster care to successful adulthood; and (II) A. that the permanency plan developed for the child in foster care who has attained the age of fourteen, and any revision or addition to the plan, shall be developed in consultation with the child and, at the option of the child, with up to two members of the child's permanency planning team who are selected by the child and who are not a foster parent of, or the case worker, case planner or case manager for, the child except that the local commissioner of social services with custody of the child may reject an individual so selected by the child if such local commissioner has good cause to believe that the individual would not act in the best interests of the child, and B. that one individual so selected by the child may be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child; and

(H) (I) a direction that the social services official or authorized agency charged with care and custody or guardianship and custody of the child, as applicable, report any anticipated change in placement to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision to change the placement or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the placement change is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or authorized agency shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change; and

(II) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program as defined in section four hundred nine-h of the social services law and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to item (I) of this clause and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section three hundred ninety-three of the social services law or section one thousand fifty-five-c, one thousand ninety-one-a or one thousand ninety-seven of this chapter. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

(viii) any other findings or orders that the court deems appropriate, which may include:

(A) Whether the court should issue any orders for services in the manner specified in section one thousand fifteen-a of this act in order to achieve the permanency plan and, if so, what services should be ordered.

(B) Where a child has been freed for adoption, the order may also:

(I) direct that such child be placed for adoption in the foster family home where he or she resides or has resided or with any other suitable person or persons;

(II) direct the local social services district to provide services or assistance to the child and the prospective adoptive parent authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. Such order shall include, where appropriate, the evaluation of eligibility for adoption subsidy pursuant to title nine of article six of the social services law, but shall not require the provision of such subsidy. Violation of such an order shall be subject to punishment pursuant to section seven hundred fifty-three of the judiciary law; and

(III) recommend that the office of children and family services investigate the facts and circumstances concerning the discharge of responsibilities for the care and welfare of such child by a local social services district pursuant to section three hundred ninety-five of the social services law; and

(IV) recommend that the attorney for the child, local social services district or agency file a petition pursuant to part one-A of article six of this act to restore the parental rights of a child who has been freed for adoption.

* (C) Where the permanency goal is return to parent and it is anticipated that the child may be returned home before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and child's attorney. If the court on its own motion or the child's attorney on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a child aging out of foster care is another planned permanent living

arrangement that includes a significant connection to an adult willing to be a permanency resource for the child, the local social services district may also discharge the child on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a child aging out of foster care shall mean that a child is physically discharged but the local social services district retains care and custody or custody and guardianship of the child and there remains a date certain for the scheduled permanency hearing.

* NB Sep amd; cannot be put together

* (C) Where the permanency goal is return to parent and it is anticipated that the child may be returned home before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and attorney for the child. If the court on its own motion or the attorney for the child on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a youth aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the youth, the local social services district may also discharge the youth on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a youth aging out of foster care shall mean that the youth is physically discharged but the local social services district retains care and custody or custody and guardianship of the child and there remains a date certain for the scheduled permanency hearing. Trial

discharge for a youth aging out of foster care may be extended at each scheduled permanency hearing, until the youth reaches the age of twenty-one, if a youth over the age of eighteen consents to such extension. Prior to finally discharging a youth aging out of foster care to another planned permanent living arrangement, the local social services official shall give the youth notice of the right to apply to reenter foster care within the earlier of twenty-four months of the final discharge or the youth's twenty-first birthday in accordance with article ten-B of this act. Such notice shall also advise the youth that reentry into foster care will only be available where the former foster care youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program in accordance with paragraph two of subdivision (a) of section one thousand ninety-one of this act.

* NB Sep amd; cannot be put together

(C-1) Where placement will be ending prior to a subsequent permanency hearing due to the child attaining twenty-one years of age, the court may direct the social services district and/or the social services official, as defined by section two of the social services law, to provide assistance or services to such child and such orders shall be enforceable after such child is discharged from foster care pursuant to subdivision (d) of section one thousand eighty-eight of this article.

(D) The court may make an order of protection in the manner specified by section one thousand fifty-six of this act 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 period of time by a person before the court.

(E) Where the court finds reasonable cause to believe that grounds for termination of parental rights exist, the court may direct the local social services district or other agency to institute a proceeding to legally free the child for adoption pursuant to section three hundred eighty-four-b of the social services law. Upon a failure by such agency to institute such proceeding within ninety days after entry of such order, the court shall permit the foster parent or parents in whose home the child resides to institute such a proceeding unless the local social services district or other agency, for good cause shown and upon due notice to all the parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the child in a subsequent adoption proceeding.

(F) The court may make an order directing a local social services district or agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the best interests of the child and there has been no prior court finding that such efforts are not required. Such efforts shall include encouraging and facilitating visitation with the child by the parent or other person legally responsible for the child's care. Such order may include a specific plan of action for the local social services district or agency including, but not limited to, requirements that such agency assist the parent or other person legally responsible for the child's care in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment. Such order shall also include encouraging and facilitating visitation with the child by the noncustodial parent and grandparents who have the right to visitation pursuant to section one thousand eighty-one of this act. Such order may also include encouraging and facilitating regular visitation and communication with the child by the child's siblings and may incorporate an order, if any, issued pursuant to this section or section one thousand twenty-seven-a or one thousand eighty-one of this act, or pursuant to section three hundred fifty-eight-a of the social services law or section seventy-one of the domestic relations law. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent. Nothing in this subdivision shall be deemed to limit the authority of the court to make an order pursuant to section two hundred fifty-five of this act.

(G) Except as provided for herein, in any order issued pursuant to this section, the court may require the local social services district or agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order.

(H) Where a child freed for adoption has not been placed in a prospective adoptive home and the court has entered an order of disposition directing that the child be placed for adoption or directing the provision of services or assistance to the child and the agency charged with the guardianship and custody of the child fails, prior to the next scheduled permanency hearing, to comply with such order, the court at the time of such hearing may, in the best interests of the child, enter an order committing the guardianship and custody of the child to another authorized agency or may make any other order authorized pursuant to section two hundred fifty-five of this act.

(I) If the court determines that the subject child has not been placed with his or her minor siblings or half-siblings who are in care, or that regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's and his or her siblings' or half-siblings' best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's and his or her siblings' or half-siblings' best interests unless such placement or visitation and communication would be contrary to the child's or his or her siblings' or half-siblings' health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation. If a child placed in foster care pursuant to this section is not placed together or afforded regular communication with his or her siblings, the child, through his or her attorney or through a parent on his or her behalf, may move for an order regarding placement or communication. The motion shall be served upon: the parent or parents in the proceeding under this section; the local social services official having the care of the child; other persons having care, custody and control of the child, if any; the parents or other persons having care, custody and control of the siblings to be visited or with whom contact is sought; such sibling himself or herself if ten years of age or older; and such siblings' attorney, if any. Upon receipt of a motion filed under this paragraph the court shall determine, after giving notice and an opportunity to be heard to the persons served, whether visitation and contact would be in the best interests of the child and his or her siblings. The court may order that the child be placed together with or have regular communication with his or her siblings if the court determines it to be in the best interests of the child and his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

(e) Service of court order and permanency hearing report. A copy of the court order which includes the date certain for the next permanency hearing and the permanency hearing report as approved, adjusted, or modified by the court, shall be given to the parent or other person legally responsible for the child.

§ 1089-a. Custody or guardianship with a parent or parents, a relative or relatives or a suitable person or persons pursuant to article six of this act or guardianship of a relative or relatives or a suitable person or persons pursuant to article seventeen of the surrogate's court procedure act. (a) Where the permanency plan is placement with a fit and willing relative or a respondent parent, the court may issue an order of custody or guardianship in response to a petition filed by a respondent parent, relative or suitable person seeking custody or guardianship of the child under article six of this act or an order of guardianship of the child under article seventeen of the surrogate's court procedure act. A petition for custody or guardianship may be heard jointly with a permanency hearing held pursuant to this article. An order of custody or guardianship issued in accordance with this subdivision will result in termination of all pending orders issued pursuant to this article or article ten of this act if the following conditions have been met:

(i) the court finds that granting custody to the respondent parent or parents, relative or relatives or suitable person or persons or guardianship of the child to the relative or relatives or suitable person or persons is in the best interests of the child and that the termination of the order placing the child pursuant to article ten of this act will not jeopardize the safety of the child. In determining whether the best interests of the child will be promoted by the granting of guardianship of the child to a relative who has cared for the child as a foster parent, the court shall give due consideration to the permanency goal of the child, the relationship between the child and the relative, and whether the relative and the local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, and, if so, whether a fact-finding hearing pursuant to section one thousand fifty-one of this chapter has occurred, and whether compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options; and

(ii) the court finds that granting custody to the respondent parent or parents, relative or relatives or suitable person or persons or guardianship of the child to the relative or relatives or suitable person or persons will provide the child with a safe and permanent home; and

(iii) the parents, the attorney for the child, the local department of social services, and the foster parent of the child who has been the foster parent for the child for one year or more consent to the issuance of an order of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act and the termination of the order of placement pursuant to this article or article ten of this act; or, if any of the parties object to the granting of custody or guardianship, the court has made the following findings after a joint hearing on the permanency of the child and the petition under article six of this act or article seventeen of the surrogate's court procedure act:

(A) if a relative or relatives or suitable person or persons have filed a petition for custody or guardianship and a parent or parents fail to consent to the granting of the petition, the court finds that the relative or relatives or suitable person or persons have demonstrated that extraordinary circumstances exist that support granting an order of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act to the relative or relatives or suitable person or persons and that the granting of the order will serve the child's best interests; or

(B) if a relative or relatives or suitable person or persons have filed a petition for custody or guardianship and the local department of social services, the attorney for the child, or the foster parent of the child who has been the foster parent for the child for one year or more objects to the granting of the petition, the court finds that granting custody or guardianship of the child to the relative or relatives or suitable person or persons is in the best interests of the child; or

(C) if a respondent parent has filed a petition for custody under article six of this act and a party who is not a parent of the child objects to the granting of the petition, the court finds either that the objecting party has failed to establish extraordinary circumstances, or, if the objecting party has established extraordinary circumstances, that granting custody to the petitioning respondent parent would nonetheless be in the child's best interests; or

(D) if a respondent parent has filed a petition for custody under article six of this act and the other parent fails to consent to the granting of the petition, the court finds that granting custody to the petitioning respondent parent is in the child's best interests.

(a-1) Custody and visitation petition of non-respondent parent under article six of this act. Where a proceeding filed by a non-respondent parent pursuant to article six of this act is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under this article may jointly hear the permanency hearing and the hearing on the custody and visitation petition under article six of this act; provided however, the court must determine the non-respondent parent's custody petition filed under article six of this act in accordance with the terms of that article.

(a-2) Custody and visitation petition of non-respondent parent under section two hundred forty of the domestic relations law. Where a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under this article may jointly hear the permanency hearing 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 the non-respondent parent's custodial rights in accordance with the terms of paragraph (a) of subdivision one of section two hundred forty of the domestic relations law.

(b) An order made in accordance with the provisions of this section shall set forth the required findings as described in subdivision (a) of this section, where applicable, including, if the guardian and local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, that a fact-finding hearing pursuant to section one thousand fifty-one of this chapter and a permanency hearing pursuant to section one thousand eighty-nine of this part have occurred, and the compelling reasons that exist for determining that the return home of the child are not in the best interests of the child and are, therefore, not appropriate permanency options for the child, and shall result in the termination of any orders in effect pursuant to article ten of this act or pursuant to this article. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department of social services to provide services to the respondent or respondents when granting custody or guardianship pursuant to article six of this act under this section or the granting of guardianship under article seventeen of the surrogate's court procedure act in accordance with this section.

(c) As part of the order granting custody or guardianship in accordance with this section pursuant to article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act, the court may require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any subsequent proceeding to modify the order of custody or guardianship granted pursuant to the article six proceeding; provided, however, if the guardian and the local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, the order must require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any such subsequent proceeding involving custody or guardianship of the child.

(d) Any order entered pursuant to this section shall conclude the court's jurisdiction over the article ten proceeding and the court shall not maintain jurisdiction over the proceeding for further permanency hearings.

(e) The court shall hold age appropriate consultation with the child, however, if the youth has attained fourteen years of age, the court shall ascertain his or her preference for a suitable guardian or custodian. Notwithstanding any other section of law, where the youth is over the age of eighteen, he or she shall consent to the appointment of a suitable guardian or custodian.

§ 1090. Representation of parties. (a) If an attorney for the child has been appointed by the family court in a proceeding pursuant to this article or section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, or three hundred eighty-four-b of the social services law, or article ten, ten-B or ten-C of this act, the appointment of the attorney for the child shall continue without further court order or appointment, unless another appointment of an attorney for the child has been made by the court, until the child is discharged from placement and all orders regarding supervision, protection or services have expired. The attorney for the child shall also represent the child without further order or appointment in any proceedings under article ten-B or ten-C of this act. The attorney for the child shall also represent the child without further order or appointment in any proceeding brought by a youth who was formerly in foster care to enforce orders that were made prior to such child's discharge from care when such child was between the ages of eighteen and twenty-one. All notices, reports and motions required by law shall be provided to such attorney. The attorney for the child may be relieved of their representation upon application to the court for termination of the appointment. Upon approval of the application, the court shall immediately appoint another attorney to whom all notices, reports, and motions required by law shall be provided.

(b) The appointment of an attorney for the respondent parent or parents pursuant to section two hundred sixty-two of this act shall continue without further order of the court. The appointment shall expire upon the expiration of the time for appeal of an order of disposition against the respondent parent committing custody and guardianship of the child pursuant to section three hundred eighty-four-b of the social services law or upon final determination of any appeal or subsequent appeals authorized by law, or upon entry of an order approving a surrender pursuant to the provisions of section three hundred eighty-three-c of the social services law. All notices, reports and motions required by law shall be served upon the attorney for the respondent parent or parents. The attorney may be relieved of his or her representation upon application to the court for termination of the appointment. If the application is approved, the court shall immediately appoint another attorney for the respondent parent or parents pursuant to section two hundred sixty-two of this act upon whom all notices, reports, and motions required by law shall be provided.

§ 1090-a. Participation of children in their permanency hearings. (a)(1) As provided for in subdivision (d) of section one thousand eighty-nine of this article, the permanency hearing shall include an age appropriate consultation with the child.

(2) Except as otherwise provided for in this section, children age ten and over have the right to participate in their permanency hearings and a child may only waive such right following consultation with his or her attorney.

(3) Nothing in this section shall be deemed to limit the ability of a child under the age of ten years old from participating in his or her permanency hearing. Additionally, nothing herein shall be deemed to require an attorney for the child to make a motion to allow for such participation. The court shall have the discretion to determine the manner and extent to which any particular child under the age of ten may participate in his or her permanency hearing based on the best interests of the child.

(b)(1) A child age fourteen and older shall be permitted to participate in person in all or any portion of his or her permanency hearing in which he or she chooses to participate.

(2) For children who are at least ten years of age and less than fourteen years of age, the court may, on its own motion or upon the motion of the local social services district, limit the child's participation in any portion of a permanency hearing or limit the child's in person participation in any portion of a permanency hearing

upon a finding that doing so would be in the best interests of the child. In making a determination pursuant to this paragraph the court shall consider the child's assertion of his or her right to participate and may also consider factors including, but not limited to, the impact that contact with other persons who may attend the permanency hearing would have on the child, the nature of the content anticipated to be discussed at the permanency hearing, whether attending the hearing would cause emotional detriment to the child, and the child's age and maturity level. If the court determines that limiting a child's in person participation is in his or her best interests, the court shall make alternative methods of participation available, which may include bifurcating the permanency hearing, participation by telephone or other available electronic means, or the issuance of a written statement to the court.

(c) Except as otherwise provided for in this section, a child who has chosen to participate in his or her permanency hearing shall choose the manner in which he or she shall participate, which may include participation in person, by telephone or available electronic means, or the issuance of a written statement to the court.

(d)(1) For children who are age ten and over, the attorney for the child shall consult with the child regarding whether the child would like to assert his or her right to participate in the permanency hearing and if so, the extent and manner in which he or she would like to participate.

(2) The attorney for the child shall notify the attorneys for all parties and the court at least ten days in advance of the scheduled hearing whether or not the child is asserting his or her right to participate, and if so, the manner in which the child has chosen to participate.

(3) (i) The court shall grant an adjournment whenever necessary to accommodate the right of a child to participate in his or her permanency hearing in accordance with the provisions of this section.

(ii) Notwithstanding paragraph two of this subdivision, the failure of an attorney for the child to notify the court of the request of a child age ten or older to participate in his or her permanency hearing shall not be grounds to prevent such child from participating in his or her permanency hearing unless a finding to limit the child's participation is made in accordance with paragraph two of subdivision (b) of this section.

(4) Notwithstanding any other provision of law to the contrary, upon the consent of the attorney for the child, the court may proceed to conduct a permanency hearing if the attorney for the child has not conducted a meaningful consultation with the child regarding his or her participation in the permanency hearing if the court finds that:

(i) The child lacks the mental capacity to consult meaningfully with his or her attorney and cannot understand the nature and consequences of the permanency hearing as a result of a significant cognitive limitation as determined by a health or mental health professional or educational professional as part of a committee on special education and such limitation is documented in the court record or the permanency hearing report;

(ii) The attorney for the child has made diligent and repeated efforts to consult with the child and the child was either unresponsive, unreachable, or declined to consult with his or her attorney; provided, however that the failure of a foster parent or agency to cooperate in making the child reachable or available shall not be grounds to proceed without consulting with the child;

(iii) At the time consultation was attempted, the child was absent without leave from foster care; or

(iv) Demonstrative evidence that other good cause exists and cannot be alleviated in a timely manner.

(e) If an adjournment is granted pursuant to paragraph three of subdivision (d) of this section, the court may, upon its own motion or upon the motion of any party or the attorney for the child, make a finding that reasonable efforts have been made to effectuate the child's approved permanency plan as set forth in subparagraph (iii) of paragraph two of subdivision (d) of section one thousand eighty-nine of this article; such finding shall be made in a written order.

(f) Nothing in this section shall contravene the requirements contained in subparagraph (ii) of paragraph one of subdivision (a) of section one thousand eighty-nine of this article that the permanency hearing be completed within thirty days of the scheduled date certain.

(g) Nothing in this section shall be construed to compel a child who does not wish to participate in his or her permanency hearing to do so.

ARTICLE 10-B

FORMER FOSTER CARE YOUTH RE-ENTRY PROCEEDINGS

§ 1091. Motion to return to foster care placement. (a) For purposes of this article:

(1) "Former foster care youth" shall mean a youth:

(i) who has attained the age of eighteen but is under the age of twenty-one and who had been discharged from a foster care setting on or after:

(A) attaining the age of eighteen due to a failure to consent to continuation in foster care; or

(B) attaining the age of sixteen but who is or is likely to be homeless unless returned to foster care; and

(ii)(A) placed in foster care with a local social services district or authorized agency, as applicable, pursuant to article three, seven, ten, ten-A or ten-C of this act or section three hundred fifty-eight-a of the social services law; or

(B) freed for adoption in accordance with section six hundred thirty-one of this act or section three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law but has not yet been adopted; or

(C) placed with the office of children and family services as a juvenile delinquent for a non-secure level of care pursuant to article three of this act.

(2) "Foster care setting" shall not include placements in:

(i) (A) a limited secure or secure level of care with the office of children and family services; or

(B) a limited secure level of care where the placement was made in a county that has an approved "close to home" program pursuant to section four hundred four of the social services law.

(ii) Provided however, a youth who was previously placed in a limited secure or secure level of care but was subsequently transferred to a non-secure level of care may still be eligible to re-enter if such youth was ultimately released from a non-secure setting.

(b) A motion to return a former foster care youth to the custody of the social services district from which the youth was most recently discharged, or, in the case of a youth previously placed with the office of children and family services, to be placed in the custody of the social services district of the child's residence, or, in the case of a child freed for adoption, the social services district or authorized agency into whose custody and guardianship such child has been placed, may be made by such former foster care youth, or by the applicable official of the local social services district, authorized agency or the office of children and family services upon the consent of such former foster care youth, if there is a compelling reason for such former foster care youth to return to foster care.

(c) (1) With respect to a former foster care youth discharged on or after his or her eighteenth birthday, the court shall not entertain a motion filed after twenty-four months from the date of the first final discharge that occurred on or after the former foster care youth's eighteenth birthday.

(2) With respect to a former foster care youth discharged prior to his or her eighteenth birthday, the court shall not entertain a motion filed after his or her twentieth birthday; provided further, however, that during the state of emergency declared pursuant to Executive Order 202 of 2020, or any extension or subsequent order issued, such former foster youth shall be entitled to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges without making a motion in accordance with paragraph one of this subdivision and, to the extent federally allowable, any requirement to enroll in and attend an educational or vocational program shall be waived for the duration of the state of emergency. Subsequent to a former foster youth's return to placement without making a motion, as authorized under this section during the state of emergency declared pursuant to Executive Order 202 of 2020 or any extension or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic, nothing herein shall prohibit the local social services district from filing a motion

for requisite findings needed to subsequently claim reimbursement under Title IV-E of the federal social security act to support the youth's care, and the family court shall hear and determine such motions on an expedited basis.

(d) A motion made pursuant to this article by the applicable official of the local social services district, authorized agency or the office of children and family services shall be made by order to show cause. Such motion shall show by affidavit or other evidence that:

(1) the former foster care youth has no reasonable alternative to foster care;

(2) the former foster care youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth;

(3) re-entry into foster care is in the best interests of the former foster care youth;

(4) the former foster care youth consents to the re-entry into foster care; and

(5) in the case of a former foster youth discharged from foster care on or after attaining the age of sixteen, the youth is or is likely to be homeless unless returned to foster care.

(e) A motion made pursuant to this article by a former foster care youth shall be made by order to show cause on ten days notice to the applicable official of the local social services district, authorized agency or the office of children and family services. Such motion shall show by affidavit or other evidence that:

(1) the requirements outlined in paragraphs one, two, three, four and, if applicable, paragraph five of subdivision (d) of this section are met; and

(2) (i) the applicable official of the local social services district, authorized agency or the office of children and family services consents to the re-entry of such former foster care youth, or

(ii) the applicable official of the local social services district, authorized agency or the office of children and family services refuses to consent to the re-entry of such former foster care youth.

(f) (1) If at any time during the pendency of a proceeding brought pursuant to this article, the court finds a compelling reason that it is in the best interests of the former foster care youth to be returned immediately to the custody of the applicable local commissioner of social services or official of the applicable authorized agency or the office of children and family services, pending a final decision on the motion, the court may issue a temporary order returning the youth to the custody of such local commissioner of social services or other official.

(2) Where the applicable official of the local social services district, authorized agency or the office of children and family services has refused to consent to the re-entry of a former foster care youth, the court shall grant a motion made pursuant to subdivision (e) of this section if the court finds and states in writing that the refusal is unreasonable. For purposes of this article, a court shall find that a refusal to allow a former foster care youth to re-enter care is unreasonable if:

(i) the youth has no reasonable alternative to foster care;

(ii) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth; and

(iii) re-entry into foster care is in the best interests of the former foster care youth.

(3) Upon making a determination on a motion filed pursuant to this article, where a motion has previously been granted pursuant to this article, in addition to the applicable findings required by this article, the court shall grant the motion to return a former foster care youth to the custody of the applicable local commissioner of social services or official of the applicable authorized agency or the office of children and family services, only:

(i) upon a finding that there is a compelling reason for such former foster care youth to return to care;

(ii) if the court has not previously granted a subsequent motion for such former foster care youth to return to care pursuant to this paragraph; and

(iii) upon consideration of the former foster care youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program, if applicable.

§ 1091-a. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a former foster care youth is placed on or after September twenty-ninth, two thousand twenty-one, and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district or the office of children and family services in accordance with this article.

2. (a) When a former foster care youth is in the care and custody of a local social services district or the office of children and family services pursuant to this article, such social services district or office shall report any anticipated placement of the former foster care youth into a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, to the court and the attorneys for the parties, including the attorney for the former foster care youth, forthwith, but not later than one business day following either the decision to place the former foster care youth in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district or office shall subsequently notify the court and attorneys for the parties, including the attorney for the former foster care youth, of the date the placement change occurred; such notice shall occur no later than one business day following the placement change.

(b) When a former foster care youth whose legal custody was transferred to a local social services district or the office of children and family services in accordance with this article resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such former foster care youth's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the former foster care youth in the qualified residential treatment program commenced.

3. Within sixty days of the start of a placement of a former foster care youth referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(b) Determine whether the needs of the former foster care youth can be met through placement in a foster family home and, if not, whether placement of the former foster care youth in a qualified residential treatment program provides the most effective and appropriate level of care for the former foster care youth in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the former foster care youth, as specified in the former foster care youth's permanency plan; and

(c) Approve or disapprove the placement of the former foster care youth in a qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the former foster care youth in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the former foster care youth in the qualified residential treatment program if:

(i) the court finds, and states in the written order that:

(A) circumstances exist that necessitate the continued placement of the former foster care youth in the qualified residential treatment program;

(B) there is not an alternative setting available that can meet the former foster care youth's needs in a less restrictive environment; and

(C) that continued placement in the qualified residential treatment program is in the former foster care youth's best interest; and

(ii) the court's written order states the specific reasons why the court has made the findings required pursuant to subparagraph (i) of this paragraph.

(d) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

4. At the conclusion of the review, if the court disapproves placement of the former foster care youth in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the former foster care youth and direct the local social services district or office of children and family services, as applicable, to make such other arrangements for the former foster care youth's care and welfare that is in the best interest of the former foster care youth and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

5. The court may, on its own motion, or the motion of any of the parties or the attorney for the former foster care youth, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to subparagraph (i) of paragraph (c) of subdivision three of this section and provide such written order to the parties and the attorney for the former foster care youth expeditiously, but no later than five days.

6. Documentation of the court's determination pursuant to this section shall be recorded in the former foster care youth's case record.

7. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such former foster care youth, including but not limited to the former foster care youth's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

ARTICLE 10-C

DESTITUTE CHILDREN

§ 1092. Definitions. When used in this article unless the specific context indicates otherwise:

(a) "destitute child" shall mean a child under the age of eighteen who is in a state of want or suffering due to lack of sufficient food, clothing, shelter, or medical or surgical care and:

(1) does not fit within the definition of an "abused child" or a "neglected child" as such terms are defined in section one thousand twelve of this act; and

(2) is without any parent or caretaker available to sufficiently care for him or her, due to:

(i) the death of a parent or caretaker; or

(ii) the incapacity or debilitation of a parent or caretaker, where such incapacity or debilitation would prevent such parent or caretaker from being able to knowingly and voluntarily enter into a written agreement to transfer the care and custody of said child pursuant to section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law; or

(iii) the inability of the commissioner of social services to locate any parent or caretaker, after making reasonable efforts to do so; or

(iv) a parent or caretaker being physically located outside of the state of New York and the commissioner of social services is or has been unable to return the child to such parent or caretaker while or after making reasonable efforts to do so, unless the lack of such efforts is or was appropriate under the circumstances.

(b) "parent" shall mean any living biological or adoptive parent of the child whose rights have not been terminated or surrendered.

(c) "caretaker" shall mean a person or persons, other than a parent of a child alleged or adjudicated to be a destitute child pursuant to this article, who possesses a valid, current court order providing him or her with temporary or permanent guardianship or temporary or permanent custody of said child.

(d) "permanency hearing" shall mean a hearing in accordance with article ten-A of this act, as defined in subdivision (k) of section one thousand twelve of this act.

(e) "commissioner of social services" shall mean the commissioner of the local department of social services or, in a city having a population of one million or more, the administration for children's services.

(f) "Interested adult" shall mean a person or persons over the age of eighteen, other than a parent or caretaker, who, at the relevant time resided with and had responsibility for the day-to-day care of a child alleged or adjudicated to be destitute.

§ 1093. Originating proceedings. (a) Filing of the petition. Only a commissioner of social services may originate a proceeding under this article. A proceeding under this article may be originated by the filing of a petition alleging that the child is a destitute child as defined by section one thousand ninety-two of this article. A commissioner of social services, who accepts the care and custody of a child appearing to be a destitute child, shall provide for such child as authorized by law, including but not limited to section three hundred ninety-eight of the social services law, and shall file a petition pursuant to this section within fourteen days upon accepting the care and custody of such child.

(b) Venue. A petition under this article shall be filed in the family court located in the county where the child resides or is found; provided however, that upon the motion of any party or the attorney for the child, the court may transfer a petition filed under this article to a county the court deems to be more appropriate under the circumstances, including, but not limited to, a county located within a jurisdiction where the child is domiciled or has another significant nexus.

(c) Contents of the petition. (1) The petition shall allege upon information and belief:

(i) the manner, date and circumstance under which the child became known to the petitioner;

(ii) the child's date of birth, if known;

(iii) that the child is a destitute child as defined in subdivision (a) of section one thousand ninety-two of this article and the basis for the allegation;

(iv) the identity of the parent or parents of the child in question, if known;

(v) whether the parent or parents of the child are living or deceased, if known;

(vi) the whereabouts and last known address for the parent or parents, if known;

(vii) the identity of a caretaker or interested adult, if known;

(viii) the efforts, if any, which were made prior to the filing of the petition to prevent any removal of the child from the home and if such efforts were not made, the reasons such efforts were not made; and

(ix) the efforts, if any, which were made prior to the filing of the petition to allow the child to return or remain safely home, and if such efforts were not made, the reasons such efforts were not made.

(2) The petition shall contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(d) Service of summons. (1) Upon the filing of a petition under this article, if a living parent, caretaker or interested adult is identified in the petition, the court shall cause a copy of the petition and a summons to be issued the same day the petition is filed, requiring such parent, caretaker or interested adult to appear in court on the return date to answer the petition. If the court deems a person a party to the proceeding pursuant to subdivision (c) of section one thousand ninety-four of this article and if such person is not before the court, the court shall cause a copy of the petition and a summons requiring such person to appear in court on the return date be served on such person.

(2) Service of a summons and petition under this article shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance.

(3) The court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules, notwithstanding that such person is not a resident or domiciliary of the state. Where service is effected outside of the state of New York on a parent, caretaker, interested adult or person made a party to the proceeding pursuant to subdivision (c) of section one thousand ninety-four of this article and such person defaults by failing to appear to answer the petition, the court may on its own motion, or upon application of any party or the attorney for the child proceed to a hearing pursuant to section one thousand ninety-five of this article.

(4) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in civil process in courts of record.

§ 1094. Initial appearance and preliminary proceedings. (a) At the initial appearance, the court shall:

(1) appoint an attorney to represent the child in accordance with section two hundred forty-nine of this act, and appoint an attorney to represent a parent, caretaker or interested adult in accordance with paragraph (ix) of subdivision (a) of section two hundred sixty-two of this act, if he or she is financially unable to obtain counsel;

(2) (i) if any parent, caretaker or interested adult enters an appearance, determine whether the child may safely remain in or return to his or her home and, if appropriate, order services to assist the family toward that end; provided however, that such order shall not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect;

(ii) determine whether temporary care is necessary to avoid risk to the child's life or health and whether it would be contrary to the welfare of the child to continue in, or return to his or her own home, and, if so, whether the child should be placed in the temporary care and custody of a relative or other suitable person or in the temporary care and custody of the commissioner of social services;

(iii) upon a determination that the child should be temporarily placed:

(A) direct the petitioner to investigate whether there are any parents, caretakers or interested adults not named in the petition or any other relatives or other suitable persons with whom the child may safely reside and, if so, direct the child to reside temporarily in their care; and

(B) if a relative or other suitable person seeks approval to care for the child as a foster parent, direct the petitioner to commence an investigation into the home of such relative and thereafter approve such relative or other suitable person, if qualified, as a foster parent; provided, however, that if such home is found to be unqualified for approval, the petitioner shall report such fact to the court forthwith and, in the case of a relative who seeks approval to care for the child as a foster parent, the relative may proceed in accordance with section one thousand twenty-eight-a of this act.

(3) set a date certain for the fact finding and disposition hearing pursuant to section one thousand ninety-five of this article and, if the child is temporarily placed, set a date certain for the initial permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of this act. The date certain for the initial permanency hearing shall be no later than eight months from the date the social services official accepted care of the child;

(4) determine whether reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home, and if such efforts were not made whether the lack of such efforts were appropriate under the circumstances; determine, where appropriate, if reasonable efforts were made to make it possible for the child to remain in or return safely home; and

(5) include the findings made pursuant to paragraphs one through four of this subdivision in a written order.

(b) (1) Any parent or caretaker, or interested adult from whose care the child has been removed, or the child's attorney may request a hearing to determine whether a child who has been removed from his or her home should be returned and, if so, whether services should be ordered to facilitate such return; provided however, that such order shall not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. Except for good cause shown, the hearing shall be held within three court days of the request and shall not be adjourned. The court shall grant the application for return of the child unless it finds that the return presents an imminent risk to the child's life or health. If imminent risk to the child is found, the court may make orders in accordance with paragraph two of subdivision (a) of this section, including, but not limited to, directions for investigations of relatives or other suitable persons with whom the child may safely reside.

(2) In determining whether temporary removal of the child is necessary to avoid imminent risk to the child's life or health, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, whether reasonable efforts were made prior to the date of the hearing to prevent or eliminate the need for removal of the child from the home and where appropriate, whether reasonable efforts were made after removal of the child to make it possible for the child to safely return home.

(3) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made

but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding and the basis for such finding.

(4) If the court determines that reasonable efforts to allow a child to safely return home were not made subsequent to the removal of the child but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding and the basis for such finding.

(c) (1) The court may upon its own motion or the motion of any person, deem a person not named in the petition who has a significant connection to the child alleged to be destitute, a party to the proceeding, if such person consents to being added as a party, and such action is appropriate under the circumstances.

(2) If the court deems a person a party pursuant to paragraph (i) of this subdivision and such person is not before the court, the court shall cause a copy of the petition and a summons requiring such person to appear in court on the return date be served on such person in accordance with subdivision (d) of section one thousand ninety-three of this article.

(d) The court may, if it deems appropriate, appoint counsel for an interested adult or another person named as a party to the proceeding pursuant to subdivision (c) of this section, if such adult or person is financially unable to obtain counsel.

§ 1095. Fact finding and disposition. (a) No fact finding hearing may commence under this article unless the court enters a finding that all parties are present at the hearing and have been served with a copy of the petition, provided however, that if any party is or are living but are not present, that the court may proceed if every reasonable effort has been made to effect service under subdivision (d) of section one thousand ninety-three of this article.

(b) The court shall sustain the petition and make a finding that a child is destitute if, based upon a preponderance of competent, material and relevant evidence presented, the court finds that the child meets the definition of a destitute child as described in subdivision (a) of section one thousand ninety-two of this article. If the proof does not conform to the specific allegations of the petition, the court may amend the allegations to conform to the proof if no party objects to such conformation.

(c) If the court finds that the child does not meet such definition of a destitute child or that the aid of the court is not required, the court shall dismiss the petition, and if applicable, return a child who was placed in the temporary care of the commissioner of social services to any parent, caretaker or interested adult; provided, however, that if the court finds that the child may be in need of protection under article ten of this act, the court may request the commissioner of social services to conduct a child protective investigation in accordance with subdivision one of section one thousand thirty-four of this act. The court shall state the grounds for any finding under this subdivision.

(d) If the court sustains the petition pursuant to subdivision (b) of this section, it may immediately convene a dispositional hearing or may adjourn the proceeding for further inquiries to be made prior to disposition provided however, that if a petition pursuant to article six of this act has been filed by a person or persons seeking custody or guardianship of the child, or if a petition pursuant to article seventeen of the surrogate's court procedure act seeking guardianship of the child has been filed, the court shall consolidate the dispositional hearing with a hearing under section one thousand ninety-six of this article, unless consolidation would not be appropriate under the circumstances. If the court does not consolidate such dispositional proceedings it shall hold the dispositional hearing under this section in abeyance pending the disposition of the petition filed pursuant to article six of this act or article seventeen of the surrogate's court procedure act. Based upon material and relevant evidence presented at the dispositional hearing, the court shall enter an order of disposition stating the grounds for its order and directing one of the following alternatives:

(1) placing the child in the care and custody of the commissioner of social services; or

(2) granting an order of custody or guardianship to relatives or suitable persons pursuant to a petition under article six of this act or guardianship of the child to a relative or suitable person under article

seventeen of the surrogate's court procedure act and in accordance with section one thousand ninety-six of this article.

(e) If the child has been placed pursuant to paragraph one of subdivision (d) of this section, the court shall include the following in its order:

(1) a date certain for the permanency hearing in accordance with paragraph two of subdivision (a) of section one thousand eighty-nine of this act;

(2) a description of the plan for the child to visit with his or her parent or parents unless contrary to the child's best interests;

(3) a direction that the child be placed together with or, at minimum, to visit and have regular communication with, his or her siblings, if any, unless contrary to the best interests of the child and/or the siblings and may incorporate an order issued pursuant to part eight of article ten of this chapter in accordance with subdivision (f) of this section;

(4) a direction that the child's parent or parents be notified of any planning conferences to be held pursuant to subdivision three of section four hundred nine-e of the social services law, of their right to attend such conferences and to have counsel or another representative or companion with them;

(5) if the child is or will be fourteen or older by the date of the permanency hearing, the services and assistance that may be necessary to assist the child in learning independent living skills; and

(6) a notice that, if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(f) If the child has been placed pursuant to paragraph one of subdivision (d) of this section, the provisions of part eight of article ten of this act shall be applicable.

(g) If the court makes an order pursuant to paragraph one of subdivision (d) of this section, the court may include a direction for the commissioner of social services to provide or arrange for services or assistance, limited to those authorized or required to be made available under the comprehensive annual services program plan then in effect, to ameliorate the conditions that formed the basis for the fact-finding under this section and, if the child has been placed in the care and custody of the commissioner of social services, to facilitate the child's permanency plan.

§ 1096. Custody or guardianship with relatives or suitable persons pursuant to article six of this act or article seventeen of the surrogate's court procedure act. (a) At the conclusion of a hearing held pursuant to section one thousand ninety-five of this article, the court may enter an order of disposition granting custody or guardianship of the child to a relative or suitable person under article six of this act or guardianship of the child to a relative or suitable person under article seventeen of the surrogate's court procedure act if:

(1) the relative or suitable person has filed a petition for custody or guardianship of the child pursuant to article six of this act or guardianship of the child pursuant to article seventeen of the surrogate's court procedure act; and

(2) the court finds that granting custody or guardianship of the child to the relative or suitable person is in the best interests of the child; and

(3) the court finds that granting custody or guardianship of the child to the relative or suitable person under article six of this act or guardianship of the child to a relative or suitable person under article seventeen of the surrogate's court procedure act will provide the child with a safe and permanent home; and

(4) all parties to the destitute child proceeding consent to the granting of custody or guardianship under article six of this act or article seventeen of the surrogate's court procedure act; or

(5) after a consolidated fact finding and dispositional hearing on the destitute child petition and the petition under article six of this act or article seventeen of the surrogate's court procedure act:

(i) if a parent or parents fail to consent to the granting of custody or guardianship under article six of this act or guardianship under article seventeen of the surrogate's court procedure act, the court finds that extraordinary circumstances exist that support granting an order of custody or guardianship under article six of this act or guardianship under article seventeen of the surrogate's court procedure act; or

(ii) if the parent or parents consent and a party other than a parent fails to consent to the granting of custody or guardianship under article six of this act or guardianship under article seventeen of the surrogate's court procedure act, the court finds that granting custody or guardianship of the child to the relative or suitable person is in the best interests of the child.

(b) An order made in accordance with the provisions of this section shall set forth the required findings as described in subdivision (a) of this section and shall constitute the final disposition of the destitute child proceeding. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department of social services to provide services to the parent, parents, caretaker or interested adult when granting custody or guardianship pursuant to article six of this act or guardianship under article seventeen of the surrogate's court procedure act under this section.

(c) As part of the order granting custody or guardianship pursuant to article six of this act or guardianship pursuant to article seventeen of the surrogate's court procedure act, the court may require that the local department of social services and the attorney for the child receive notice of and be made parties to any subsequent proceeding to modify such order of custody or guardianship.

(d) An order entered in accordance with this section shall conclude the court's jurisdiction over the proceeding held pursuant to this article and the court shall not maintain jurisdiction over the parties for the purposes of permanency hearings held pursuant to article ten-A of this act.

§ 1097. Court review of placement in a qualified residential treatment program. 1. The provisions of this section shall apply when a child is placed on or after September twenty-ninth, two thousand twenty-one, and resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and whose care and custody were transferred to a local social services district in accordance with this article.

2. (a) When a child is in the care and custody of a local social services district pursuant to this article, such social services district shall report any anticipated placement of the child into a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision to place the child in the qualified residential treatment program or the actual date the placement change occurred, whichever is sooner. Such notice shall indicate the date that the initial placement or change in placement is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the placement change, the local social services district shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement change occurred, such notice shall occur no later than one business day following the placement change.

(b) When a child whose legal custody was transferred to a local social services district in accordance with this article resides in a qualified residential treatment program, as defined in section four hundred nine-h of the social services law, and where such child's initial placement or change in placement in such qualified residential treatment program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to paragraph (a) of this subdivision and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with subdivision three of this section. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

3. Within sixty days of the start of a placement of a child referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(a) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of the social services law;

(b) Determine whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan; and

(c) Approve or disapprove the placement of the child in the qualified residential treatment program. Provided that, where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of the social services law, the court may only approve the placement of the child in the qualified residential treatment program if:

(i) the court finds, and states in the written order that:

(A) circumstances exist that necessitate the continued placement of the child in the qualified residential treatment program;

(B) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and

(C) that continued placement in the qualified residential treatment program is in the child's best interest; and

(ii) the court's written order states the specific reasons why the court has made the findings required pursuant to subparagraph (i) of this paragraph.

(d) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

4. At the conclusion of the review, if the court disapproves placement of the child in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

5. The court may, on its own motion, or the motion of any of the parties or the attorney for the child, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to subparagraph (i) of paragraph (c) of subdivision three of this section and provide such written order to the parties and the attorney for the child expeditiously, but no later than five days.

6. Documentation of the court's determination pursuant to this section shall be recorded in the child's case record.

7. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such child, including but not limited to the child's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

ARTICLE 11

APPEALS

electronic means.

§ 1111. Appeals to appellate division. An appeal may be taken to the appellate division of the supreme court of the judicial department in which the family court whose order is appealed from is located.

§ 1112. Appealable orders. a. An appeal may be taken as of right from any order of disposition and, in the discretion of the appropriate appellate division, from any other order under this act. An appeal from an intermediate or final order in a case involving abuse or neglect may be taken as of right to the appellate division of the supreme court. Pending the determination of such appeal, such order shall be stayed where the effect of such order would be to discharge the child, if the family court or the court before which such appeal is pending finds that such a stay is necessary to avoid imminent risk to the child's life or health. A preference in accordance with rule five thousand five hundred twenty-one of the civil practice law and rules shall be afforded, without the necessity of a motion, for appeals under article three; parts one and two of article six; articles seven, ten, and ten-A of this act; and sections three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, and three hundred eighty-four-b of the social services law.

b. In any proceeding pursuant to article ten of this act or in any proceeding pursuant to article ten-A of this act that originated as a proceeding under article ten of this act where the family court issues an order which will result in the return of a child previously remanded or placed by the family court in the custody of someone other than the respondent, such order shall be stayed until five p.m. of the next business day after the day on which such order is issued unless such stay is waived by all parties to the proceeding by written stipulation or upon the record in family court. Nothing herein shall be deemed to affect the discretion of a judge of the family court to stay an order returning a child to the custody of a respondent for a longer period of time than set forth in this subdivision.

§ 1113. Time of appeal. An appeal under this article must be taken no later than thirty days after the service by a party or the child's attorney upon the appellant of any order from which the appeal is taken, thirty days from receipt of the order by the appellant in court or thirty-five days from the mailing or electronic transmission of the order to the appellant by the clerk of the court, whichever is earliest.

All such orders shall contain the following statement in conspicuous print: "Pursuant to section 1113 of the family court act, an appeal must be taken within thirty days of receipt of the order by appellant in court, thirty-five days from the mailing or electronic transmission of the order to the appellant by the clerk of the court, or thirty days after service by a party or attorney for the child upon the appellant, whichever is earliest." When service of the order is made by the court, the time to take an appeal shall not commence unless the order contains such statement and there is an official notation in the court record as to the date and the manner of service of the order.

§ 1114. Effect of appeal; stay. (a) The timely filing of a notice of appeal under this article does not stay the order from which the appeal is taken.

(b) Except as provided in subdivision (d) of this section, a justice of the appellate division to which an appeal is taken may stay execution of the order from which the appeal is taken on such conditions, if any, as may be appropriate.

(c) If the order appealed from is an order of support under articles four or five, the stay may be conditioned upon the giving of sufficient surety by a written undertaking approved by such judge of the appellate division, that during the pendency of the appeal, the appellant will pay the amount specified in the order to the family court from whose order the appeal is taken. The stay may further provide that the family court (i) shall hold such payments in escrow, pending determination of the appeal or (ii) shall disburse such payments or any part of them for the support of the petitioner or other person for whose benefit the order was made.

(d) Any party to a child protective proceeding, or the attorney for the child, may apply to a justice of the appellate division for a stay of an order issued pursuant to part two of article ten of this chapter returning a child to the custody of a respondent. The party applying for the stay shall notify the attorneys for all parties and the attorney for the child of the time and place of such application. If requested by any party present, oral argument shall be had on the application, except for good cause stated upon the record. The party applying for the stay shall state in the application the errors of fact or law allegedly committed by the family court. A party applying to the court for the granting or continuation of such stay shall make every reasonable effort to obtain a complete transcript of the proceeding before the family court.

If a stay is granted, a schedule shall be set for an expedited appeal.

§ 1115. Notices of appeal. An appeal as of right shall be taken by filing the original notice of appeal with the clerk of the family court in which the order was made and from which the appeal is taken.

A notice of appeal shall be served on any adverse party as provided for in subdivision one of section five thousand five hundred fifteen of the civil practice law and rules and upon the child's attorney, if any. The appellant shall file two copies of such notice, together with proof of service, with the clerk of the family court who shall forthwith transmit one copy of such notice to the clerk of the appropriate appellate division or as otherwise required by such appellate division.

§ 1116. Printed case and brief not required. In appeals under this article, a printed case on appeal or a printed brief shall not be required.

§ 1117. Costs. When costs and disbursements on an appeal in a proceeding instituted by a social services official are awarded to the respondent, they shall be a county charge and be paid by the county.

§ 1118. Applicability of civil practice law and rules. The provisions of the civil practice law and rules apply where appropriate to appeals under this article, provided, however, that the fees required by section eight thousand twenty-two of the civil practice law and rules shall not be required where the attorney for the appellant or attorney for the movant, as applicable, certifies that such appellant or movant has been assigned counsel or an attorney for a child pursuant to section two hundred forty-nine, two hundred sixty-two or eleven hundred twenty of this act or section seven hundred twenty-two of the county law, or is represented by a legal aid society or a legal services program or other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization. Where the attorney for the appellant or the attorney for the movant certifies in accordance with procedures established by the appropriate appellate division that the appellant or movant has been represented in family court by assigned counsel or an attorney for a child, pursuant to section two hundred forty-nine, two hundred sixty-two or eleven hundred twenty of this act or section seven hundred twenty-two of the county law, or is represented by a legal aid society or legal services program or some other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf or under the auspices of such society or organization, and that the appellant, who has indicated an intention to appeal, or movant, continues to be eligible for assignment of counsel and, in the case of counsel assigned to represent an adult party, continues to be indigent, the appellant or movant shall be presumed eligible for poor person relief pursuant to section eleven hundred one of the civil practice law and rules and for assignment of counsel on appeal without further motion. The appointment of counsel and granting of poor person relief by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals.

§ 1119. Effective date. This act shall take effect September first, nineteen hundred sixty-two.

§ 1120. Counsel for parties and children on appeal. (a) Upon an appeal in a proceeding under this act, the appellate division to which such appeal is taken, or is sought to be taken, shall assign counsel to any person upon a showing that such person is one of the persons described in section two hundred sixty-two of this act and is financially unable to obtain independent counsel or upon certification by an attorney in accordance with section eleven hundred eighteen of this article. The appellate division to which such appeal is taken, or is sought to be taken, may in its discretion assign counsel to any party to the appeal. Counsel assigned under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section seven hundred twenty-two-b of the county law. The appointment of counsel by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals. Counsel may be relieved of his or her representation upon application to the court to which the appeal is taken for termination of the appointment, by the court on its own motion or, in the case of a motion for leave to appeal to the court of appeals, upon application to the appellate division. Upon termination of the appointment of counsel for an indigent party the court shall promptly appoint another attorney.

(b) Whenever an attorney has been appointed by the family court pursuant to section two hundred forty-nine of this act to represent a child in a proceeding described therein, the appointment shall continue without further court order or appointment where (i) the attorney on behalf of the child files a notice of appeal, or (ii) where a party to the original proceeding files a notice of appeal. The attorney for the child may be relieved of his representation upon application to the court to which the appeal is taken for termination of the appointment. Upon approval of such application the court shall appoint another attorney for the child.

(c) An appellate court may appoint an attorney to represent a child in an appeal in a proceeding originating in the family court where an attorney was not representing the child at the time of the entry of the order appealed from or at the time of the filing of the motion for permission to appeal and when independent legal representation is not available to such child.

(d) Nothing in this section shall be deemed to relieve attorneys for children of their duties pursuant to subdivision one of sections 354.2 and seven hundred sixty of this act.

(e) An attorney appointed or continuing to represent a child under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section thirty-five of the judiciary law.

(f) In any case where an attorney is or shall be representing a child in an appellate proceeding pursuant to subdivision (b) or (c) of this section, such attorney shall be served with a copy of the notice of appeal.

§ 1121. Special procedures. 1. Consistent with the provisions of sections 354.2, seven hundred sixty and one thousand fifty-two-b of this act the provisions of this section shall apply to appeals taken from orders issued pursuant to articles three, seven, ten and ten-A and parts one and two of article six of this act, and pursuant to sections three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, and three hundred eighty-four-b of the social services law.

2. Upon the filing of such order, it shall be the duty of counsel to the parties and the child to promptly advise the parties in writing of the right to appeal to the appropriate appellate division of the supreme court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if the party is unable to pay the cost of an appeal. It shall be the further duty of such counsel to explain to the client the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

3. It shall also be the duty of such counsel to ascertain whether the party represented by such attorney wishes to appeal and, if so, to serve and file the necessary notice of appeal and, as applicable, to apply for leave to appeal as a poor person, to file a certification of continued eligibility for appointment of counsel pursuant to section eleven hundred eighteen of this article, and to submit such other documents as may be required by the appropriate appellate division.

4. If the party has been permitted to waive the appointment of counsel appointed pursuant to section two hundred forty-nine-a or two hundred sixty-two of this act, it shall be the duty of the court to advise the party of the right to the appointment of counsel for the purpose of filing an appeal.

5. Where a party wishes to appeal, it shall also be the duty of such counsel, where appropriate, to apply for assignment of counsel for such party pursuant to applicable provisions of this act, the judiciary law and the civil practice law and rules, and to file a certification of continued eligibility for appointment of counsel and, in the case of counsel assigned to represent an adult party, continued indigency, pursuant to section one thousand one hundred eighteen of this article and to submit such other documents as may be required by the appropriate appellate division.

6. (a) Except as provided for herein, counsel for the appellant shall, no later than ten days after filing the notice of appeal, request preparation of the transcript of the proceeding appealed therefrom.

(b) Counsel assigned or appointed pursuant to article eleven of the civil practice law and rules or section eleven hundred twenty of this act shall, no later than ten days after receipt of notice of such appointment, request preparation of the transcript of the proceeding appealed from.

(c) In any case where counsel is assigned or appointed pursuant to paragraph (b) of this subdivision subsequent to the filing of the notice of appeal, such counsel shall, within ten days of such assignment or appointment, request preparation of the transcript of the proceeding appealed from.

(d) Where the appellant is seeking relief to proceed as a poor person pursuant to article eleven of the civil practice law and rules, the transcript of the proceeding appealed from shall be requested within ten days of the order determining the motion.

7. Such transcript shall be completed within thirty days from the receipt of the request of the appellant. Where such transcript is not completed within such time period, the court reporter or director of the transcription service responsible for the preparation of the transcript shall notify the administrative judge of the appropriate judicial district. Such administrative judge shall establish procedures to effectuate the timely preparation of such transcript. The appellate divisions may establish additional procedures to effectuate the timely preparation of transcripts.

The appellate division shall establish procedures to ensure the expeditious filing and service of the appellant's brief, the answering brief and any reply brief, which may include scheduling orders. The appellant shall perfect the appeal within sixty days of receipt of the transcript of the proceeding appealed from or within any different time that the appellate division has by rule prescribed for perfecting such appeals under subdivision (c) of rule five thousand five hundred thirty of the civil practice law and rules or as otherwise specified by the appellate division. Such sixty day or other prescribed period may be extended by the appellate division for good cause shown upon written application to the appellate division showing merit to the appeal and a reasonable ground for an extension of time. Upon the granting of such an extension of time the appellate division shall issue new specific deadlines by which the appellant's brief, the answering brief and any reply brief must be filed and served.

§ 1122. Filing of papers on appeal to the appellate division by electronic means. Notwithstanding any other provision of law, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for the taking and perfection of appeals in accordance with the provisions of section twenty-one hundred twelve of the civil practice law and rules. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in paragraph (i) or (ii) of subdivision (c) of section two hundred fourteen of this chapter to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform.

ARTICLE 12
SEPARABILITY

§ 1211. Separability. If any provision of this act or the application thereof to any person or circumstances is held to be invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.