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NOW - NEW YORK STATE OPPOSE MEMO

A-00330 and S-291 - Presumption of Joint Custody / Shared Parenting for Minor Children March 2005

The National Organization for Women, New York State, Inc. strongly urges the Assembly and Senate of New York to oppose this legislation. This bill seeks to "create the statutory of presumption of joint custody for all minor children whose parents are no longer married, so that both parents can continue to share in the responsibilities and duties of the children's upbringing."

"Shared Parenting" is defined as "the award of custody to both parties so that both parties share equally the legal responsibility and control of such child and share equally the living experience in time and physical care of assure frequent and continuing contact with both parties, as the court deems to be in the best interests of the child, taking into consideration the location and circumstances of each party."

The assertion that "shared parenting is in the best interests of minor children" is on its face untrue and is directly contradicted by the body of academic research on this subject, as well as the disastrous experience of California (one of the first states to adopt this experiment).

The following facts continue to be true with respect to mandatory joint custody of the children:

* To arbitrarily reassign a child's primary caregiver, or disrupt a child's attachment to a primary caregiver creates an unstable, even traumatic situation for the children.

* Increased father involvement does not necessarily result in positive outcomes for children. This involvement by the father will have positive consequences only when it is the arrangement of choice for the particular family and when there is a relatively cooperative and low conflict relationship between the parents.

* In families where there is a high level of conflict between the mother and father, joint custody arrangements are harmful to children, placing them in the middle of ongoing bickering and a stressful, unstable environment with no escape.

* Where there is domestic violence, joint custody/shared parenting arrangements are NEVER appropriate.

* Legislating "shared parenting" will not make it so, or guaranty continued relationships between fathers and children.

* Joint Custody bills have been designed to establish rights without responsibilities. Joint custody facilitates using the children to maintain access to a former partner and ongoing control of their life. Father's rights groups continue to push for this legislation in spite of the body of evidence that in the majority of cases, joint custody is not in the best interest of the children.

* Fathers Rights groups continue to promote the myth that courts are biased in favor of mothers. In litigated cases, father who sue for custody almost always win. In fact, fathers are often awarded sole custody even when sexual and physical abuse of the children is alleged and substantiated. According to The American Judges Association, 70% of the time the abuser convinces the court to give him custody.

* Existing law currently says that there is no preference for shared parenting in New York. The court may award joint custody, but in practice rarely does so. Legislators should be aware that the reason that more mothers have custody after divorce is that most arrangements are worked out between the parents. 95% of the litigated cases, including matrimonial cases, are settled out of court.

* Legislation providing for mandated joint custody ignores the issues of domestic abuse, including child abuse. Mothers are too often held more accountable by Child Protective Services for child abuse perpetrated by the father, than the fathers themselves are. Mothers often accused of Parental Alienation Syndrome, discourages women from protecting their children since raising the issue of child abuse leads to retaliatory accusations of alienating the children, and frequently, to an award of custody to the abusive father.

The National Organization for Women-New York State, Inc. is in favor of primary caregiver presumption. This means that the parent who assumed primary responsibility for the children during the marriage, either father or mother, should continue to be the custodial parent.

Establishment of a presumption of joint custody is harmful to the children. NOW New York State urges the passage of primary caretaker legislation, a realistic solution for children. NOW New York State urges the New York Legislators to defeat A00330/S291 and to look to research regarding the damage to children by passing mandated joint custody. Specifically: Richard Neely, former Chief Justice of the West Virginia Court of Appeals, citing West Virginia primary caretaker presumption law and its effectiveness.

Marcia A. Pappas, President, NOW-NYS, Inc.
Lori Gardner, Executive VP
Barbara Kirkpatrick, Legislative Vice President

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Thursday, November 10, 2005

Bill Summary - A00330

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A00330 Summary:

BILL NO A00330

SAME AS Same as Uni. S 291

SPONSOR Weisenberg

COSPNSR Galef, McEneny, Ignizio, Casale, O`Mara, Wirth, Seddio, Aubertine

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Amd SS70 & 240, add S240-d, Dom Rel L

Establishes the presumption in matrimonial proceedings for awarding shared parenting of minor children in the absence of an allegation that shared parenting would be detrimental to the best interests of the child; establishes an order of preference in awarding custody; defines shared parenting and parenting plan.

A00330 Actions:

BILL NO A00330

01/12/2005 referred to judiciary
02/11/2005 reference changed to children and families

A00330 Votes:

A00330 Memo:

BILL NUMBER:A330

TITLE OF BILL: An act to amend the domestic relations law, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings

PURPOSE: To create a statutory presumption of joint custody for all minor children whose parents are no longer married, so that both parents can continue to share in the responsibilities and duties of the children`s upbringing.

SUMMARY OF PROVISIONS: Section 1 of the bill sets forth the legislative intent for creating a presumption of joint custody in proceedings where the custody of minor children is at issue. It further states that continuing contact with both parents through shared parenting is in the best interests of minor children.

Section 2 of the bill amends S 70(a) of the Domestic Relations Law to require the court to award custody to both parents in the absence of allegations that shared parenting would be detrimental to the child. The burden of proof that shared parenting would be detrimental is placed upon the parent requesting sole custody.

Section 3 of the bill amends S 240(1) of the Domestic Relations Law to establish an order of preference for the awarding of custody of minor children in the case of divorce. The first preference is for joint custody to be awarded by the court. If the court opts not to award joint custody it must state its reasons for denial. The order of joint custody may be amended by the court if it is shown that it would be in the best interests of the child. The second preference would be to either parent based on the court`s determination of the best interests of the child. The third preference would be to the person with whom the child has been living in a wholesome and stable environment. The final preference would be to another person the court deems suitable.

Section 4 of the bill adds a new S 240(d) to the Domestic Relations Law to create a definition of shared parenting. Under this definition both parents would remain legally responsible and in control of their children so that both parents share in the care and upbringing of their children. It also sets forth requirements of a "parenting plan."

Section 5 of the bill establishes the effective date.

EXISTING LAW: Currently, there is no preference for shared parenting in New York. The court may award joint custody, but in practice rarely does so.

JUSTIFICATION: Whether the parents are married or not, each should be assumed to have equally important responsibilities in child rearing. In families of divorce, as in households where the parents live together, the social attitude concerning the alleged primacy of maternal influence in the lives of children is an unbalanced perspective and is potentially

damaging to children. Current psychological studies, including state sponsored projects spanning 38 states, reveal convergent findings that children of all ages have better adjustment after divorce when they have full parenting participation from both parents. Custody decisions that exclude or narrowly limit the participation of either parent tend ultimately to have negative impact on children.

According to reports by the National Institute of Mental Health, custody arrangements which effectively remove one parent from a child`s life interferes with the child`s normal development. Although nothing in current law prohibits a court of competent jurisdiction from awarding shared parenting of a child to both parents, it is rarely done by the courts, or only in instances where it is requested by both parents. Statistics have shown that in more than 95% of divorce or separation cases, the mother was awarded sole custody of the child, with the father limited to rights of visitation.

A shared parenting arrangement would allow the child to enjoy continued contact with both parents and the extended family on each side. Presumptive shared parenting protects and shifts the litigation burden away from the cooperative parent, and fosters a context for mediation to the child`s advantage. Because presumptive shared parenting reduces litigation and re-litigation, it will also reduce the stress inherent in the divorce process. To the extent that policy is driven by conflict reduction, shared parenting is the obvious starting point. Joint physical custody also satisfies the top positive predictor of child support compliance, which is involvement in parenting. Most importantly, it recognizes that children are not property or bargaining chips. It reassures the child that both parents are equal. As this law would assure that neither parent is demoted in the children`s eyes, it affirms to the children what they need to feel, that both parents are equal.

FISCAL IMPLICATIONS: None

LOCAL FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect November first next succeeding the date on which it shall have become a law and shall apply to actions and proceedings commenced on and after such date.

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NOW - NEW YORK STATE OPPOSE MEMO
Mandatory Joint Custody

A3181 (Benjamin) A6743 (Thiele)

Current New York law was enunciated by Judge Charles Breitel for the NY Court of Appeals in Braiman v. Braiman. "Joint custody is encouraged, primarily as a voluntary alternative for relatively stable, amicable parents behaving in a mature, civilized fashion. As court-ordered arrangements imposed upon…embattled and embittered parents … [joint custody] can only enhance family chaos." Braiman is still good law and should not be overturned.

Each year, the National Organization for Women-New York State fights back against proposed legislation that will hurt mothers and their children.

A case for "Primary Caregiver Presumption." The National Organization for Women-New York State has always favored a primary caregiver (usually the mother) presumption to ensure stability and continuity of care for children. If the father has not been involved in a major way in the lives of his children during the marriage, why would that involvement increase after divorce?

Primary caregiver presumption legislation would cut down on a bargaining tool where one parent agrees to forgo a custody battle if the other agrees to a less favorable financial settlement. Richard Neely, a lawyer in West Virginia, has acknowledged that he often advised his male clients to make that threat. When he became Chief Justice of West Virginia Supreme Court of Appeals, he was responsible for the passage of a primary caregiver presumption.

Contrary to the argument of so called father's rights groups, mothers are NOT awarded custody in 95% of the divorce cases. Since only 5% of cases are litigated, mothers get custody by agreement of the parties, whether or not the agreement is coerced as described above.

Father's rights groups are in the forefront of the push for legislation establishing a presumption in favor of joint custody. These groups emphasize that many states already have some form of mandated joint custody. The first of these was California. After seeing the effects on children: convoluted living arrangements between relocated, possibly remarried parents, children being transferred from parent to parent in front of police stations, children being enrolled in two separate schools and other horror stories, the California legislature, in 1989 revoked its presumption and the statute now established "neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan which is in the best interest of the child or children."

A New York Times article dated March 26, 1995, describes a voluntary joint custody arrangement between parents who both wanted their child and had no reason to doubt the prevailing wisdom that it would best for him to continue to be raised by both parents. This child was "ferried" first across town, then across the State (California) and then later across the country. After eight years, the author (the father with whom the child resided during the school year) writes "… you would think he would be used to it by now. He is not. His emotional preparation begins a week or so before he flies to visit with his mother … He becomes, to varying degrees, anxious, lethargic, somber and withdrawn from his friends. The back and forth seems only to have become tougher on him as he has grown older." He concludes, "Joint custody may work for divorcing parents. But it's a terrible arrangement for the children."

For over 20 years, father's rights groups have been claiming that courts discriminate against fathers in custody decisions. A continuum of studies shows that when fathers sue for custody, in the majority of cases, fathers win sole custody. Unbelievably, this is true even when fathers have been physically and/or sexually abusive.

Children should be seen, heard and believed. There is a pervasive attitude in the courts that allegations of child abuse are not true. Andrew Schepard, founder of PEACE, a statewide parental education program, in the NY Law Journal column of July 29, 1998, discussed an Australian study of child abuse charges. He stated that "many professionals involved in such cases [of child abuse] believe that the allegations are presumptively false, simply a nuclear weapon in the ongoing divorce custody wars." The study found, to his surprise that only 9% of the allegations were unproven. According to the US Department of Health and Human Services, during 2005, an estimated 899,000 children in the 50 States, DC and Puerto Rico were determined to be victims of abuse or neglect. Of the perpetrators who were parents, more than 90% were the biological parents, 4.3 % were the stepparents, and 0.7 % was the adoptive parents of the victim. The parental relationship was unknown for 4.5 % of the victims.

The truth about So-Called PAS: The proposed legislation does not acknowledge the devastation wreak by domestic violence and child abuse, although they state that the court must consider the affects of domestic violence upon the best interests of the child. However, because of the widespread acceptance in the courts of PAS (parental alienation syndrome) mothers are afraid to even raise the issue of child abuse for fear of losing custody and possibly even visitation. Often, mothers are advised by their attorneys and domestic violence counselors not to raise that issue in court because of the risk that it will backfire. The "friendly parent" concept intimidates the parent who has experienced an embattled relationship which makes the future of joint custody predictable.

Joint custody over the wishes of one parent facilitates using the children to maintain access and control over the other parent's life. NOW receives dozens of calls asking how a custodial parent can enforce visitation responsibilities. Under current law, there are no penalties for failure to exercise visitation. This bill has been designed to establish rights without responsibilities. There is no way to enforce joint custody obligations or shared parenting schedules.

The father's rights groups and others who are proponents of this bill point to the breakdown of the family throughout the country, the epidemic of single mothers, the increasing of number of children in trouble and rising population of young people in prison. These, indeed, are ills within our society; however the causes are complex. Joint custody awards won't affect the multitude of families in disarray for various reasons. This bill certainly does not contribute to a solution for these problems.

We do not know the extent to which this bill will affect child support awards. Father's rights groups have been lobbying for years to reduce child support obligations based on the time they are with their children. This bill has the potential to cause the lowering of the child support awards, certainly not in the best interest of the children.

Wrongly formulated legislation apportions child support based on the percentage of time the child spends with each parent. The Honorable Judith M. Reichler, former support magistrate (formerly known as hearing examiner) in NY County, served on the committee to develop the child support guidelines (CSSA). In testimony she presented to the NYS Bar Association in January 2006, she stated the following: "It is simply more expensive to have joint physical custody because, among other things, of the necessity for duplication of certain household costs in each parent's home." She went on to say that a proportional offset method for calculating child support has the potential of depriving children of much needed support. The intent of the sponsors of the child support guidelines was to protect children from unfairly bearing the economic burden of parental separation and allowing them to share in the economic status of both their parents.

Proposed legislation that mandates joint custody is in the best interest of fathers; certainly not in the best interests of children.

New York State is in the advantageous position of availing itself of hindsight. Let us review the results of the leap into forced joint custody in other states before taking this misstep.

Marcia A. Pappas
President

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MO SB290 Modifies provisions relating to the education of gifted children
TX HB1871 Relating to the duty of the comptroller to report sales and use tax information...
MS SC578 Recognize success of Madison Central Soccer Coach Cecil Hinds.
MS SC589 Mourn the passing of Honorable Casey Pace, longtime Director of the Legislative...
TX SB580 Relating to water intake requirements for the Lower Colorado River Aut...
MS HB490 UN Agenda 21; prohibit state from adopting.
MS SC585 Commend and congratulate Newton County Academy Generals for winning the...
FL S1290 Dental Licensing
MS SC579 Recognize leadership and legacy of longtime Wayne General Hospital Administrator...

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Bill Text: NY A03181 | 2009-2010 | General Assembly | Introduced

New York Assembly Bill 3181 *(Prior Session Legislation)*

NY State Legislature page for A03181

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Introduced

Bill Title: An act to amend the domestic relations law, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings

Spectrum: Bipartisan Bill

Status: *(Introduced - Dead)* 2010-01-06 - referred to judiciary [A03181 Detail]

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S T A T E O F N E W Y O R K

3181
2009-2010 Regular Sessions
I N A S S E M B L Y
January 23, 2009

Introduced by M. of A. BENJAMIN, FINCH, GALEF, McDONOUGH, KOLB, SCOZZAFAVA, ALESSI, BOYLE -- Multi-Sponsored by -- M. of A. BURLING, CALHOUN, ENGLEBRIGHT, FITZPATRICK, GIANARIS, KOON, MAGEE, McENENY, ORTIZ, PERRY, QUINN, REILLY, THIELE, TOWNS, TOWNSEND, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds and declares that it is the public policy of the state to assure minor children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child-rearing in order to effectuate this policy. At the outset and thereafter, in any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of minor children as may seem necessary or proper. The provisions of this act establish a presumption, affecting the burden of proof, that shared parenting is in the best interests of minor children.

S 2. Subdivision (a) of section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended to read as follows:

(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] SHALL award the natural guardianship, charge and custody of such child to [either parent] BOTH PARENTS, IN THE ABSENCE OF AN ALLEGATION THAT SUCH SHARED PARENTING WOULD BE DETRIMENTAL

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

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TO SUCH CHILD, 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] THE BURDEN OF PROOF THAT SUCH SHARED PARENTING WOULD BE DETRIMENTAL TO SUCH CHILD SHALL BE UPON THE PARENT REQUESTING SOLE CUSTODY. THE court shall determine solely what is for the best interest of the child, and what will best promote [its] THE CHILD'S welfare and happiness, and make award accordingly.

S 3. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 538 of the laws of 2008, is amended to read as follows:

(a) (I) 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. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child. 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]

(II) CUSTODY SHALL BE AWARDED IN THE FOLLOWING ORDER OF PREFERENCE, ACCORDING TO THE BEST INTERESTS OF THE CHILD:

(1) TO BOTH PARENTS JOINTLY PURSUANT TO SECTION TWO HUNDRED FORTY-D OF THIS ARTICLE. IN SUCH CASES THE COURT MUST REQUIRE THE PARENTS TO SUBMIT A PARENTING PLAN AS DEFINED IN SUBDIVISION TWO OF SECTION TWO HUNDRED FORTY-D OF THIS ARTICLE FOR IMPLEMENTATION OF THE CUSTODY ORDER OR THE PARENTS ACTING INDIVIDUALLY OR IN CONCERT MAY SUBMIT A CUSTODY

IMPLEMENTATION PLAN TO THE COURT PRIOR TO ISSUANCE OF A CUSTODY DECREE. THERE SHALL BE A PRESUMPTION, AFFECTING THE BURDEN OF PROOF, THAT SHARED PARENTING IS IN THE BEST INTERESTS OF A MINOR CHILD UNLESS THE PARENTS HAVE AGREED TO AN AWARD OF CUSTODY TO ONE PARENT OR SO AGREE IN OPEN COURT AT A HEARING FOR THE PURPOSE OF DETERMINING CUSTODY OF A MINOR CHILD OF THE MARRIAGE OR THE COURT FINDS THAT SHARED PARENTING WOULD BE DETRIMENTAL TO A PARTICULAR CHILD OF A SPECIFIC MARRIAGE. FOR THE PURPOSE OF ASSISTING THE COURT IN MAKING A DETERMINATION WHETHER AN AWARD OF SHARED PARENTING IS APPROPRIATE, THE COURT MAY DIRECT THAT AN INVESTIGATION BE CONDUCTED. IF THE COURT DECLINES TO ENTER AN ORDER AWARDING SHARED PARENTING PURSUANT TO THIS PARAGRAPH, THE COURT SHALL STATE IN ITS DECISION THE REASONS FOR DENIAL OF AN AWARD OF SHARED PARENTING. IN JURISDICTIONS HAVING A PRIVATE OR PUBLICLY-SUPPORTED CONCILIATION SERVICE, THE COURT OR THE PARTIES MAY, AT ANY TIME, PURSUANT TO LOCAL RULES OF COURT, CONSULT WITH THE CONCILIATION SERVICE FOR THE PURPOSE OF ASSISTING THE PARTIES TO FORMULATE A PLAN FOR IMPLEMENTATION OF THE CUSTODY ORDER OR TO RESOLVE ANY CONTROVERSY WHICH HAS ARISEN IN THE IMPLEMENTATION OF A PLAN FOR CUSTODY. ANY ORDER FOR SHARED PARENTING MAY BE MODIFIED OR TERMINATED UPON THE PETITION OF ONE OR BOTH PARENTS OR ON THE COURT'S OWN MOTION IF IT IS SHOWN THAT THE BEST INTER-

ESTS OF THE CHILD REQUIRE MODIFICATION OR TERMINATION OF THE SHARED PARENTING ORDER. ANY ORDER FOR THE CUSTODY OF A MINOR CHILD OF A MARRIAGE ENTERED BY A COURT IN THIS STATE OR IN ANY OTHER STATE, SUBJECT TO JURISDICTIONAL REQUIREMENTS, MAY BE MODIFIED AT ANY TIME TO AN ORDER OF SHARED PARENTING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(2) TO EITHER PARENT, IN WHICH CASE, THE COURT, IN MAKING AN ORDER FOR CUSTODY TO EITHER PARENT SHALL CONSIDER, AMONG OTHER FACTORS, WHICH PARENT IS MORE LIKELY TO ALLOW THE CHILD OR CHILDREN FREQUENT AND CONTINUING CONTACT WITH THE NONCUSTODIAL PARENT, AND SHALL NOT PREFER A PARENT AS CUSTODIAN BECAUSE OF THAT PARENT'S GENDER. THE BURDEN OF PROOF THAT SHARED PARENTING WOULD NOT BE IN THE CHILD'S BEST INTEREST SHALL BE UPON THE PARENT REQUESTING SOLE CUSTODY. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ACCESS TO RECORDS AND INFORMATION PERTAINING TO A MINOR CHILD, INCLUDING BUT NOT LIMITED TO MEDICAL, DENTAL AND SCHOOL RECORDS, SHALL NOT BE DENIED TO A PARENT BECAUSE THE PARENT IS NOT THE CHILD'S CUSTODIAL PARENT.

(3) IF TO NEITHER PARENT, TO THE PERSON OR PERSONS IN WHOSE HOME THE CHILD HAS BEEN LIVING IN A NURTURING AND STABLE ENVIRONMENT.

(4) TO ANY OTHER PERSON OR PERSONS DEEMED BY THE COURT TO BE SUITABLE AND ABLE TO PROVIDE A NURTURING AND STABLE ENVIRONMENT.

BEFORE THE COURT MAKES ANY ORDER AWARDING CUSTODY TO A PERSON OR PERSONS OTHER THAN A PARENT WITHOUT THE CONSENT OF THE PARENTS, IT SHALL MAKE A FINDING THAT AN AWARD OF CUSTODY TO A PARENT WOULD BE DETRIMENTAL TO THE CHILD AND THE AWARD TO A NON-PARENT IS REQUIRED TO SERVE THE BEST INTERESTS OF THE CHILD. ALLEGATIONS THAT PARENTAL CUSTODY WOULD BE DETRIMENTAL TO THE CHILD, OTHER THAN A STATEMENT OF THAT ULTIMATE FACT, SHALL NOT APPEAR IN THE PLEADINGS. THE COURT MAY, IN ITS DISCRETION, EXCLUDE THE PUBLIC FROM THE HEARING ON THIS ISSUE. THE COURT SHALL STATE IN WRITING THE REASON FOR ITS DECISION AND WHY THE AWARD MADE WAS FOUND TO BE IN THE BEST INTERESTS OF THE CHILD. ANY direction MADE PURSUANT TO THIS SUBDIVISION 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

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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.

S 4. The domestic relations law is amended by adding a new section 240-d to read as follows:

S 240-D. CUSTODY OF CHILDREN. 1. WHERE THE COURT CONSIDERS AWARDING SHARED PARENTING PURSUANT TO THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THIS ARTICLE, "SHARED PARENTING", SHALL MEAN AN ORDER AWARDING CUSTODY OF THE CHILD TO BOTH PARTIES SO THAT BOTH PARTIES SHARE EQUALLY THE LEGAL RESPONSIBILITY AND CONTROL OF SUCH CHILD AND SHARE EQUALLY THE LIVING EXPERIENCE IN TIME AND PHYS-

ICAL CARE TO ASSURE FREQUENT AND CONTINUING CONTACT WITH BOTH PARTIES, AS THE COURT DEEMS TO BE IN THE BEST INTERESTS OF THE CHILD, TAKING INTO CONSIDERATION THE LOCATION AND CIRCUMSTANCES OF EACH PARTY. THE TERM "SHARED PARENTING", SHALL BE CONSIDERED INTERCHANGEABLE WITH "NEARLY EQUAL SHARED PARENTING". AN AWARD OF JOINT PHYSICAL AND LEGAL CUSTODY OBLIGATES THE PARTIES TO EXCHANGE INFORMATION CONCERNING THE HEALTH, EDUCATION AND WELFARE OF THE MINOR CHILD, AND UNLESS ALLOCATED, APPORTIONED OR DECREED, THE PARENTS OR PARTIES SHALL CONFER WITH ONE ANOTHER IN THE EXERCISE OF DECISION-MAKING RIGHTS, RESPONSIBILITIES AND AUTHORITY.

2. FOR THE PURPOSES OF THIS ARTICLE A "PARENTING PLAN", REQUIRED TO BE SUBMITTED TO THE COURT PURSUANT TO CLAUSE ONE OF SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THIS ARTICLE, SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) THE LEGAL RESPONSIBILITIES OF EACH PARENT;

(B) A WEEKLY PARENTING SCHEDULE;

(C) A HOLIDAY AND VACATION PARENTING SCHEDULE;

(D) A SCHEDULE FOR SPECIAL OCCASIONS, INCLUDING BIRTHDAYS;

(E) A DESCRIPTION OF ANY SPECIFIC DECISION MAKING AREAS FOR EACH PARENT PROVIDED, HOWEVER, THAT BOTH PARENTS SHALL CONFER AND JOINTLY DETERMINE MAJOR ISSUES AFFECTING THE WELFARE OF THE CHILD INCLUDING HEALTH, EDUCATION, DISCIPLINE AND RELIGION;

(F) IF APPLICABLE, THE NEED FOR ANY AND ALL OF THE PARTIES TO PARTICIPATE IN COUNSELING;

(G) ANY RESTRICTIONS ON EITHER PARENT WHEN IN PHYSICAL CONTROL OF THE CHILD OR CHILDREN; AND

(H) PROVISIONS FOR MEDIATION OF DISPUTES.

3. ONE PARENT MAY BE DESIGNATED AS A PUBLIC WELFARE RECIPIENT IN SITUATIONS WHERE PUBLIC WELFARE AID IS DEEMED NECESSARY AND APPROPRIATE. IN MAKING AN ORDER OF SHARED PARENTING, THE COURT SHALL SPECIFY THE RIGHT OF EACH PARENT TO THE PHYSICAL CONTROL OF THE CHILD IN SUFFICIENT DETAIL TO ENABLE A PARENT DEPRIVED OF THAT CONTROL TO ENFORCE THE COURT ORDER AND TO ENABLE LAW ENFORCEMENT AUTHORITIES TO IMPLEMENT LAWS FOR RELIEF OF PARENTAL KIDNAPPING AND CUSTODIAL INTERFERENCE.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to actions and proceedings commenced on and after such date.

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