

## New York Divorce Laws

### Chapter 14 Of The Consolidated Laws - Domestic Relations Law

#### § 70 Dom. Rel. Habeas corpus for child detained by parent.

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

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

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

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

#### § 72 Dom. Rel. Special proceeding or habeas corpus to obtain visitation rights in respect to certain infant grandchildren

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

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

(b) For the purposes of this section "extended disruption of custody" shall include, but not be limited to, a prolonged separation of the respondent parent and the child for at least twenty-four continuous months during which the parent voluntarily relinquished care and control of the child and the child resided in the household of the petitioner grandparent or grandparents, provided, however, that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for less than twenty-four months.

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

## **Article 9 Action To Annul A Marriage Or Declare It Void**

### **§ 140 Dom. Rel. Action for judgment declaring nullity of void marriages or annulling voidable marriage.**

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

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

(c) Party a mentally retarded person or mentally ill person. An action to annul a marriage on the ground that one of the parties thereto was a mentally retarded person may be maintained at any time during the life-time of either party by any relative of a mentally retarded person, who has an interest to avoid the marriage. An action to annul a marriage on the ground that one of the parties thereto was a mentally ill person may be maintained at any time during the continuance of the mental illness, or, after the death of the mentally ill person in that condition, and during the life of the other party to the marriage, by any relative of the mentally ill person who has an interest to avoid the marriage. Such an action may also be maintained by the mentally ill person at any time after restoration to a sound mind; but in that case, the marriage should not be annulled if it appears that the parties freely cohabited as husband and wife after the mentally ill person was restored to a sound mind. Where one of the parties to a marriage was a mentally ill person at the time of the marriage, an action may also be maintained by the other party at any time during the continuance of the mental illness, provided the plaintiff did not know of the mental illness at the time of the marriage. Where no relative of the mentally retarded

person or mentally ill person brings an action to annul the marriage and the mentally ill person is not restored to sound mind, the court may allow an action for that purpose to be maintained at any time during the life-time of both the parties to the marriage, by any person as the next friend of the mentally retarded person or mentally ill person.

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

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

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

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

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

spouse in the event of his or her removal from the custody of the office of mental health unless thereafter otherwise directed by the court. Any security exacted for the suitable support, care and maintenance during life of the mentally ill spouse shall be available to that spouse or any person on his or her behalf or to any person or agency providing support, care and maintenance for such spouse in the event that the required payments for such support, care and maintenance have not been made and upon application to the court the other spouse shall be ordered and directed to provide additional or further security.

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

3. Except as provided in paragraph five, when the person alleged to be incurably mentally ill is confined in a state hospital for the mentally ill of this state, one, and one only, of the physicians so appointed shall be a member of the resident medical staff of such hospital designated by the director thereof. If the alleged incurably mentally ill person is not confined in a state hospital for the mentally ill of this state, one of the examining physicians named in pursuance of this section shall be the director of a state hospital for the mentally ill if the alleged mentally ill person is within this state, or the superintendent or comparable officer of a state hospital for the mentally ill of the state or country where the alleged mentally ill person is present if the alleged mentally ill person is outside of this state. The report of such superintendent or comparable officer of a state hospital for the mentally ill of such other state or country shall not be received in evidence or considered by the court unless he shall be a well educated physician with at least five years of training and experience in the care and treatment of persons suffering from mental disorders.

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

members of the resident medical staff of any state hospital, whether or not the alleged mentally ill person is being confined there.

**§ 142 Dom. Rel. Dismissal of complaint in action by next friend to annul a marriage.**

Where the next friend of an infant, mentally retarded person or mentally ill person maintains an action annulling a marriage, the court may dismiss the complaint if justice so requires, although, in a like case, the party to the marriage, if plaintiff, would be entitled to judgment.

**§ 143 Dom. Rel. Jury trial.**

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

**§ 144 Dom. Rel. Proof required.**

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

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

**§ 146 Dom. Rel. Judgment, how far conclusive.**

A final judgment, annulling a marriage rendered during the lifetime of both the parties is conclusive evidence of the invalidity of the marriage in every court of record or not of record, in any action or special proceeding, civil or criminal. Such a judgment rendered after the death of either party to the marriage is conclusive only as against the parties to the action and those claiming under them.

**Article 10 Action For Divorce**

**§ 170 Dom. Rel. Action for divorce.**

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

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

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

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

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

(5) The husband and wife have lived apart pursuant to a decree or judgment of separation for a period of one or more years after the granting of such decree or judgment, and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such decree or judgment.

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

#### **§ 170-a Dom. Rel. Special action.**

a. A spouse against whom a decree of divorce has been obtained under the provisions of subdivision five or six of section one hundred seventy of this chapter, where the decree, judgment or agreement of separation was obtained or entered into prior to January twenty-first, nineteen hundred seventy, may institute an action in which there shall be recoverable, in addition to any rights under this or any other provisions of law, an amount equivalent to the value of any economic and property rights of which the spouse was deprived by virtue of such decree, except where the grounds for the separation judgment would have excluded recovery of economic and property rights.

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

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

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

e. Actions under this subdivision may be brought:

- (i) Within two years of the enactment of this section, or
- (ii) Within two years of the obtainment of the subject divorce, whichever is later.

**§ 171 Dom. Rel. When divorce denied, although adultery proved.**

In either of the following cases, the plaintiff is not entitled to a divorce, although the adultery is established:

1. Where the offense was committed by the procurement or with the connivance of the plaintiff.
2. Where the offense charged has been forgiven by the plaintiff. The forgiveness may be proven, either affirmatively, or by the voluntary cohabitation of the parties with the knowledge of the fact.
3. Where there has been no express forgiveness, and no voluntary cohabitation of the parties, but the action was not commenced within five years after the discovery by the plaintiff of the offense charged.
4. Where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce.

**§ 172 Dom. Rel. Co-respondent as party.**

1. In an action brought to obtain a divorce on the ground of adultery the plaintiff or defendant may serve a copy of his pleading on a co-respondent named therein. At any time within twenty days after such service, the co-respondent may appear to defend such action so far as the issues affect him. If no such service be made, then at any time before the entry of judgment a co-respondent named in any of the pleadings may make a written demand on any party for a copy of a summons and a pleading served by such party, which must be served within ten days thereafter, and he may appear to defend such action so far as the issues affect him.
2. In an action for divorce where a co-respondent has appeared and defended, in case no one of the allegations of adultery controverted by such co-respondent shall be proven, such co-respondent shall be entitled to a bill of costs against the person naming him as such co-respondent, which bill of costs shall consist only of the sum now allowed by law as a trial fee, and disbursements.

**§ 173 Dom. Rel. Jury trial.**

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

**§ 175 Dom. Rel. Legitimacy of children.**

1. Where the action for divorce is brought by the wife, the legitimacy of any child of the parties, born or begotten before the commencement of the action, is not affected by the judgment dissolving the marriage.
2. Where the action for divorce is brought by the husband, the legitimacy of a child born or begotten before the commission of the offense charged is not affected by a judgment dissolving the marriage; but the legitimacy of any other

child of the wife may be determined as one of the issues in the action. In the absence of proof to the contrary, the legitimacy of all the children begotten before the commencement of the action must be presumed.

## **Article 11 Action For Separation**

### **§ 200 Dom. Rel. Action for separation.**

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

1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.
2. The abandonment of the plaintiff by the defendant.
3. The neglect or refusal of the defendant-spouse to provide for the support of the plaintiff-spouse where the defendant-spouse is chargeable with such support under the provisions of section thirty-two of this chapter or of section four hundred twelve of the family court act.
4. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.
5. The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

### **§ 202 Dom. Rel. Defense of justification.**

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

### **§ 203 Dom. Rel. Judgment for separation revocable.**

Upon the joint application of the parties, accompanied with satisfactory evidence of their reconciliation, a judgment for a separation, forever, or for a limited period, rendered as prescribed in this article, may be revoked at any time by the court which rendered it, subject to such regulations and restrictions as the court thinks fit to impose.

### **§ 210 Dom. Rel. Limitations on actions for divorce and separation.**

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

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

**§ 211 Dom. Rel. Pleadings, proof and motions.**

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

**§ 220 Dom. Rel. Special proceeding to dissolve marriage on the ground of absence.**

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

1. Where the petitioner is a resident of this state and has been a resident thereof for one year immediately preceding the commencement of the special proceeding.
2. Where the matrimonial domicile at the time of the disappearance of the absent spouse was within the state.

**§ 221 Dom. Rel. Procedure.**

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

for five successive years last past without being known to him or her to be living and that he or she believes you to be dead, and that pursuant to an order of said court, entered the .....day of ..... , 19..... , a hearing will be had upon said petition at the said supreme court, .....term part....., in the .....county court house, in the..... state of New York, on the..... day of ..... ,19..... , at ..... o'clock in the ..... noon. Dated.....; " and if the court, after the filing of proof of the proper publication of said notice and after a hearing and proof taken, is satisfied of the truth of all the allegations contained in the petition, it may make a final order dissolving such marriage.

**§ 230 Dom. Rel. Required residence of parties.**

An action to annul a marriage, or to declare the nullity of a void marriage, or for divorce or separation may be maintained only when:

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

**§ 231 Dom. Rel. Residence of married persons.**

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

**§ 232 Dom. Rel. Notice of nature of matrimonial action; proof of service.**

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

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

**§ 233 Dom. Rel. Sequestration of defendant's property in action for divorce, separation or annulment where defendant cannot be personally served.**

Where in an action for divorce, separation, annulment or declaration of nullity of a void marriage it appears to the court that the defendant is not within the state, or cannot be found therein, or is concealing himself or herself therein, so that process cannot be personally served upon the defendant, the court may at any time and from time to time make any order or orders without notice directing the sequestration of his or her property, both real and personal and whether tangible or intangible, within the state, and may appoint a receiver thereof, or by injunction or otherwise take the same into its possession and control. The property thus sequestered and the income therefrom may be applied in whole or in part and from time to time, under the direction of the court and as justice may require, to the payment of such sum or sums as the court may deem it proper to award, by order or judgment as the case may be, and during the pendency of the action or at the termination thereof, for the education or maintenance of any of the children of a marriage, or for the support of a spouse, or for his or her expenses in bringing and carrying on said action and the proceedings incidental thereto or connected therewith; and if the rents and profits of the real estate, together with the other property so sequestered, be insufficient to pay the sums of money required, the court, upon such terms and conditions as it may prescribe, may direct the mortgage or sale of sufficient of said real estate to pay such sums. The court may appoint the plaintiff spouse receiver or sequestrator in such cases. The court may authorize such spouse to use and occupy, free of any liability for rent or use and occupation or otherwise, any house or other suitable property of the defendant spouse as a dwelling for himself or herself with or without the children of the marriage, and may likewise turn over to the plaintiff spouse for the use of such spouse with or without the children of the marriage any chattel or chattels of the defendant spouse. The relief herein provided for is in addition to any and every other remedy to which a spouse may be entitled under the law.

**§ 234 Dom. Rel. Title to or occupancy and possession of property.**

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

**§ 235 Dom. Rel. Information as to details of matrimonial actions or proceedings.**

1. An officer of the court with whom the proceedings in a matrimonial action or a written agreement of separation or an action or proceeding for custody, visitation or maintenance of a child are filed, or before whom the testimony is taken, or his clerk, either before or after the termination of the suit, shall not permit a copy of any of the pleadings, affidavits,

findings of fact, conclusions of law, judgment of dissolution, written agreement of separation or memorandum thereof, or testimony, or any examination or perusal thereof, to be taken by any other person than a party, or the attorney or counsel of a party, except by order of the court.

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

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

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

5. The limitations of subdivisions one, two and three of this section in relation to confidentiality shall cease to apply one hundred years after date of filing, and such records shall thereupon be public records available to public inspection.

### **§ 236 Dom. Rel. Special controlling provisions; prior actions or proceedings; new actions or proceedings.**

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

### **PART A PRIOR ACTIONS OR PROCEEDINGS**

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

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

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

## **PART B NEW ACTIONS OR PROCEEDINGS**

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

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

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

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

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

d. The term separate property shall mean:

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

(2) compensation for personal injuries;

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

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

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

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

2. Matrimonial actions. Except as provided in subdivision five of this part, the provisions of this part shall be applicable to actions for an annulment or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage, for a declaration of the validity or nullity of a foreign judgment of divorce, for a declaration of the validity or nullity of a marriage, and to proceedings to obtain maintenance or a distribution of marital property following a foreign judgment of divorce, commenced on and after the effective date of this part. Any application which seeks a modification of a judgment, order or decree made in an action commenced prior to the effective date of this part shall be heard and determined in accordance with the provisions of part A of this section.

3. Agreement of the parties. An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded. Notwithstanding any other provision of law, an acknowledgment of an agreement made before marriage may be executed before any person authorized to solemnize a marriage pursuant to subdivisions one, two and three of section eleven of this chapter. Such an agreement may include (1) a contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will; (2) provision for the ownership, division or distribution of separate and marital property; (3) provision for the amount and duration of maintenance or other terms and conditions of the marriage relationship, subject to the provisions of section 5-311 of the general obligations law, and provided that such terms were fair and reasonable at the time of the

making of the agreement and are not unconscionable at the time of entry of final judgment; and (4) provision for the custody, care, education and maintenance of any child of the parties, subject to the provisions of section two hundred forty of this article. Nothing in this subdivision shall be deemed to affect the validity of any agreement made prior to the effective date of this subdivision.

4. Compulsory financial disclosure. a. In all matrimonial actions and proceedings in which alimony, maintenance or support is in issue, there shall be compulsory disclosure by both parties of their respective financial states. No showing of special circumstances shall be required before such disclosure is ordered. A sworn statement of net worth shall be provided upon receipt of a notice in writing demanding the same, within twenty days after the receipt thereof. In the event said statement is not demanded, it shall be filed with the clerk of the court by each party, within ten days after joinder of issue, in the court in which the proceeding is pending. As used in this part, the term "net worth" shall mean the amount by which total assets including income exceed total liabilities including fixed financial obligations. It shall include all income and assets of whatsoever kind and nature and wherever situated and shall include a list of all assets transferred in any manner during the preceding three years, or the length of the marriage, whichever is shorter; provided, however that transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth. All such sworn statements of net worth shall be accompanied by a current and representative paycheck stub and the most recently filed state and federal income tax returns including a copy of the W-2(s) wage and tax statement(s) submitted with the returns. In addition, both parties shall provide information relating to any and all group health plans available to them for the provision of care or other medical benefits by insurance or otherwise for the benefit of the child or children for whom support is sought, including all such information as may be required to be included in a qualified medical child support order as defined in section six hundred nine of the employee retirement income security act of 1974 ( 29 U.S.C. § 1169) including, but not limited to: (i) the name and last known mailing address of each party and of each dependent to be covered by the order; (ii) the identification and a description of each group health plan available for the benefit or coverage of the disclosing party and the child or children for whom support is sought; (iii) a detailed description of the type of coverage available from each group health plan for the potential benefit of each such dependent; (iv) the identification of the plan administrator for each such group health plan and the address of such administrator; (v) the identification numbers for each such group health plan; and (vi) such other information as may be required by the court. Noncompliance shall be punishable by any or all of the penalties prescribed in section thirty-one hundred twenty-six of the civil practice law and rules, in examination before or during trial.

b. As soon as practicable after a matrimonial action has been commenced, the court shall set the date or dates the parties shall use for the valuation of each asset. The valuation date or dates may be anytime from the date of commencement of the action to the date of trial.

5. Disposition of property in certain matrimonial actions. a. Except where the parties have provided in an agreement for the disposition of their property pursuant to subdivision three of this part, the court, in an action wherein all or part of the relief granted is divorce, or the dissolution, annulment or declaration of the nullity of a marriage, and in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine the respective rights of the parties in their separate or marital property, and shall provide for the disposition thereof in the final judgment.

b. Separate property shall remain such.

c. Marital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties.

d. In determining an equitable disposition of property under paragraph c, the court shall consider:

- (1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;
- (2) the duration of the marriage and the age and health of both parties;
- (3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;
- (4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;
- (5) any award of maintenance under subdivision six of this part;
- (6) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;
- (7) the liquid or non-liquid character of all marital property;
- (8) the probable future financial circumstances of each party;
- (9) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;
- (10) the tax consequences to each party;
- (11) the wasteful dissipation of assets by either spouse;
- (12) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;
- (13) any other factor which the court shall expressly find to be just and proper.

e. In any action in which the court shall determine that an equitable distribution is appropriate but would be impractical or burdensome or where the distribution of an interest in a business, corporation or profession would be contrary to law, the court in lieu of such equitable distribution shall make a distributive award in order to achieve equity between the parties. The court in its discretion, also may make a distributive award to supplement, facilitate or effectuate a distribution of marital property.

f. In addition to the disposition of property as set forth above, the court may make such order regarding the use and occupancy of the marital home and its household effects as provided in section two hundred thirty-four of this chapter, without regard to the form of ownership of such property.

g. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

h. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph d of this subdivision.

6. Maintenance. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action the court may order temporary maintenance or maintenance in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and of the respective parties. Such order shall be effective as of the date of the application therefor, and any retroactive amount of maintenance due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary maintenance which has been paid. In determining the amount and duration of maintenance the court shall consider:

- (1) the income and property of the respective parties including marital property distributed pursuant to subdivision five of this part;
- (2) the duration of the marriage and the age and health of both parties;
- (3) the present and future earning capacity of both parties;
- (4) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor;
- (5) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage;
- (6) the presence of children of the marriage in the respective homes of the parties;
- (7) the tax consequences to each party;
- (8) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;
- (9) the wasteful dissipation of marital property by either spouse;
- (10) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; and
- (11) any other factor which the court shall expressly find to be just and proper.

b. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

c. The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, or upon modification pursuant to paragraph (b) of subdivision nine of section two hundred thirty-six of this part or section two hundred forty-eight of this chapter.

d. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph a of this subdivision.

7. Child support. a. In any matrimonial action, or in an independent action for child support, the court as provided in section two hundred forty of this chapter shall order either or both parents to pay temporary child support or child support without requiring a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of either or both parents may be unavailable. Where such information is available, the court may make an order for temporary child support pursuant to section two hundred forty of this article. Such order shall, except as provided for herein, be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support. The court shall not consider the misconduct of either party but shall make its award for child support pursuant to section two hundred forty of this article.

b. Notwithstanding any other provision of law, any written application or motion to the court for the establishment of a child support obligation for persons not in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought. Unless the party receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law.

c. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

8. Special relief in matrimonial actions. a. In any matrimonial action the court may order a party to purchase, maintain or assign a policy of insurance providing benefits for health and hospital care and related services for either spouse or children of the marriage not to exceed such period of time as such party shall be obligated to provide maintenance, child support or make payments of a distributive award. The court may also order a party to purchase, maintain or assign a policy of accident insurance or insurance on the life of either spouse, and to designate in the case of life insurance, either spouse or children of the marriage, or in the case of accident insurance, the insured spouse as irrevocable beneficiaries during a period of time fixed by the court. The obligation to provide such insurance shall cease upon the termination of the spouse's duty to provide maintenance, child support or a distributive award. A copy of such order shall be served, by registered mail, on the home office of the insurer specifying the name and mailing address of the spouse or children, provided that failure to so serve the insurer shall not affect the validity of the order.

b. In any action where the court has ordered temporary maintenance, maintenance, distributive award or child support, the court may direct that a payment be made directly to the other spouse or a third person for real and personal property and services furnished to the other spouse, or for the rental or mortgage amortization or interest payments, insurances, taxes, repairs or other carrying charges on premises occupied by the other spouse, or for both payments to the other spouse and to such third persons. Such direction may be made notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by the other spouse.

c. Any order or judgment made as in this section provided may combine any amount payable to either spouse under this section with any amount payable to such spouse as child support or under section two hundred forty of this chapter.

9. Enforcement and modification of orders and judgments in matrimonial actions. a. All orders or judgments entered in matrimonial actions shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules, or in any other manner provided by law. Orders or judgments for child support, alimony and maintenance shall also be enforceable pursuant to article fifty-two of the civil practice law and rules upon a debtor's default as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of the civil practice law and rules. The establishment of a default shall be subject to the procedures established for the determination of a mistake of fact for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of the civil practice law and rules. For the purposes of enforcement of child support orders or combined spousal and child support orders pursuant to section five thousand two hundred forty-one of the civil practice law and rules, a "default" shall be deemed to include amounts arising from retroactive support. The court may, and if a party shall fail or refuse to pay maintenance, distributive award or child support the court shall, upon notice and an opportunity to the defaulting party to be heard, require the party to furnish a surety, or the sequestering and sale of assets for the purpose of enforcing any award for maintenance, distributive award or child support and for the payment of reasonable and necessary attorney's fees and disbursements.

b. Upon application by either party, the court may annul or modify any prior order or judgment as to maintenance or child support, upon a showing of the recipient's inability to be self-supporting or a substantial change in circumstance or termination of child support awarded pursuant to section two hundred forty of this article, including financial hardship. Where, after the effective date of this part, a separation agreement remains in force no modification of a prior order or

judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. Provided, however, that no modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to section two hundred forty-four of this chapter. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance or child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance, or child support due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past due support. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support. The provisions of this subdivision shall not apply to a separation agreement made prior to the effective date of this part.

c. Notwithstanding any other provision of law, any written application or motion to the court for the modification or enforcement of a child support or combined maintenance and child support order for persons not in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party ordered to pay child support to the other party. Unless the party receiving child support or combined maintenance and child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law.

d. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided

promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

**§ 237 Dom. Rel. Counsel fees and expenses.**

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to declare the validity or nullity of a judgment of divorce rendered against a spouse who was the defendant in any action outside the State of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, or (5) to enjoin the prosecution in any other jurisdiction of an action for a divorce, the court may direct either spouse or, where an action for annulment is maintained after the death of a spouse, may direct the person or persons maintaining the action, to pay such sum or sums of money directly to the attorney of the other spouse to enable that spouse to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. Such direction must be made in the final judgment in such action or proceeding, or by one or more orders from time to time before final judgment, or by both such order or orders and the final judgment; provided, however, such direction shall be made prior to final judgment where it is shown that such order is required to enable the petitioning party to properly proceed. Any applications for counsel fees and expenses may be maintained by the attorney for either spouse in his own name in the same proceeding.

(b) Upon any application to annul or modify an order or judgment for alimony or for custody, visitation, or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child, the court may direct a spouse or parent to pay such sum or sums of money for the prosecution or the defense of the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. With respect to any such application or proceeding, such direction may be made in the order or judgment by which the particular application or proceeding is finally determined, or by one or more orders from time to time before the final order or judgment, or by both such order or orders and the final order or judgment. Any applications for counsel fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. 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.

(c) In any action or proceeding for failure to obey any lawful order compelling payment of support or maintenance, or distributive award the court shall, upon a finding that such failure was willful, order respondent to pay counsel fees to the attorney representing the petitioner.

(d) The term "expenses" as used in subdivisions (a) and (b) of this section shall include, but shall not be limited to, accountant fees, appraisal fees, actuarial fees, investigative fees and other fees and expenses that the court may determine to be necessary to enable a spouse to carry on or defend an action or proceeding under this section. In determining the appropriateness and necessity of fees, the court shall consider:

1. The nature of the marital property involved;
2. The difficulties involved, if any, in identifying and evaluating the marital property;
3. The services rendered and an estimate of the time involved; and

4. The applicant's financial status.

**§ 238 Dom. Rel. Expenses in enforcement proceedings.**

In any action or proceeding to compel the payment of any sum of money required to be paid by a judgment or order entered in an action for divorce, separation, annulment or declaration of nullity of a void marriage, or in any proceeding pursuant to section two hundred forty-three, two hundred forty-four, two hundred forty-five, or two hundred forty-six, the court may in its discretion require either party to pay the expenses of the other in bringing, carrying on, or defending such action or proceeding. In any such action or proceeding, applications for counsel fees and expenses may be maintained by the attorney for the respective parties in counsel's own name and in counsel's own behalf.

**§ 239 Dom. Rel. Stay in divorce or separation action on default of payment.**

In an action for divorce or separation the court or the judge thereof may refuse to grant an order to stay proceedings, where the only default is the failure of a spouse to pay alimony, maintenance or counsel fees due to his or her inability to make such payments. In no event shall a spouse who has been imprisoned for contempt of court for failure to pay alimony, maintenance or counsel fees or by virtue of an order of arrest as a provisional remedy under the civil practice law and rules be stayed from proceeding with the prosecution or defense of an action where the only default is the failure of such spouse to pay alimony, maintenance or counsel fees.

**§ 240 Dom. Rel. Custody and child support; orders of protection.**

1. (a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section. An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a

child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

(b) As used in this section, the following terms shall have the following meanings:

(1) "Health insurance benefits" means any medical, dental, optical and prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organization, including such employers or organizations which are self insured, or through other available health insurance or health care coverage plans.

(2) "Available health insurance benefits" means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person, shall be considered unavailable.

(c) When the person on whose behalf the petition is brought is a child, the court shall consider the availability of health insurance benefits to all parties and shall take the following action to ensure that health insurance benefits are provided for the benefit of the child:

(1) Where the child is presently covered by health insurance benefits, the court shall direct in the order of support that such coverage be maintained, unless either parent requests the court to make a direction for health insurance benefits coverage pursuant to paragraph two of this subdivision.

(2) Where the child is not presently covered by health insurance benefits, the court shall make a determination as follows:

- (i) If only one parent has available health insurance benefits, the court shall direct in the order of support that such parent provide health insurance benefits.
- (ii) If both parents have available health insurance benefits the court shall direct in the order of support that either parent or both parents provide such health insurance. The court shall make such determination based on the circumstances of the case, including, but not limited to, the cost and comprehensiveness of the respective health insurance benefits and the best interests of the child.
- (iii) If neither parent has available health insurance benefits, the court shall direct in the order of support that the custodial parent apply for the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law and the medical assistance program established pursuant to title eleven of article five of the social services law. If eligible for such coverage, the court shall prorate the cost of any premium or family contribution in accordance with paragraph (d) of this subdivision. A direction issued under this subdivision shall not limit or alter either parent's obligation to obtain health insurance benefits at such time as they become available, as required pursuant to paragraph (a) of this subdivision.
- (d) The cost of providing health insurance benefits pursuant to paragraph (c) of this subdivision 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. Where the court finds that such proration is unjust or inappropriate, the court shall:
- (1) order the parties to pay such amount of the cost of health insurance benefits as the court finds just and appropriate;
  - (2) add or subtract such amount in the manner set forth in this subdivision; and
  - (3) set forth in the order the factors it considered, the amount of each party's share of the cost and the reason or reasons the court did not order such pro rata apportionment.
- (e) The court shall provide in the order of support that the legally responsible relative immediately notify the other party, or the other party and the support collection unit when the order is issued on behalf of a child in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, of any change in health insurance benefits, including any termination of benefits, change in the health insurance benefit carrier, premium, or extent and availability of existing or new benefits.
- (f) Where the court determines that health insurance benefits are available, the court shall provide in the order of support that the legally responsible relative immediately enroll the eligible dependents named in the order who are otherwise eligible for such benefits without regard to any seasonal enrollment restrictions. Such order shall further direct the legally responsible relative to maintain such benefits as long as they remain available to such relative. Such order shall further direct the legally responsible relative to assign all insurance reimbursement payments for health care expenses incurred for his or her eligible dependents to the provider of such services or the party actually having incurred and satisfied such expenses, as appropriate.

(g) When the court issues an order of child support or combined child and spousal support on behalf of persons in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, such order shall further direct that the provision of health care benefits shall be immediately enforced pursuant to section fifty-two hundred forty-one of the civil practice law and rules.

(h) When the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance and care or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall also issue a separate order which shall include the necessary direction to ensure the order's characterization as a qualified medical child support order as defined by section six hundred nine of the employee retirement income security act of 1974 (29 U.S.C. § 1169). Such order shall: (i) clearly state that it creates or recognizes the existence of the right of the named dependent to be enrolled and to receive benefits for which the legally responsible relative is eligible under the available group health plans, and shall clearly specify the name, social security number and mailing address of the legally responsible relative, and of each dependent to be covered by the order; (ii) provide a clear description of the type of coverage to be provided by the group health plan to each such dependent or the manner in which the type of coverage is to be determined; and (iii) specify the period of time to which the order applies. The court shall not require the group health plan to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred and ninety-six g of title forty-two of the United States code.

(i) Upon a finding that a legally responsible relative wilfully failed to obtain health insurance benefits in violation of a court order, such relative will be presumptively liable for all health care expenses incurred on behalf of such dependents from the first date such dependents were eligible to be enrolled to receive health insurance benefits after the issuance of the order of support directing the acquisition of such coverage.

(j) The order shall be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall, except as provided for herein, be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the courts shall not direct the schedule of repayment of retroactive support. Where such direction is for child support and paternity has been established by a voluntary acknowledgement of paternity as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgement has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgement with the appropriate registrar within five business days. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under section two hundred thirty-six of this article. Upon the application of either parent, or of any other person or party having the care, custody and control of

such child pursuant to such judgment or order, after such notice to the other party, parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules.

1-a. In any proceeding brought pursuant to this section to determine the custody or visitation of minors, a report made to the statewide central register of child abuse and maltreatment, pursuant to title six of article six of the social services law, or a portion thereof, which is otherwise admissible as a business record pursuant to rule forty-five hundred eighteen of the civil practice law and rules shall not be admissible in evidence, notwithstanding such rule, unless an investigation of such report conducted pursuant to title six of article six of the social services law has determined that there is some credible evidence of the alleged abuse or maltreatment and that the subject of the report has been notified that the report is indicated. In addition, if such report has been reviewed by the state commissioner of social services or his designee and has been determined to be unfounded, it shall not be admissible in evidence. If such report has been so reviewed and has been amended to delete any finding, each such deleted finding shall not be admissible. If the state commissioner of social services or his designee has amended the report to add any new finding, each such new finding, together with any portion of the original report not deleted by the commissioner or his designee, shall be admissible if it meets the other requirements of this subdivision and is otherwise admissible as a business record. If such a report, or portion thereof, is admissible in evidence but is uncorroborated, it shall not be sufficient to make a fact finding of abuse or maltreatment in such proceeding. Any other evidence tending to support the reliability of such report shall be sufficient corroboration.

1-b. (a) The court shall make its award for child support pursuant to the provisions of this subdivision. The court may vary from the amount of the basic child support obligation determined pursuant to paragraph (c) of this subdivision only in accordance with paragraph (f) of this subdivision.

(b) For purposes of this subdivision, the following definitions shall be used:

(1) "Basic child support obligation" shall mean the sum derived by adding the amounts determined by the application of subparagraphs two and three of paragraph (c) of this subdivision except as increased pursuant to subparagraphs four, five, six and seven of such paragraph.

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

(3) "Child support percentage" shall mean:

- (i) seventeen percent of the combined parental income for one child;
- (ii) twenty-five percent of the combined parental income for two children;
- (iii) twenty-nine percent of the combined parental income for three children;
- (iv) thirty-one percent of the combined parental income for four children; and
- (v) no less than thirty-five percent of the combined parental income for five or more children.

(4) "Combined parental income" shall mean the sum of the income of both parents.

(5) "Income" shall mean, but shall not be limited to, the sum of the amounts determined by the application of clauses (i), (ii), (iii), (iv), (v) and (vi) of this subparagraph reduced by the amount determined by the application of clause (vii) of this subparagraph:

(i) gross (total) income as should have been or should be reported in the most recent federal income tax return. If an individual files his/her federal income tax return as a married person filing jointly, such person shall be required to prepare a form, sworn to under penalty of law, disclosing his/her gross income individually;

(ii) to the extent not already included in gross income in clause (i) of this subparagraph, investment income reduced by sums expended in connection with such investment;

(iii) to the extent not already included in gross income in clauses (i) and (ii) of this subparagraph, the amount of income or compensation voluntarily deferred and income received, if any, from the following sources:

- (A) workers' compensation,
- (B) disability benefits,
- (C) unemployment insurance benefits,
- (D) social security benefits,
- (E) veterans benefits,
- (F) pensions and retirement benefits,
- (G) fellowships and stipends, and
- (H) annuity payments;

(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;

(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;

(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 that 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, provided the order or agreement provides 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,

(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 eighty thousand dollars 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 prorate each parent's share of future reasonable health care expenses of the child not covered by insurance in the same proportion as each parent's income is to the combined parental income. The non-custodial parent's pro rata share of such health care expenses shall be paid in a manner determined by the court, including direct payment to the health care provider.

(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 or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater. 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.

(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 parent's pro-rata share of the basic child support obligation is unjust or inappropriate, which finding shall be based upon consideration of the following factors:

(1) The financial resources of the custodial and non-custodial parent, and those of the child;

(2) The physical and emotional health of the child and his/her special needs and aptitudes;

(3) The standard of living the child would have enjoyed had the marriage or household not been dissolved;

(4) The tax consequences to the parties;

(5) The non-monetary contributions that the parents will make toward the care and well-being of the child;

(6) The educational needs of either parent;

(7) A determination that the gross income of one parent is substantially less than the other parent's gross income;

(8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclause (D) of clause (vii) of subparagraph five of paragraph (b) of this subdivision, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action;

(9) Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and

(10) Any other factors the court determines are relevant in each case, the court shall order the non-custodial parent to pay his or her pro rata share of the basic child support obligation, and may order the non-custodial parent to pay an amount pursuant to paragraph (e) of this subdivision.

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. In no instance shall the court order child support below twenty-five dollars per month. Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

(h) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this subdivision, and that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded. In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the basic child support obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section. Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of this article, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of social services 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. In no instance shall the court approve any voluntary support agreement or compromise that includes an amount for child support less than twenty-five dollars per month.

(j) In addition to financial disclosure required in section two hundred thirty-six of this article, the court may require that the income and/or expenses of either party be verified with documentation including, but not limited to, past and present income tax returns, employer statements, pay stubs, corporate, business, or partnership books and records, corporate and business tax returns, and receipts for expenses or such other means of verification as the court determines appropriate. Nothing herein shall affect any party's right to pursue discovery pursuant to this chapter, the civil practice law and rules, or the family court act.

(k) When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs or standard of living of the child, whichever is greater. Such order may be retroactively modified upward, without a showing of change in circumstances.

(l) In any action or proceeding for modification of an order of child support existing prior to the effective date of this paragraph, brought pursuant to this article, the child support standards set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order; provided, however, that (1) where the circumstances warrant modification of such order, or (2) where any party objects to an adjusted child support order made or proposed at the direction of the support collection unit pursuant to section one hundred eleven-h or one hundred eleven-n of the social services law, and the court is reviewing the current order of child support, such standards shall be applied by the court in its determination with regard to the request for modification, or disposition of an objection to an adjusted child support order made or proposed by a support collection unit. In applying such standards, when the order to be modified incorporates by reference or merges with a validly executed separation agreement or stipulation of settlement, the court may consider, in addition to the factors set forth in paragraph (f) of this subdivision, the provisions of such agreement or stipulation concerning property distribution, distributive award and/or maintenance in determining whether the amount calculated by using the standards would be unjust or inappropriate.

1-c. (a) Notwithstanding any other provision of this chapter to the contrary, no court shall make an order providing for visitation or custody to a person who has been convicted of murder in the first or second degree in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of any child who is the subject of the proceeding. Pending determination of a petition for visitation or custody, such child shall not visit and no person shall visit with such child present, such person who has been convicted of murder in the first or second degree in this state, or convicted of an offense in another jurisdiction which, if committed in this state, would constitute either murder in the first or second degree, of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding without the consent of such child's custodian or legal guardian.

(b) Notwithstanding paragraph (a) of this subdivision a court may order visitation or custody where:

(i)(A) such child is of suitable age to signify assent and such child assents to such visitation or custody; or

(B) if such child is not of suitable age to signify assent, the child's custodian or legal guardian assents to such order; or

(C) the person who has been convicted of murder in the first or second degree, or an offense in another jurisdiction which if committed in this state, would constitute either murder in the first or second degree, can prove by a preponderance of the evidence that:

(1) he or she, or a family or household member of either party, was a victim of domestic violence by the victim of such murder; and

(2) the domestic violence was causally related to the commission of such murder; and

(ii) the court finds that such visitation or custody is in the best interests of the child.

(c) For the purpose of making a determination pursuant to clause (C) of subparagraph (i) of paragraph (b) of this subdivision, the court shall not be bound by the findings of fact, conclusions of law or ultimate conclusion as determined by the proceedings leading to the conviction of murder in the first or second degree in this state or of an offense in another jurisdiction which, if committed in this state, would constitute murder in either the first or second degree, of a parent, legal guardian, legal custodian, sibling, half-sibling or stepsibling of a child who is the subject of the proceeding. In all proceedings under this section, a law guardian shall be appointed for the child.

2. (a) An order directing payment of money for child support shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules or in any other manner provided by law. Such orders or judgments for child support and maintenance shall also be enforceable pursuant to article fifty-two of the civil practice law and rules upon a debtor's default as such term is defined in paragraph seven of subdivision (a) of section fifty-two hundred forty-one of the civil practice law and rules. The establishment of a default shall be subject to the procedures established for the determination of a mistake of fact for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of the civil practice law and rules. For the purposes of enforcement of child support orders or combined spousal and child support orders pursuant to section five thousand two hundred forty-one of the civil practice law and rules, a "default" shall be deemed to include amounts arising from retroactive support.

b. (1) When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall direct that the child support payments be made to the support collection unit. Unless (i) the court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding; or (ii) when the child is not in receipt of public assistance, a written agreement providing for an alternative arrangement has been reached between the parties, the support collection unit shall issue an income execution immediately for child support or combined maintenance and child support, and may issue an execution for medical support enforcement in accordance with the provisions of the order of support. Such written agreement may include an oral stipulation made on the record resulting in a written order. For purposes of this paragraph, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income execution shall not constitute good cause. When an immediate income execution or an execution for medical support enforcement is issued by the support collection unit, such income execution shall be issued pursuant to section five thousand two hundred forty-one of the civil practice law and rules, except that the provisions thereof relating to mistake of fact, default and any other provisions which are not relevant to the issuance of an income execution pursuant to this paragraph shall not apply; provided, however, that if the support collection unit makes an error in the issuance of an income execution pursuant to this paragraph, and such error is to the detriment of the debtor, the support collection unit shall have thirty days after notification by the debtor to correct the error. Where permitted under federal law and where the record of the proceedings contains such information, such order shall include on its face the social security number and the name and address of the employer, if any, of the person chargeable with support; provided, however, that failure to comply with this requirement shall not invalidate such order. When the court determines that there is good cause not to immediately issue an income execution or when the parties agree to an alternative arrangement as provided in this paragraph, the court shall provide expressly in the order of support that the support collection unit shall not issue

an immediate income execution. Notwithstanding any such order, the support collection unit shall issue an income execution for support enforcement when the debtor defaults on the support obligation, as defined in section five thousand two hundred forty-one of the civil practice law and rules.

(2) When the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall issue an income deduction order pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules at the same time it issues the order of support. The court shall enter the income deduction order unless the court finds and sets forth in writing (i) the reasons that there is good cause not to require immediate income withholding; or (ii) that an agreement providing for an alternative arrangement has been reached between the parties. Such agreement may include a written agreement or an oral stipulation, made on the record, that results in a written order. For purposes of this paragraph, good cause shall mean substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income deduction order shall not constitute good cause. Where permitted under federal law and where the record of the proceedings contains such information, such order shall include on its face the social security number and the name and address of the employer, if any, of the person chargeable with support; provided, however, that failure to comply with this requirement shall not invalidate the order. When the court determines that there is good cause not to issue an income deduction order immediately or when the parties agree to an alternative arrangement as provided in this paragraph, the court shall provide expressly in the order of support the basis for its decision and shall not issue an income deduction order.

c. Any order of support issued on behalf of a child in receipt of family assistance or child support enforcement services pursuant to section one hundred eleven-g of the social services law shall be subject to review and adjustment by the support collection unit pursuant to section one hundred eleven-n of the social services law. Such review and adjustment shall be in addition to any other activities undertaken by the support collection unit relating to the establishment, modification, and enforcement of support orders payable to such unit.

3. Order of protection. a. The court may make an order of protection in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by any party. Such an order may require any party:

(1) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court;

(2) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(3) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons;

(4) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act; or

(5) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child.

(6) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced.

(7) to observe such other conditions as are necessary to further the purposes of protection.

b. An order of protection entered pursuant to this subdivision shall bear in a conspicuous manner, on the front Page of said order, the language "Order of protection issued pursuant to section two hundred forty of the domestic relations law". The absence of such language shall not affect the validity of such order. The presentation of a copy of such an order to any peace officer acting pursuant to his or her special duties, or police officer, shall constitute authority, for that officer to arrest a person when that person has violated the terms of such an order, and bring such person before the court and, otherwise, so far as lies within the officer's power, to aid in securing the protection such order was intended to afford.

c. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action or in a proceeding to obtain custody of or visitation with any child under this section, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

d. The chief administrator of the courts shall promulgate appropriate uniform temporary orders of protection and orders of protection forms, applicable to proceedings under this article, to be used throughout the state. Such forms shall be promulgated and developed in a manner to ensure the compatibility of such forms with the statewide computerized registry established pursuant to section two hundred twenty-one-a of the executive law.

e. No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counter-claim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown.

Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court may make an order in accordance with section eight hundred forty-two-a of the family court act directing the surrender of firearms, revoking or suspending a party's firearms license, and/or directing that such party be ineligible to receive a firearms license. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with

subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action.

3-a. Service of order of protection. If a temporary order of protection has been issued upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided hereunder shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition or complaint if not previously served. Service of such temporary order of protection or order of protection and associated papers shall, insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this subdivision, and his or her employer, shall not be liable for damages resulting from failure to achieve service where, having made a reasonable effort, such officer or designated person is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order. A statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of service of the summons, petition and temporary order of protection or order of protection. When the temporary order of protection or order of protection and other papers, if any, have been served, such officer or designated person shall provide the court with an affirmation, certificate or affidavit of service and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law.

3-b. Emergency powers; local criminal court. If the court that issued an order of protection or temporary order of protection under this section or warrant in connection thereto is not in session when an arrest is made for an alleged violation of the order or upon a warrant issued in connection with such violation, the arrested person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of the criminal procedure law and arraigned by such court. Such local criminal court shall order the commitment of the arrested person to the custody of the sheriff, admit to, fix or accept bail, or release the arrested person on his or her recognizance pending appearance in the court that issued the order of protection, temporary order of protection or warrant. In making such order, such local criminal court shall consider the bail recommendation, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

3-c. Orders of protection; filing and enforcement of out-of-state orders. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

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

(1) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

(2) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

(3) in the case of orders of protection or temporary orders of protection issued against both a petitioner and respondent, the order or portion thereof sought to be enforced was supported by: (i) a pleading requesting such order, including, but not limited to, a petition, crosspetition or counterclaim; and (ii) a judicial finding that the requesting party is entitled to the issuance of the order, which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order was issued had give knowing, intelligent and voluntary consent to its issuance.

b. Notwithstanding the provisions of article fifty-four of the civil practice law and rules, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law; provided, however, that such filing and registry entry shall not be required for enforcement of the order.

4. One-time adjustment of child support orders issued prior to September fifteenth, nineteen hundred eighty-nine. Any party to a child support order issued prior to September fifteenth, nineteen hundred eighty-nine on the behalf of a child in receipt of public assistance or child support services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit undertake one review of the order for adjustment purposes pursuant to section one hundred eleven-h of the social services law. A hearing on the adjustment of such order shall be granted upon the objection of either party pursuant to the provisions of this section. An order shall be adjusted if as of the date of the support collection unit's review of the correct amount of child support as calculated pursuant to the provisions of this section would deviate by at least ten percent from the child support ordered in the current order of support. Additionally, a new order shall be issued upon a showing that the current order of support does not provide for the health care needs of the child through insurance or otherwise. Eligibility of the child for medical assistance shall not relieve any obligation the parties otherwise have to provide for the health care needs of the child. The support collection unit's review of a child support order shall be made on notice to all parties to the current support order. Nothing herein shall be deemed in any way to limit, restrict, expand or impair the rights of any party to file for a modification of a child support order as is otherwise provided by law.

(1) Upon mailing of an adjustment finding and where appropriate a proposed order in conformity with such finding filed by either party or by the support collection unit, a party shall have thirty-five days from the date of mailing to submit to the court identified thereon specific written objections to such finding and proposed order.

- (a) If specific written objections are submitted by either party or by the support collection unit, a hearing shall be scheduled by the court on notice to the parties and the support collection unit, who then shall have the right to be heard by the court and to offer evidence in support of or in opposition to adjustment of the support order.
- (b) The party filing the specific written objections shall bear the burden of going forward and the burden of proof; provided, however, that if the support collection unit has failed to provide the documentation and information required by subdivision fourteen of section one hundred eleven-h of the social services law, the court shall first require the support collection unit to furnish such documents and information to the parties and the court.
- (c) If the court finds by a preponderance of the evidence that the specific written objections have been proven, the court shall recalculate or readjust the proposed adjusted order accordingly or, for good cause, shall remand the order to the support collection unit for submission of a new proposed adjusted order. Any readjusted order so issued by the court or resubmitted by the support collection unit after a remand by the court shall be effective as of the date the proposed adjusted order would have been effective had no specific written objections been filed.
- (d) If the court finds that the specific written objections have not been proven by a preponderance of the evidence, the court shall immediately issue the adjusted order as submitted by the support collection unit, which shall be effective as of the date the order would have been effective had no specific written exceptions been filed.
- (e) If the court receives no specific written objections to the support order within thirty-five days of the mailing of the proposed order the clerk of the court shall immediately enter the order without further review, modification, or other prior action by the court or any judge or support magistrate thereof, and the clerk shall immediately transmit copies of the order of support to the parties and to the support collection unit.
- (2) A motion to vacate an order of support adjusted pursuant to this section may be made no later than forty-five days after an adjusted support order is executed by the court where no specific written objections to the proposed order have been timely received by the court. Such motion shall be granted only upon a determination by the court issuing such order that personal jurisdiction was not timely obtained over the moving party.
5. Provision of child support orders to the state case registry. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.
5. On-going cost of living adjustment of child support orders issued prior to September fifteenth, nineteen hundred eighty-nine. Any party to a child support order issued prior to September fifteenth, nineteen hundred eighty-nine on the behalf of a child in receipt of public assistance or child support services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit review the order for a cost of living adjustment in accordance with the provisions of section two hundred forty-c of this article.

**§ 240-a Dom. Rel. Judgment or decree; additional provision.**

In any action or proceeding brought under the provisions of this chapter wherein all or part of the relief granted is divorce or annulment of a marriage any interlocutory or final judgment or decree shall contain, as a part thereof, the social

security numbers of the named parties in the action or proceeding, as well as a provision that each party may resume the use of his or her premarriage surname or any other former surname.

### **§ 240-b Dom. Rel. Order of support by parent.**

When the court makes an order of support pursuant to section two hundred forty of this article, and where permitted under federal law and where the record of the proceedings contains such information, the court shall require the social security number of such parent to be affixed to such order; provided, however, that no such order shall be invalid because of the omission of such number. Where the record of the proceedings contains such information, such order shall also include on its face the name and address of the employer, if any, of the person chargeable with support provided, however, that failure to comply with this requirement shall not invalidate such order. Where the order of child support or combined child and spouse support is made on behalf of persons in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, the court shall require each party to provide, and update upon any change, the following information to the court by reporting such change to the support collection unit designated by the appropriate social services district: social security number, residential and mailing addresses, telephone number, driver's license number; and name, address and telephone number of the parties' employers. Due process requirements for notice and service of process for subsequent hearings are met, with respect to such party, upon sending written notice by first class mail to the most recent residential address on record with the support collection unit; or by sending by first class mail written notice to the most recent employer address on record with the support collection unit, if a true copy thereof also is sent by first class mail to the most recent residential address on record with the support collection unit. Any such order issued on or after the first day of October, nineteen hundred ninety-nine shall also include, where available, the social security number of each child on whose behalf support has been ordered.

### **§ 240-c Dom. Rel. Review and cost of living adjustment of child support orders.**

1. Request. Any party to a child support order issued on behalf of a child in receipt of public assistance, or child support enforcement services pursuant to section one hundred eleven-g of the social services law may request that the support collection unit review the order for cost of living adjustment purposes pursuant to section one hundred eleven-n of the social services law.

2. Adjustment process. (a) A cost of living adjustment shall be made by the support collection unit with respect to an order of support under review if the sum of the annual average changes of the consumer price index for all urban consumers (CPI-U), as published annually by the United States department of labor bureau of labor statistics, is ten percent or greater.

(b) The cost of living adjustment and adjusted child support obligation amount as calculated by the review shall be reflected on the adjusted order issued by the support collection unit and mailed to the parties by first class mail. The child support obligation amount contained in the adjusted order shall be due and owing on the date the first payment is due under the terms of the order of support which was reviewed and adjusted occurring on or after the effective date of the adjusted order.

(c) The support collection unit shall provide a copy of the adjusted order to the court which issued the most recent order of support, which shall append it to the order.

3. Objection process. (a) An objection to a cost of living adjustment, as reflected in an adjusted order issued by a support collection unit, may be made to the court by either party to the order, or by the support collection unit, and shall be submitted to the court in writing within thirty-five days from the date of mailing of the adjusted order. A copy of the written objection shall be provided by the objecting party to the other party and to the support collection unit.

(b) Where such objections are timely filed, the cost of living adjustment shall not take effect, and a hearing on the adjustment of such order shall be granted pursuant to the provisions of this section, which shall result in either:

(1) the issuance by the court of a new order of support in accordance with the child support standards as set forth in section two hundred forty of this article; or

(2) where application of the child support standards as set forth in section two hundred forty of this article results in a determination that no adjustment is appropriate, an order of no adjustment.

(c) Any order of support made by the court under this section shall occur without the requirement for proof or showing of a change in circumstances.

(d) The court shall conduct the hearing and make its determination no later than forty-five days from the date it receives an objection. If the order under review does not provide for health insurance benefits for the child, the court shall make a determination regarding such benefits pursuant to section two hundred forty of this article. The clerk of the court shall immediately transmit copies of the order of support or order of no adjustment issued by the court pursuant to this subdivision to the parties and the support collection unit. Where a hearing results in the issuance of a new order of support, the effective date of the court order shall be the earlier of the date of the court determination or the date the cost of living adjustment would have been effective had it not been challenged.

(e) Where no objection has been timely raised to a cost of living adjustment as reflected in an adjusted order, such adjustment shall become final without further review by the court or any judge or support magistrate thereof.

4. Modification of orders. Nothing herein shall be deemed in any way to limit, restrict, expand or impair the rights of any party to file for a modification of a child support order as is otherwise provided by law.

5. Notice. Parties eligible for adjustment of child support orders shall receive notice of the right to review such orders as follows:

(a) All applications or motions by the support collection unit or by persons seeking support enforcement services through the support collection unit for the establishment, modification, enforcement, violation or adjustment of child support orders shall on their face in conspicuous type state:

NOTE: (1) A COURT ORDER OF SUPPORT RESULTING FROM A PROCEEDING COMMENCED BY THIS APPLICATION (MOTION) SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. SUCH COST OF LIVING ADJUSTMENT SHALL BE ON NOTICE TO BOTH PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THE RIGHT TO BE HEARD BY THE COURT AND TO PRESENT EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH SUBDIVISION

1-B OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW, KNOWN AS THE CHILD SUPPORT STANDARDS ACT.

(2) A PARTY SEEKING SUPPORT FOR ANY CHILD(REN) RECEIVING FAMILY ASSISTANCE SHALL HAVE A CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED BY THE SUPPORT COLLECTION UNIT, WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION TWO HUNDRED FORTY-B OF THE DOMESTIC RELATIONS LAW, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

(b) All court orders of support payable through a support collection unit shall on their face in conspicuous type state:

NOTE: (1) THIS ORDER OF CHILD SUPPORT SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER THIS ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. UPON APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT, AN ADJUSTED ORDER SHALL BE SENT TO THE PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING TO SUBMIT A WRITTEN OBJECTION TO THE COURT INDICATED ON SUCH ADJUSTED ORDER. UPON RECEIPT OF SUCH WRITTEN OBJECTION, THE COURT SHALL SCHEDULE A HEARING AT WHICH THE PARTIES MAY BE PRESENT TO OFFER EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH THE CHILD SUPPORT STANDARDS ACT.

(2) A RECIPIENT OF FAMILY ASSISTANCE SHALL HAVE THE CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION TWO HUNDRED FORTY-B OF THE DOMESTIC RELATIONS LAW, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

**§ 241 Dom. Rel. Interference with or withholding of visitation rights; alimony or maintenance suspension.**

When it appears to the satisfaction of the court that a custodial parent receiving alimony or maintenance pursuant to an order, judgment or decree of a court of competent jurisdiction has wrongfully interfered with or withheld visitation rights

provided by such order, judgment or decree, the court, in its discretion, may suspend such payments or cancel any arrears that may have accrued during the time that visitation rights have been or are being interfered with or withheld. Nothing in this section shall constitute a defense in any court to an application to enforce payment of child support or grounds for the cancellation of arrears for child support.

**§ 243 Dom. Rel. Security for payments by defendant in action for divorce, separation or annulment; sequestration.**

Where a judgment rendered or an order made in an action in this state for divorce, separation or annulment, or for a declaration of nullity of a void marriage, or a judgment rendered in another state for divorce upon any of the grounds provided in section one hundred seventy of this chapter, or for separation or separate support and maintenance for any of the causes specified in section two hundred, or for relief, however designated, granted upon grounds which in this state would be grounds for annulment of marriage or for a declaration of nullity of a void marriage, upon which an action has been brought in this state and judgment rendered therein, requires a spouse to provide for the education or maintenance of any of the children of a marriage, or for the support of his or her spouse, the court, in its discretion, also may direct the spouse from whom maintenance or support is sought to give reasonable security, in such a manner and within such a time as it thinks proper, for the payment, from time to time, of the sums of money required for that purpose. If he or she fails to give the security, or to make any payment required by the terms of such a judgment or order, whether or not security has been given therefor, or to pay any sum of money for the support and maintenance of the children or the support and maintenance of the spouse during the pendency of the action, or for counsel fees and expenses which he or she is required to pay by a judgment or order, the court may cause his or her personal property and the rents and profits of his or her real property to be sequestered, and may appoint a receiver thereof. The rents and profits and other property so sequestered may be applied, from time to time, under the direction of the court, to the payment of any of the sums of money specified in this section, as justice requires; and if the same shall be insufficient to pay the sums of money required, the court, on application of the receiver, may direct the mortgage or sale of such real property by the receiver, under such terms and conditions as it may prescribe, sufficient to pay such sums.

**§ 244 Dom. Rel. Enforcement by execution of judgment or order in action for divorce, separation or annulment.**

Where a spouse in an action for divorce, separation or annulment, or declaration of nullity of a void marriage, or a person other than a spouse when an action for an annulment is maintained after the death of a spouse, defaults in paying any sum of money as required by the judgment or order directing the payment thereof, or as required by the terms of an agreement or stipulation incorporated by reference in a judgment, such direction shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules. Upon application the court shall make an order directing the entry of judgment for the amount of arrears of child support together with costs and disbursements. The court shall make an order directing the entry of judgment for the amount of arrears of any other payments so directed, together with costs and disbursements, unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. The court shall not make an order reducing or cancelling arrears unless the facts and circumstances constituting good cause are set forth in a written memorandum of decision. The application for such order shall be upon such notice to the spouse or other person as the court may direct. Such judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments. The relief herein provided for is in addition to any and every other remedy to which a spouse may be entitled under the law; provided that when a judgment for such arrears or any part thereof shall have been entered pursuant to this section, such judgment shall thereafter not be subject to modification under the

discretionary power granted by this section; and after the entry of such judgment the judgment creditor shall not hereafter be entitled to collect by any form of remedy any greater portion of such arrears than that represented by the judgment so entered. Such judgment shall provide for the payment of interest on the amount of any arrears if the default was willful, in that the obligated spouse knowingly, consciously and voluntarily disregarded the obligation under a lawful court order. Such interest shall be computed from the date on which the payment was due, at the prevailing rate of interest on judgments as provided in the civil practice law and rules.

**§ 244-a Dom. Rel. Enforcement of arrears which accrue during pendency of an enforcement proceeding.**

In any proceeding for enforcement of payment of any sum of money as required by judgment or order the party seeking enforcement may amend the papers in support of the application for enforcement to include any additional arrears which have accrued since the commencement of such enforcement proceeding at the time of a hearing upon or submission of the matter, provided that written notice of the intention to so amend has been given eight days previously.

**§ 244-b Dom. Rel. Child support proceedings and enforcement of arrears; suspension of driving privileges.**

(a) In any proceeding for the enforcement of a direction or agreement, incorporated in a judgment or order, to pay any sum of money as child support or combined child and spousal support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such judgment or order for a period of four months, the court may order the department of motor vehicles to suspend the respondent's driving privileges, and if such order issues, the respondent may apply to the department of motor vehicles for a restricted use license pursuant to section five hundred thirty of the vehicle and traffic law. The court may at any time upon payment of arrears or partial payment of arrears by the respondent order the department of motor vehicles to terminate the suspension of respondent's driving privileges. For purposes of determining whether a support obligor has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

(b) If the respondent, after receiving appropriate notice, fails to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding, the court may order the department of motor vehicles to suspend the respondent's driving privileges. The court may subsequently order the department of motor vehicles to terminate the suspension of the respondent's driving privileges; however, the court shall order the termination of such suspension when the court is satisfied that the respondent has fully complied with all summonses, subpoenas and warrants relating to a paternity or child support proceeding.

(c) The provisions of subdivision (a) of this section shall not apply to:

(i) respondents who are receiving public assistance or supplemental security income; or

(ii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this chapter falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this chapter; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this chapter remaining after the payment of the current support obligation would fall below the self-

support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this chapter.

(d) The court's discretionary decision not to suspend driving privileges shall not have any res judicata effect or preclude any other agency with statutory authority to direct the department of motor vehicles to suspend driving privileges.

**§ 244-c Dom. Rel. Child support proceedings and enforcement of arrears; suspensions of state professional, occupational and business licenses.**

(a) In any proceeding for enforcement of a direction or agreement, incorporated in a judgement or order, to pay any sum of money as child support or combined child and spousal support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such judgment or order for a period of four months and that the respondent is licensed, permitted or registered by or with a board, department, authority or office of this state to conduct a trade, business, profession or occupation, the court may order such board, department, authority or office to commence proceedings as required by law regarding the suspension of such license, permit, registration, or authority to practice and to inform the court of the actions it has taken pursuant to such proceedings. For purposes of determining whether a respondent has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

(b) If the respondent, after receiving appropriate notice, fails to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding, and the court has determined that the respondent is licensed, permitted or registered by or with a board, department, authority or office of this state or one of its political subdivisions or instrumentalities to conduct a trade, business, profession or occupation, the court may order such board, department, authority or office to commence proceedings as required by law regarding the suspension of such license, permit, registration or authority to practice and to inform the court of the actions it has taken pursuant to such proceeding. The court may subsequently order such board, department, authority or office to terminate the suspension of the respondent's license, permit, registration or authority to practice; however, the court shall order the termination of such suspension when the court is satisfied that the respondent has fully complied with all summons, subpoenas and warrants relating to a paternity or child support proceeding.

(c) If the court determines that the suspension of the license, permit or registration of the respondent would create an extreme hardship to either the licensee, permittee or registrant or to persons whom he or she serves, the court may, in lieu of suspension, suspend the order described in subdivision (a) of this section to the licensing entity for a period not to exceed one year. If, on or before the expiration of this period, the court has not received competent proof presented at hearing that the respondent is in full compliance with his or her support obligation, the court shall cause the suspension of the order to be rescinded and shall further cause such order to be served upon the licensing entity.

(d) The provisions of subdivision (a) of this section shall not apply to:

(i) respondents who are receiving public assistance or supplemental security income; or

(ii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law, or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law remaining after the payment of the current support obligation would fall below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law.

(e) The court shall inform the respondent that competent proof for purposes of proving payment to a licensing entity shall be a certified check, notice issued by the court, or notice from a support collection unit where the order is for payment to the support collection unit.

**§ 244-d Dom. Rel. Child support proceedings and enforcement of arrears; suspension of recreational license.**

(a) In any proceeding for enforcement of a direction or agreement, incorporated in a judgement or order, to pay any sum of money as child support or combined child and spousal support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such judgment or order for a period of four months, the court may order any agency responsible for the issuance of a recreational license to suspend or refuse to reissue a license to the respondent, or deny application for such license by the respondent. For purposes of determining whether a respondent has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section.

(b) If the respondent, after receiving appropriate notice, fails to comply with a summons, subpoena, or warrant relating to a paternity or child support proceeding, the court may order any agency responsible for the issuance of a recreational license to suspend or to refuse to reissue a license to the respondent or to deny application for such license by the respondent. The court may subsequently order such agency to terminate the adverse action regarding the respondent's license; however, the court shall order the termination of such suspension or other adverse action when the court is satisfied that the respondent has fully complied with the requirements of all summons, subpoenas, and warrants relating to a paternity or child support proceeding.

(c) The provisions of subdivision (a) of this section shall not apply to:

(i) respondents who are receiving public assistance or supplemental security income; or

(ii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this article; or

(iii) respondents whose income as defined by subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article remaining after the payment of the current support obligation would fall below the self-

support reserve as defined by subparagraph six of paragraph (b) of subdivision one-b of section two hundred forty of this article.

**§ 245 Dom. Rel. Enforcement by contempt proceedings of judgment or order in action for divorce, separation or annulment.**

Where a spouse, in an action for divorce, separation, annulment or declaration of nullity of a void marriage, or for the enforcement in this state of a judgment for divorce, separation, annulment or declaration of nullity of a void marriage rendered in another state, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced pursuant to section two hundred forty-three or two hundred forty-four of this chapter or section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules, the aggrieved spouse may make application pursuant to the provisions of section seven hundred fifty-six of the judiciary law to punish the defaulting spouse for contempt, and where the judgment or order directs the payment to be made in installments, or at stated intervals, failure to make such single payment or installment may be punished as therein provided, and such punishment, either by fine or commitment, shall not be a bar to a subsequent proceeding to punish the defaulting spouse as for a contempt for failure to pay subsequent installments, but for such purpose such spouse may be proceeded against under the said order in the same manner and with the same effect as though such installment payment was directed to be paid by a separate and distinct order, and the provisions of the civil rights law are hereby superseded so far as they are in conflict therewith. Such application may also be made without any previous sequestration or direction to give security where the court is satisfied that they would be ineffectual. No demand of any kind upon the defaulting spouse shall be necessary in order that he or she be proceeded against and punished for failure to make any such payment or to pay any such installment; personal service upon the defaulting spouse of an uncertified copy of the judgment or order under which the default has occurred shall be sufficient.

**§ 246 Dom. Rel. Persons financially unable to comply with orders or judgments directing the payment of alimony.**

1. Any person who, by an order or judgment made or entered in an action for divorce, separation, annulment or declaration of the nullity of a void marriage or an action for the enforcement in this state of a judgment for divorce, separation or annulment or declaring the nullity of a void marriage rendered in another state, is directed to make payment of any sum or sums of money and against whom an order to punish for a contempt of court has been made pursuant to the provisions of section two hundred forty-five of this chapter or the judiciary law may, if financially unable to comply with the order or judgment to make such payment, upon such notice to such parties as the court may direct, make application to the court for an order relieving him from such payment and such contempt order. The court, upon the hearing of such application, if satisfied from the proofs and evidence offered and submitted that the applicant is financially unable to make such payment may, upon a showing of good cause, until further order of the court, modify the order or judgment to make such payment and relieve him from such contempt order. No such modification shall reduce or annul unpaid sums or installments accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgement or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc based on newly discovered evidence.

2. Whenever, upon application to the court by an interested party, it appears to the satisfaction of the court that any person, who has been relieved totally or partially from making any such payment pursuant to the provisions of this

section, is no longer financially unable to comply with the order or judgment to make such payment, then the court may, upon a showing of good cause, modify or revoke its order relieving him totally or partially from making such payment.

3. Any person may assert his financial inability to comply with the directions contained in an order or judgment made or entered in an action for divorce, separation, annulment or declaration of the nullity of a void marriage or an action for the enforcement in this state of a judgment for divorce, separation or annulment or declaring the nullity of a void marriage rendered in another state, as a defense in a proceeding instituted against him under section two hundred forty-five or under the judiciary law to punish him for his failure to comply with such directions and, if the court, upon the hearing of such contempt proceeding, is satisfied from the proofs and evidence offered and submitted that the defendant is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make an order modifying such order or judgment and denying the application to punish the defendant for contempt. No such modification shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc as of the date of the application based on newly discovered evidence. Any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.

#### **§ 247 Dom. Rel. Alimony or maintenance payments suspended during confinement in prison.**

Notwithstanding any inconsistent provision of this article, the provision of any judgment or order rendered or made in an action for divorce, separation, annulment or declaration of nullity of a void marriage, requiring the payment of moneys by one spouse for the support of the other shall be suspended and inoperative so far as punishment for contempt is concerned during the period in which the defaulting spouse shall be imprisoned pursuant to any order adjudging him or her in contempt for failure to comply with any provision in such order.

#### **§ 248 Dom. Rel. Modification of judgment or order in action for divorce or annulment.**

Where an action for divorce or for annulment or for a declaration of the nullity of a void marriage is brought by a husband or wife, and a final judgment of divorce or a final judgment annulling the marriage or declaring its nullity has been rendered, the court, by order upon the application of the husband on notice, and on proof of the marriage of the wife after such final judgment, must modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders, or of both, directing payments of money for the support of the wife. The court in its discretion upon application of the husband on notice, upon proof that the wife is habitually living with another man and holding herself out as his wife, although not married to such man, may modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders or of both, directing payment of money for the support of such wife.

#### **§ 249 Dom. Rel. Trial preferences in matrimonial actions.**

Upon motion of either party or upon its own motion, the court may direct that any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to enjoin the prosecution in any other jurisdiction of an action for divorce, be placed forthwith by the clerk on the supreme court calendar and be entitled to preference in the trial thereof, in accordance with Rule 3403 of the civil practice law and rules, provided that in the courts' discretion, justice so requires. Such direction may be made by separate order or in any order

granted in any such action or proceeding upon any application made pursuant to sections two hundred thirty-six, two hundred thirty-seven or two hundred forty of this article.

Such direction, in the event no note of issue has been previously filed with the clerk, may also require either party to file with the clerk proof of service of the summons, two copies of the note of issue and such other data as may be required.

**§ 252 Dom. Rel. Effect of pendency of action for divorce, separation or annulment on petition for order of protection.**

1. In an action for divorce, separation or annulment or in an action to declare the nullity of a void marriage in the supreme court, the supreme court or the family court shall entertain an application for an order of protection or temporary order of protection by either party. Such an order may require any party:

(a) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against such child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced; or

(g) to observe such other conditions as are necessary to further the purposes of protection.

2. An order of protection entered pursuant to this subdivision shall bear in a conspicuous manner, on the front Page of said order, the language "Order of protection issued pursuant to section two hundred fifty-two of the domestic relations law". The absence of such language shall not affect the validity of such order. The presentation of a copy of such an order to any peace officer acting pursuant to his or her special duties, or police officer, shall constitute authority, for that officer to arrest a person when that person has violated the terms of such an order, and bring such person before the court and, otherwise, so far as lies within the officer's power, to aid in securing the protection such order was intended to afford.

2-a. If the court that issued an order of protection or temporary order of protection under this section or warrant in connection thereto is not in session when an arrest is made for an alleged violation of the order or upon a warrant issued in connection with such violation, the arrested person shall be brought before a local criminal court in the county of arrest

or in the county in which such warrant is returnable pursuant to article one hundred twenty of the criminal procedure law and arraigned by such court. Such local criminal court shall order the commitment of the arrested person to the custody of the sheriff, admit to, fix or accept bail, or release the arrested person on his or her recognizance pending appearance in the court that issued the order of protection, temporary order of protection or warrant. In making such order, such local criminal court shall consider the bail recommendations, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

3. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

4. No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counterclaim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown.

5. Except with respect to enforcement pursuant to a criminal prosecution under article two hundred fifteen of the penal law, the supreme court may provide in an order made pursuant to this section that the order may be enforced or modified only in the supreme court. If the supreme court so provides, the family court may not entertain an application to enforce or modify such an order of the supreme court.

6. In any such matrimonial action however, the court may not sua sponte consolidate actions or make, vacate or modify orders of protection issued in family court involving the same parties except upon motion and with notice to the non-moving party. Such non-moving party shall be given an opportunity to be heard.

7. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

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

(i) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

(ii) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

(iii) in the case of orders of protection or temporary orders of protection issued against both a petitioner and respondent, the order or portion thereof sought to be enforced was supported by: (A) a pleading requesting such order, including, but not limited to, a petition, crosspetition or counterclaim; and (B) a judicial finding that the requesting party is entitled to the issuance of the order, which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order was issued had given knowing, intelligent and voluntary consent to its issuance.

(b) Notwithstanding the provisions of article fifty-four of the civil practice law and rules, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law; provided, however, that such filing and registry entry shall not be required for enforcement of the order.

8. Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

9. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court may take an order in accordance with section eight hundred forty-two-a of the family court act directing the surrender of firearms, revoking or suspending a party's firearms license, and/or directing that such party be ineligible to receive a firearms license. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgement or settlement of the action.

### **§ 253 Dom. Rel. Removal of barriers to remarriage.**

1. This section applies only to a marriage solemnized in this state or in any other jurisdiction by a person specified in subdivision one of section eleven of this chapter.

2. Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to

remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

3. No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

4. In any action for divorce based on subdivisions five and six of section one hundred seventy of this chapter in which the defendant enters a general appearance and does not contest the requested relief, no final judgment of annulment or divorce shall be entered unless both parties shall have filed and served sworn statements: (i) that he or she has, to the best of his or her knowledge, taken all steps solely within his or her power to remove all barriers to the other party's remarriage following the annulment or divorce; or (ii) that the other party has waived in writing the requirements of this subdivision.

5. The writing attesting to any waiver of the requirements of subdivision two, three or four of this section shall be filed with the court prior to the entry of a final judgment of annulment or divorce.

6. As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a "barrier to remarriage" within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a "barrier to remarriage" if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses. "All steps solely within his or her power" shall not be construed to include application to a marriage tribunal or other similar organization or agency of a religious denomination which has authority to annul or dissolve a marriage under the rules of such denomination.

7. No final judgment of annulment or divorce shall be entered, notwithstanding the filing of the plaintiff's sworn statement prescribed by this section, if the clergyman or minister who has solemnized the marriage certifies, in a sworn statement, that he or she has solemnized the marriage and that, to his or her knowledge, the plaintiff has failed to take all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce, provided that the said clergyman or minister is alive and available and competent to testify at the time when final judgment would be entered.

8. Any person who knowingly submits a false sworn statement under this section shall be guilty of making an apparently sworn false statement in the first degree and shall be punished in accordance with section 210.40 of the penal law.

9. Nothing in this section shall be construed to authorize any court to inquire into or determine any ecclesiastical or religious issue. The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry, except as provided in subdivision eight of this section.

**§ 254 Dom. Rel. Confidentiality.**

1. Notwithstanding any other provision of law, in any proceeding for custody, divorce, separation or annulment, whether or not an order of protection or temporary order of protection is sought or has been sought in the past, the court may, upon its own motion or upon the motion of any party or the law guardian, authorize any party or the child to keep his or her address confidential from any adverse party or the child, as appropriate, in any pleadings or other papers submitted to the court, where the court finds that the disclosure of the address or other identifying information would pose an unreasonable risk to the health or safety of a party or the child. Pending such a finding, any address or other identifying information of the child or party seeking confidentiality shall be safeguarded and sealed in order to prevent its inadvertent or unauthorized use or disclosure.

2. Notwithstanding any other provision of law, if a party or a child has resided or resides in a residential program for victims of domestic violence as defined in section four hundred fifty-nine-a of the social services law, the present address of the party and the child and the address of the residential program for victims of domestic violence shall not be revealed.

3. Upon authorization as provided in subdivision one of this section, the identifying information shall be sealed and shall not be disclosed in any pleading or other document filed in a proceeding under this article. The court shall designate the clerk of the court or such other disinterested person as it deems appropriate, with consent of such disinterested person, as the agent for service of process for the party whose address is to remain confidential and shall notify the adverse party of such designation in writing. The clerk or disinterested person designated by the court shall, when served with process or other papers on behalf of the party whose address is to remain confidential, promptly notify such party whose address is to remain confidential and forward such process or papers to him or her.

4. In any case in which such a confidentiality authorization is made, the party whose address is to remain confidential shall inform the clerk of the court or disinterested person designated by the court of any change in address for purposes of receipt of service or process or any papers.

**Note:** Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.