

Domestic Relations Law §§ 170, 236, 237, 238

McKinney's DRL § 170

**Effective: October 12, 2010**McKinney's Consolidated Laws of New York Annotated [Currentness](#)**Domestic Relations Law** ([Refs & Annos](#))[Chapter 14](#). Of the Consolidated Laws ([Refs & Annos](#))[Article 10](#). Action for Divorce ([Refs & Annos](#))**→ § 170. Action for divorce**

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

- (1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.
- (2) The abandonment of the plaintiff by the defendant for a period of one or more years.
- (3) The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.
- (4) The commission of an act of adultery, provided that adultery for the purposes of articles ten, eleven, and eleven-A of this chapter, is hereby defined as the commission of an act of 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.
- (7) The relationship between husband and wife has broken down irretrievably for a period of at least six months,

provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

CREDIT(S)

(Added L.1966, c. 254, § 2. Amended L.1967, c. 648, § 1; L.1968, c. 700, §§ 1, 2; L.1969, c. 964, § 1; L.1970, c. 835, §§ 1, 2; L.1970, c. 867, § 1; L.1971, c. 801, §§ 1, 2; L.1972, c. 719, § 1; L.1974, c. 920, § 7; L.1974, c. 1047, § 1; L.1975, c. 415, § 2; [L.2003, c. 264, § 53, eff. Nov. 1, 2003](#); [L.2010, c. 384, § 1, eff. Oct. 12, 2010](#).)

HISTORICAL AND STATUTORY NOTES

2010 Main Volume

L.2010, c. 384 legislation

Subd. 7. L.2010, c. 384, § 1, added subd. 7.

L.2010, c. 384, § 2, provides:

"This act shall take effect on the sixtieth day [Oct. 12, 2010] after it shall have become a law and shall apply to matrimonial actions commenced on or after such effective date."

L.2003, c. 264 legislation

Subd. (4). L.2003, c. 264, § 53, substituted "intercourse, oral sexual conduct or anal sexual conduct" for "or deviate sexual intercourse"; substituted "Oral sexual conduct and anal sexual conduct include, but are" for "Deviate sexual intercourse includes, but"; and, in two instances, substituted "section" for "Section".

Derivation

Former section **170**, in part, added L.1962, c. 313, § 7, and repealed by L.1966, c. 254, § 2. Said section **170** was from CPA § 1147; repealed by [CPLR 10001](#). Said section 1147 derived from CCP § 1756; originally revised from R.S., pt. 2, c. 8, tit. 1, § 38.

McKinney's D. R. L. § **170**, NY DOM REL § **170**

Current through L.2010, chapters 1 to 59 and 61 to 481.

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Effective: October 13, 2010

McKinney's Consolidated Laws of New York Annotated [Currentness](#)

Domestic Relations Law ([Refs & Annos](#))

[Chapter 14](#). Of the Consolidated Laws ([Refs & Annos](#))

[Article 13](#). Provisions Applicable to More Than One Type of Matrimonial Action ([Refs & Annos](#))

→ § 236. Special controlling provisions; prior actions or proceedings; new actions or proceedings

Except as otherwise expressly provided in this section, the provisions of part A shall be controlling with respect to any action or proceeding commenced prior to the date on which the provisions of this section as amended become effective [\[FN1\]](#) and the provisions of part B shall be controlling with respect to any action or proceeding commenced on or after such effective date. Any reference to this section or the provisions hereof in any action, proceeding, judgment, order, rule or agreement shall be deemed and construed to refer to either the provisions of part A or part B respectively and exclusively, determined as provided in this paragraph any inconsistent provision of law notwithstanding.

PART A

PRIOR ACTIONS OR PROCEEDINGS

Alimony, temporary and permanent. 1. Alimony. In any action or proceeding brought (1) during the lifetime of both parties to the marriage to annul a marriage or declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, the court may direct either spouse to provide suitably for the support of the other as, in the court's discretion, justice requires, having regard to the length of time of the marriage, the ability of each spouse to be self supporting, the circumstances of the case and of the respective parties. Such direction may require the payment of a sum or sums of money either directly to either spouse or to third persons for real and personal property and services furnished to either spouse, or for the rental of or mortgage amortization or interest payments, insurance, taxes, repairs or other carrying charges on premises occupied by either spouse, or for both payments to either spouse and to such third persons. Such direction shall be effective as of the date of the application therefor, and any retroactive amount of alimony due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary alimony which has been paid. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by either spouse (1) by reason of a finding by the court that a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to either spouse in an action in which jurisdiction over the person of the other spouse was not obtained, or (2) by reason of the misconduct of the other spouse, unless such misconduct would itself constitute grounds for separation or divorce, or (3) by reason of a failure of proof of the grounds of either spouse's action or counterclaim. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to either spouse under this section with any amount payable to either spouse under [section two hundred forty](#) of this chapter. Upon the application of either spouse, upon such notice to the other party and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or by final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or

declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of [section two hundred forty-four](#) of this chapter, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc based on newly discovered evidence.

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

PART B

NEW ACTIONS OR PROCEEDINGS

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

a. The term "maintenance" shall mean payments provided for in a valid agreement between the parties or awarded by the court in accordance with the provisions of subdivisions five-a and six of this part, to be paid at fixed intervals for a definite or indefinite period of time, but an award of maintenance shall terminate upon the death of either party or upon the 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. a. Except as provided in subdivision five of this part, the provisions of this part shall be applicable to actions for an annulment or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage, for a declaration of the validity or nullity of a foreign judgment of divorce, for a declaration of the validity or nullity of a marriage, and to proceedings to obtain maintenance or a distribution of marital property following a foreign judgment of divorce, commenced on and after the effective date of this part. Any application which seeks a modification of a judgment, order or decree made in an action commenced prior to the effective date of this part shall be heard and determined in accordance with the provisions of part A of this section.

b. With respect to matrimonial actions which commence on or after the effective date of this paragraph, the plaintiff shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy of the automatic orders set forth in this paragraph. The automatic orders shall be binding upon the plaintiff in a matrimonial action immediately upon the filing of the summons, or summons and complaint, and upon the defendant immediately upon the service of the automatic orders with the summons. The automatic orders shall remain in full force and effect during the pendency of the action, unless terminated, modified or amended by further order of the court upon motion of either of the parties or upon written agreement between the parties duly executed and acknowledged. The automatic orders are as follows:

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying

for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court; except that any party who is already in pay status may continue to receive such payments thereunder.

(3) Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

3. Agreement of the parties. An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded. Notwithstanding any other provision of law, an acknowledgment of an agreement made before marriage may be executed before any person authorized to solemnize a marriage pursuant to [subdivisions one, two and three of section eleven](#) of this chapter. Such an agreement may include (1) a contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will; (2) provision for the ownership, division or distribution of separate and marital property; (3) provision for the amount and duration of maintenance or other terms and conditions of the marriage relationship, subject to the provisions of [section 5-311 of the general obligations law](#), and provided that such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment; and (4) provision for the custody, care, education and maintenance of any child of the parties, subject to the provisions of [section two hundred forty](#) of this article. Nothing in this subdivision shall be deemed to affect the validity of any agreement made prior to the effective date of this subdivision.

4. Compulsory financial disclosure. a. In all matrimonial actions and proceedings in which alimony, maintenance or support is in issue, there shall be compulsory disclosure by both parties of their respective financial states. No showing of special circumstances shall be required before such disclosure is ordered. A sworn statement of net worth shall be provided upon receipt of a notice in writing demanding the same, within twenty days after the receipt thereof. In the event said statement is not demanded, it shall be filed with the clerk of the court by each party, within ten days after joinder of issue, in the court in which the proceeding is pending. As used in this part, the term "net worth" shall mean the amount by which total assets including income exceed total liabilities including fixed financial obligations. It shall include all income and assets of whatsoever kind and nature and wherever situated and shall include a list of all assets transferred in any manner during the preceding three years, or the length of the marriage, whichever is shorter; provided, however that transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth. All such sworn statements of net worth shall be accompanied by a current and representative paycheck stub and the most recently filed state and federal income tax returns including a copy of the W-2(s) wage and tax statement(s) submitted with the returns. In addition, both parties shall provide information relating to any and all group health plans available to

them for the provision of care or other medical benefits by insurance or otherwise for the benefit of the child or children for whom support is sought, including all such information as may be required to be included in a qualified medical child support order as defined in section six hundred nine of the employee retirement income security act of 1974 (29 USC 1169) including, but not limited to: (i) the name and last known mailing address of each party and of each dependent to be covered by the order; (ii) the identification and a description of each group health plan available for the benefit or coverage of the disclosing party and the child or children for whom support is sought; (iii) a detailed description of the type of coverage available from each group health plan for the potential benefit of each such dependent; (iv) the identification of the plan administrator for each such group health plan and the address of such administrator; (v) the identification numbers for each such group health plan; and (vi) such other information as may be required by the court. Noncompliance shall be punishable by any or all of the penalties prescribed in [section thirty-one hundred twenty-six of the civil practice law and rules](#), in examination before or during trial.

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

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

b. Separate property shall remain such.

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

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

(1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;

(2) the duration of the marriage and the age and health of both parties;

(3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;

(4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;

(5) the loss of health insurance benefits upon dissolution of the marriage;

(6) any award of maintenance under subdivision six of this part;

(7) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;

- (8) the liquid or non-liquid character of all marital property;
- (9) the probable future financial circumstances of each party;
- (10) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;
- (11) the tax consequences to each party;
- (12) the wasteful dissipation of assets by either spouse;
- (13) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;
- (14) any other factor which the court shall expressly find to be just and proper.

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

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

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

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

5-a. Temporary maintenance awards. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action the court shall make its award for temporary maintenance pursuant to the provisions of this subdivision.

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

- (1) "Payor" shall mean the spouse with the higher income.
- (2) "Payee" shall mean the spouse with the lower income.
- (3) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of action.
- (4) "Income" shall mean:
 - (a) income as defined in the child support standards act and codified in [section two hundred forty](#) of this article

and [section four hundred thirteen of the family court act](#); and

(b) income from income producing property to be distributed pursuant to subdivision five of this part.

(5) "Income cap" shall mean up to and including five hundred thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand twelve and every two years thereafter, the payor's annual income amount shall increase by the product of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the two year period rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(6) "Guideline amount of temporary maintenance" shall mean the sum derived by the application of paragraph c of this subdivision.

(7) "Guideline duration" shall mean the durational period determined by the application of paragraph d of this subdivision.

(8) "Presumptive award" shall mean the guideline amount of the temporary maintenance award for the guideline duration prior to the court's application of any adjustment factors as provided in subparagraph one of paragraph e of this subdivision.

(9) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in [section two hundred forty](#) of this article and [section four hundred thirteen of the family court act](#).

c. The court shall determine the guideline amount of temporary maintenance in accordance with the provisions of this paragraph after determining the income of the parties:

(1) Where the payor's income is up to and including the income cap:

(a) the court shall subtract twenty percent of the income of the payee from thirty percent of the income up to the income cap of the payor.

(b) the court shall then multiply the sum of the payor's income up to and including the income cap and all of the payee's income by forty percent.

(c) the court shall subtract the income of the payee from the amount derived from clause (b) of this subparagraph.

(d) the guideline amount of temporary maintenance shall be the lower of the amounts determined by clauses (a) and (c) of this subparagraph; if the amount determined by clause (c) of this subparagraph is less than or equal to zero, the guideline amount shall be zero dollars.

(2) Where the income of the payor exceeds the income cap:

(a) the court shall determine the guideline amount of temporary maintenance for that portion of the payor's income that is up to and including the income cap according to subparagraph one of this paragraph, and, for the payor's income in excess of the income cap, the court shall determine any additional guideline amount of temporary maintenance through consideration of the following factors:

- (i) the length of the marriage;
 - (ii) the substantial differences in the incomes of the parties;
 - (iii) the standard of living of the parties established during the marriage;
 - (iv) the age and health of the parties;
 - (v) the present and future earning capacity of the parties;
 - (vi) the need of one party to incur education or training expenses;
 - (vii) the wasteful dissipation of marital property;
 - (viii) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;
 - (ix) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
 - (x) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of **domestic** violence as provided in [section four hundred fifty-nine-a of the social services law](#);
 - (xi) the availability and cost of medical insurance for the parties;
 - (xii) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment;
 - (xiii) the inability of one party to obtain meaningful employment due to age or absence from the workforce;
 - (xiv) the need to pay for exceptional additional expenses for the child or children, including, but not limited to, schooling, day care and medical treatment;
 - (xv) the tax consequences to each party;
 - (xvi) marital property subject to distribution pursuant to subdivision five of this part;
 - (xvii) the reduced or lost earning capacity of the party seeking temporary maintenance as a result of having foregone or delayed education, training, employment or career opportunities during the marriage;
 - (xviii) the contributions and services of the party seeking temporary maintenance as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
 - (xix) any other factor which the court shall expressly find to be just and proper.
- (b) In any decision made pursuant to this subparagraph, the court shall set forth the factors it considered and the reasons for its decision. Such written order may not be waived by either party or counsel.
- (3) Notwithstanding the provisions of this paragraph, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the presumptive amount of the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-

support reserve. If the payor's income is below the self-support reserve, there is a rebuttable presumption that no temporary maintenance is awarded.

d. The court shall determine the guideline duration of temporary maintenance by considering the length of the marriage. Temporary maintenance shall terminate upon the issuance of the final award of maintenance or the death of either party, whichever occurs first.

e. (1) The court shall order the presumptive award of temporary maintenance in accordance with paragraphs c and d of this subdivision, unless the court finds that the presumptive award is unjust or inappropriate and adjusts the presumptive award of temporary maintenance accordingly based upon consideration of the following factors:

- (a) the standard of living of the parties established during the marriage;
- (b) the age and health of the parties;
- (c) the earning capacity of the parties;
- (d) the need of one party to incur education or training expenses;
- (e) the wasteful dissipation of marital property;
- (f) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;
- (g) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
- (h) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of **domestic** violence as provided in [section four hundred fifty-nine-a of the social services law](#);
- (i) the availability and cost of medical insurance for the parties;
- (j) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment;
- (k) the inability of one party to obtain meaningful employment due to age or absence from the workforce;
- (l) the need to pay for exceptional additional expenses for the child or children, including, but not limited to, schooling, day care and medical treatment;
- (m) the tax consequences to each party;
- (n) marital property subject to distribution pursuant to subdivision five of this part;
- (o) the reduced or lost earning capacity of the party seeking temporary maintenance as a result of having foregone or delayed education, training, employment or career opportunities during the marriage;
- (p) the contributions and services of the party seeking temporary maintenance as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
- (q) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the presumptive award of temporary maintenance is unjust or inappropriate and the court adjusts the presumptive award of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written order, the amount of the unadjusted presumptive award of temporary maintenance, the factors it considered, and the reasons that the court adjusted the presumptive award of temporary maintenance. Such written order shall not be waived by either party or counsel.

(3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the unrepresented party or parties have been informed of the presumptive award of temporary maintenance.

f. A validly executed agreement or stipulation voluntarily entered into between the parties in an action commenced after the effective date of this subdivision presented to the court for incorporation in an order shall include a provision stating that the parties have been advised of the provisions of this subdivision, and that the presumptive award provided for therein results in the correct amount of temporary maintenance. In the event that such agreement or stipulation deviates from the presumptive award of temporary maintenance, the agreement or stipulation must specify the amount that such presumptive award of temporary maintenance 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 presumptive award of temporary maintenance provided such agreements or stipulations comply with the provisions of this subdivision. The court shall, however, retain discretion with respect to temporary, and post-divorce maintenance awards pursuant to this section. Any court order incorporating a validly executed agreement or stipulation which deviates from the presumptive award of temporary maintenance shall set forth the court's reasons for such deviation.

g. When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order the temporary maintenance award based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered or obtained evidence.

h. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

i. 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 this subdivision.

6. Post-divorce maintenance awards. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action the court may order 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 length of the marriage;
- (3) the age and health of both parties;
- (4) the present and future earning capacity of both parties;
- (5) the need of one party to incur education or training expenses;
- (6) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
- (7) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of **domestic** violence as provided in [section four hundred fifty-nine-a of the social services law](#);
- (8) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor;
- (9) 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;
- (10) the presence of children of the marriage in the respective homes of the parties;
- (11) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity;
- (12) the inability of one party to obtain meaningful employment due to age or absence from the workforce;
- (13) the need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment;
- (14) the tax consequences to each party;
- (15) the equitable distribution of marital property;
- (16) 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;
- (17) the wasteful dissipation of marital property by either spouse;
- (18) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;
- (19) the loss of health insurance benefits upon dissolution of the marriage, and the availability and cost of medical insurance for the parties; and

(20) 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 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.

6-a. Law revision commission study. a. The legislature hereby finds and declares it to be the policy of the state that it is necessary to achieve equitable outcomes when families divorce and it is important to ensure that the economic consequences of a divorce are fairly shared by divorcing couples. Serious concerns have been raised that the implementation of New York state's maintenance laws have not resulted in equitable results. Maintenance is often not granted and where it is granted, the results are inconsistent and unpredictable. This raises serious concerns about the ability of our current maintenance laws to achieve equitable and fair outcomes.

The legislature further finds a comprehensive review of the provisions of our state's maintenance laws should be undertaken. It has been thirty years since the legislature significantly reformed our state's divorce laws by enacting equitable distribution of marital property and introduced the concept of maintenance to replace alimony. Concerns that the implementation of our maintenance laws have not resulted in equitable results compel the need for a review of these laws.

b. The law revision commission is hereby directed to:

(1) review and assess the economic consequences of divorce on the parties;

(2) review the maintenance laws of the state, including the way in which they are administered to determine the impact of these laws on post marital economic disparities, and the effectiveness of such laws and their administration in achieving the state's policy goals and objectives of ensuring that the economic consequences of a divorce are fairly and equitably shared by the divorcing couple; and

(3) make recommendations to the legislature, including such proposed revisions of such laws as it determines necessary to achieve these goals and objectives.

c. The law revision commission shall make a preliminary report to the legislature and the governor of its findings, conclusions, and any recommendations not later than nine months from the effective date of this subdivision, and a final report of its findings, conclusions and recommendations not later than December thirty-first, two thousand eleven.

7. Child support. a. In any matrimonial action, or in an independent action for child support, the court as provided in [section two hundred forty](#) of this chapter shall order either or both parents to pay temporary child support or child support without requiring a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of either or both parents may be unavailable. Where such information is available, the court may make an order for tempor-

any child support pursuant to [section two hundred forty](#) of this article. Such order shall, except as provided for herein, be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to [subdivision \(b\) of section fifty-two hundred forty-one of the civil practice law and rules](#). When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to [section one hundred eleven-g of the social services law](#), the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in [subdivision \(b\) of section fifty-two hundred forty-one of the civil practice law and rules](#), or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support. The court shall not consider the misconduct of either party but shall make its award for child support pursuant to [section two hundred forty](#) of this article.

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

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

d. Any child support order made by the court in any proceeding under the provisions of this section shall include, on its face, a notice printed or typewritten in a size equal to at least eight point bold type informing the parties of their right to seek a modification of the child support order upon a showing of:

- (i) a substantial change in circumstances; or
- (ii) that three years have passed since the order was entered, last modified or adjusted; or

(iii) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted; however, if the parties have specifically opted out of subparagraph (ii) or (iii) of this paragraph in a validly executed agreement or stipulation, then that basis to seek modification does not apply.

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

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

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

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

b. (1) Upon application by either party, the court may annul or modify any prior order or judgment as to main-

tenance, 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. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to [section two hundred forty-four](#) of this article. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall not apply to a separation agreement made prior to the effective date of this part.

(2)(i) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be a bar to finding a substantial change in circumstances provided such incarceration is not the result of nonpayment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment.

(ii) In addition, unless the parties have specifically opted out of the following provisions in a validly executed agreement or stipulation entered into between the parties, the court may modify an order of child support where:

(A) three years have passed since the order was entered, last modified or adjusted; or

(B) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted. A reduction in income shall not be considered as a ground for modification unless it was involuntary and the party has made diligent attempts to secure employment commensurate with his or her education, ability, and experience.

(iii) No modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support. Such modification may increase child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of child support due shall, except as provided for in this subparagraph, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past due support. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to [subdivision \(b\) of section fifty-two hundred forty-one of the civil practice law and rules](#). When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to [section one hundred eleven-g of the social services law](#), the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an immediate execution for support enforcement as provided for by this chapter, or in such periodic payments as would have been authorized had such an execution been issued. In

such case, the court shall not direct the schedule of repayment of retroactive support.

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

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

CREDIT(S)

(Added L.1962, c. 313, § 10. Amended L.1963, c. 685, § 6; L.1968, c. 699, § 1; L.1980, c. 281, § 9; L.1980, c. 645, §§ 2, 3; L.1981, c. 695, §§ 1, 2; L.1984, c. 790, § 2; L.1985, c. 809, § 6; L.1986, c. 884, §§ 1 to 4; L.1986, c. 892, §§ 2 to 4; L.1987, c. 815, §§ 6, 7; L.1989, c. 567, §§ 4, 5; L.1990, c. 818, §§ 4, 5; L.1992, c. 41, §§ 139, 140; L.1992, c. 415, §§ 1, 2; L.1993, c. 59, § 9; L.1993, c. 354, § 2; L.1994, c. 170, §§ 359, 360; L.1997, c. 398, §§ 4, 5, eff. Oct. 1, 1998; L.1997, c. 398, § 141, eff. Jan. 1, 1998; L.1997, c. 436, pt. B, §§ 105, 106, eff. Aug. 20, 1997; L.1998, c. 214, § 56, eff. Nov. 4, 1998; L.1998, c. 393, § 2, eff. July 22, 1998; L.1999, c. 275, § 2, eff. Sept. 18, 1999; L.2003, c. 595, § 1, eff. Sept. 22, 2003; L.2009, c. 72, § 1, eff. Sept. 1, 2009; L.2009, c. 229, §§ 1 to 3, eff. Sept. 14, 2009; L.2010, c. 32, § 1, eff. March 30, 2010, deemed eff. Sept. 1, 2009; L.2010, c. 182, §§ 7, 9, eff. Oct. 13, 2010; L.2010, c. 371, §§ 1, 2, 4, eff. Oct. 12, 2010; L.2010, c. 371, § 3, eff. Aug. 13, 2010.)

[FN1] July 19, 1980.

HISTORICAL AND STATUTORY NOTES

2010 Main Volume

L.2010, c. 371 legislation

Part B, subd. 1, par. a. L.2010, c. 371, § 4, substituted "subdivisions five-a and" for "subdivision".

Part B, subd. 5-a. L.2010, c. 371, § 1, added subd. 5-a.

Part B, subd. 6. L.2010, c. 371, § 2, rewrote subd. 6, which had read:

"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;

"(11) the loss of health insurance benefits upon dissolution of the marriage; and

"(12) 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."

Part B, subd. 6-a. L.2010, c. 371, § 3, added subd. 6-a.

L.2010, c. 371, § 6, provides:

"This act shall take effect immediately; provided, however, that sections one, two and four of this act shall take effect on the sixtieth day [Oct. 12, 2010] after this act shall have become a law and shall apply to matrimonial actions commenced on or after the effective date of such sections."

L.2010, c. 182 legislation

Pt. B, subd. 7, par. d. L.2010, c. 182, § 9, added par. d.

Pt. B, subd. 9, par. b. L.2010, c. 182, § 7, rewrote par. b, which had read:

"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."

L.2010, c. 182, § 1, provides:

"§ 1. Short title. This act shall be known and may be cited as the 'Low Income Support Obligation and Performance Improvement Act'."

L.2010, 182, § 13, provides:

"§ 13. This act shall take effect on the ninetieth day [Oct. 13, 2010] after it shall have become law; provided however, that sections six [amending [Family Court Act § 451](#)] and seven [amending **Domestic Relations Law § 236**] of this act shall apply to any action or proceeding to modify any order of child support entered on or after the effective date of this act except that if the child support order incorporated without merging a valid agreement or stipulation of the parties, the amendments regarding the modification of a child support order set forth in sections six and seven of this act shall only apply if the incorporated agreement or stipulation was executed on or after this act's effective date; provided however, that sections three and four of this act shall take effect on the three hundred sixty-fifth day after it shall have become a law."

L.2010, c. 32 legislation

Part B, subd. 2, par. (b), subpar. (2). L.2010, c. 32, § 1, substituted "Keogh" for "Keough"; and inserted "; except that any party who is already in pay status may continue to receive such payments thereunder".

L.2009, c. 229 legislation

Part B, subd. 5, par. d, subpar. (5). L.2009, c. 229, § 1, renumbered the former subpar. (5) as subpar. (6), and inserted a new subpar. (5) relating to loss of health insurance benefits.

Part B, subd. 5, par. d, subpar. (6). L.2009, c. 229, § 1, renumbered former subpar. (6) as subpar. (7).

Part B, subd. 5, par. d, subpar. (7). L.2009, c. 229, § 1, renumbered former subpar. (7) as subpar. (8).

Part B, subd. 5, par. d, subpar. (8). L.2009, c. 229, § 1, renumbered former subpar. (8) as subpar. (9).

Part B, subd. 5, par. d, subpar. (9). L.2009, c. 229, § 1, renumbered former subpar. (9) as subpar. (10).

Part B, subd. 5, par. d, subpar. (10). L.2009, c. 229, § 1, renumbered former subpar. (10) as subpar. (11).

Part B, subd. 5, par. d, subpar. (11). L.2009, c. 229, § 1, renumbered former subpar. (11) as subpar. (12).

Part B, subd. 5, par. d, subpar. (12). L.2009, c. 229, § 1, renumbered former subpar. (12) as subpar. (13).

Part B, subd. 5, par. d, subpar. (13). L.2009, c. 229, § 1, renumbered former subpar. (13) as subpar. (14).

Part, B, subd. 6, par. a, subpar. (10). L.2009, c. 229, § 2, deleted "and" at the end of the subpar. (10).

Part B, subd. 6, par. a, subpar. (11). L.2009, c. 229, § 3, renumbered subpar. (11) as subpar. (12) and inserted a

new subpar. (11) relating to loss of health insurance benefits.

Part B, subd. 6, par. a, subpar. (12). L.2009, c. 229, § 3, designated former subpar. (11) as subpar. (12).

L.2009, c. 229, § 4, provides:

"This act shall take effect on the sixtieth day after it shall have become a law and shall apply to any action or proceeding commenced on or after such effective date."

L.2009, c. 72 legislation

Part B, subd. 2. L.2009, c. 72, § 1, designated the prior text of subd. 2 as par. a and added par. b.

L.2003, c. 595 legislation

Part B, subd. 3. L.2003, c. 595, § 1, inserted the second sentence relating to an acknowledgment of an agreement made before marriage; and near the end of the subdivision, substituted "article" for "chapter".

L.2003, c. 595, § 2, provides:

"§ 2. This act shall take effect immediately and shall apply to all matrimonial actions commenced on or after such date."

L.1999, c. 275 legislation

Part B, subd. 8, par. a. L.1999, c. 275, § 2, added the last sentence relating to service of an order on the home office of the insurer.

L.1997, c. 436 legislation

L.1997, c. 436, pt. B, § 141, eff. Aug. 20, 1997, provides that except when the context and purpose indicates otherwise, references in any chapter of law or in any regulation of a state agency or in any state agency form or contract to "home relief" shall refer to the safety net assistance program and references to "aid to dependent children" or "aid to families with dependent children" shall refer to the family assistance program.

L.1997, c. 398 legislation

L.1997, c. 398, §§ 1, 147, 148, and 149; as amended by L.1998, c. 214, § 61, eff. July 7, 1998, deemed eff. Jan. 1, 1998, provide:

"§ 1. The legislature hereby finds and declares:

"It is essential that New York state's child support enforcement program meet the needs of children, including providing for the timely and efficient establishment of paternity and child support orders and the collection of child support payments.

"It is also essential that New York state meet the child support requirements contained in the federal Personal Responsibility and Work Opportunity Reconciliation Act.

"In recognition of these goals, we hereby enact a number of measures to strengthen New York state's child sup-

port system, including establishing a cost of living adjustment process to ensure that child support order amounts keep pace with inflation. In addition, we have determined that state and local child support agencies should have additional enforcement remedies and improved paternity establishment measures. Finally, we fulfill federal requirements by adopting several initiatives, including the Uniform Interstate Family Support Act, establishing a computerized state case registry and making improvements to New York state's new hire reporting program. These changes and others contained in this legislation are intended to help families by ensuring that New York state's children receive the child support that they deserve."

"§ 147. Notwithstanding any provision of law to the contrary, the commissioners of social services, taxation and finance, health, labor and motor vehicles and the chair of the workers' compensation board, and any appropriate entity of the state, shall be authorized to promulgate regulations on an emergency basis to ensure the implementation of this act and may take any steps necessary to implement this act prior to its effective date.

"§ 148. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgement shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

"§ 149. This act shall take effect January 1, 1998, except that:

"a. sections one-a, two, three, eight, eleven, fifteen, sixteen, seventeen and nineteen of this act shall take effect on October 1, 1997; provided, however, that [paragraph 3 of subsection \(e\) of section 697 of the tax law](#) made by section seventeen of this act shall be subject to the expiration and reversion of such subdivision pursuant to chapter 491 of the laws of 1993, as amended, when upon such date the provisions of section eighteen of this act shall take effect;

"b. sections four, five, six, and seven of this act shall take effect October 1, 1998;

"c. sections twenty through thirty-one, thirty-three through thirty-five, and seventy-six through ninety-two of this act shall take effect 90 days after it shall have become a law; and

"d. sections thirty-six and thirty-seven of this act shall take effect December 31, 1997."

L.1986, c. 884 legislation

L.1986, c. 884, § 5, provides:

"This act [amending this section] shall take effect immediately [Aug. 2, 1986] provided that sections one and four of this act [amending Part B, subs. 1 and 6, respectively] shall apply to all matrimonial actions commenced on and after the effective date of this act and all matrimonial actions pending on the effective date of this act wherein a trial has not yet commenced, and provided, further that sections two and three of this act [amending Part B, subs. 4 and 5, respectively] shall take effect on September first, nineteen hundred eighty-six and shall apply to all matrimonial actions commenced on or after such date."

Derivation

McKinney's DRL § 236

CPA §§ 1140-a, 1155, 1164, 1169, 1170, 1170-b; repealed by [CPLR 10001](#).

Said § 1140-a, added L.1940, c. 226; amended L.1948, c. 212.

Said § 1155, amended L.1946, c. 742; L.1948, c. 212. It derived from CCP § 1759, amended L.1894, c. 728; L.1895, c. 801; L.1900, c. 742; originally revised from [R.S. pt. 2, c. 8, tit. 1, §§ 43, 45, 46](#).

Said § 1164 derived from CCP § 1766; originally revised from [R.S., pt. 2, c. 8, tit. 1, §§ 54, 55](#).

Said § 1169, amended L.1940, c. 226; L.1948, c. 212. It derived from CCP § 1769; originally revised from R.S. pt. 2, c. 8, tit. 1, § 58.

Said § 1170, amended L.1921, c. 199; L.1925, c. 240; L.1934, c. 521; L.1948, c. 212. It derived from CCP § 1771, amended L.1895, c. 891; L.1904, c. 339; L.1908, c. 297; originally revised from R.S., pt. 2, c. 8, tit. 1, § 59.

Said § 1170-b, added L.1953, c. 663.

<[Notes of Decisions for **Domestic** Relations Law § 236 are displayed in a separate document. See **Domestic** Relations Law § 236, post.]>

McKinney's D. R. L. § 236, NY DOM REL § 236

Current through L.2010, chapters 1 to 59 and 61 to 481.

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Effective: October 12, 2010

McKinney's Consolidated Laws of New York Annotated [Currentness](#)

Domestic Relations Law ([Refs & Annos](#))

[Chapter 14](#). Of the Consolidated Laws ([Refs & Annos](#))

[Article 13](#). Provisions Applicable to More Than One Type of Matrimonial Action ([Refs & Annos](#))

→ § 237. Counsel fees and expenses

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to declare the validity or nullity of a judgment of divorce rendered against a spouse who was the defendant in any action outside the State of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, (5) to obtain maintenance or distribution of property following a foreign judgment of divorce, or (6) to enjoin the prosecution in any other jurisdiction of an action for a divorce, the court may direct either spouse or, where an action for annulment is maintained after the death of a spouse, may direct the person or persons maintaining the action, to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse to enable the other party to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Any applications for fees and expenses may be maintained by the attorney for either spouse in his own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

(b) Upon any application to enforce, annul or modify an order or judgment for alimony, maintenance, distributive award, distribution of marital property or for custody, visitation, or maintenance of a child, made as in [section two hundred thirty-six](#) or [section two hundred forty](#) of this article provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child, the court may direct a spouse or parent to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse or parent to enable the other party to carry on or defend the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both

parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement, between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Any applications for fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

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

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

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

CREDIT(S)

(Added L.1962, c. 313, § 10. Amended L.1963, c. 341, § 1; L.1963, c. 685, § 7; L.1978, c. 444, § 1; L.1980, c. 281, § 10; L.1983, c. 86, § 1; L.1983, c. 287, § 1; L.1986, c. 149, § 1; L.1986, c. 892, § 5; [L.1987, c. 482, § 1](#); [L.1992, c. 422, § 1](#); [L.2010, c. 329, § 1, eff. Oct. 12, 2010.](#))

HISTORICAL AND STATUTORY NOTES

2010 Main Volume

L.2010, c. 329 legislation

Subd. (a). L.2010, c. 329, § 1, rewrote subd. (a), which had read:

"(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."

Subd. (b). L.2010, c. 329, § 1, rewrote subd. (b), which had read:

"(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."

L.2010, c. 329, § 3, as amended by L.2010, c. 415, § 1, eff. Aug. 13, 2010, provides:

"This act shall take effect on the sixtieth day [Oct. 12, 2010] after it shall have become a law and shall apply to actions and proceedings commenced on or after such effective date."

Derivation

CPA § 1169, amended L.1940, c. 226; L.1948, c. 212; and CPA § 1169-a, added L.1945, c. 559; amended L.1957, c. 739; both repealed by [CPLR 10001](#). Said § 1169 was derived from CCP § 1769; originally revised from R.S., pt. 2, c. 8, tit. 1, § 58.

McKinney's D. R. L. § 237, NY DOM REL § 237

Current through L.2010, chapters 1 to 59 and 61 to 481.

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McKinney's DRL § 238

**Effective: October 12, 2010**McKinney's Consolidated Laws of New York Annotated [Currentness](#)Domestic Relations Law ([Refs & Annos](#))[Chapter 14](#). Of the Consolidated Laws ([Refs & Annos](#))[Article 13](#). Provisions Applicable to More Than One Type of Matrimonial Action ([Refs & Annos](#))**→ § 238. Expenses in enforcement and modification proceedings**

In any action or proceeding to enforce or modify any provision of a judgment or order entered in an action for divorce, separation, annulment, declaration of nullity of a void marriage, declaration of validity or nullity of a judgement of divorce rendered against a spouse who was the defendant in any action outside the state of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, or an injunction restraining the prosecution in any other jurisdiction of an action for a divorce, or in any proceeding pursuant to [section two hundred forty-three, two hundred forty-four, two hundred forty-five, or two hundred forty-six](#) of this article, the court may in its discretion require either party to pay counsel fees and fees and expenses of experts directly to the attorney of the other party to enable the other party to carry on or defend the action or proceeding as, in the court's discretion, justice requires having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In any such action or proceeding, applications for fees and expenses may be maintained by the attorney for the respective parties in counsel's own name and in counsel's own behalf. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their representative attorneys, shall file an affidavit with the court detailing the financial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

CREDIT(S)

(Added L.1962, c. 313, § 10. Amended L.1963, c. 685, § 8; L.1978, c. 529, § 1; [L.2010, c. 329, § 2, eff. Oct. 12, 2010.](#))

HISTORICAL AND STATUTORY NOTES

2010 Main Volume

L.2010, c. 329 legislation

L.2010, c. 329, § 2, inserted "and modification" in the section heading and rewrote the text of this section, which had read:

"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."

L.2010, c. 329, § 3, as amended by L.2010, c. 415, § 1, eff. Aug. 13, 2010, provides:

"This act shall take effect on the sixtieth day [Oct. 12, 2010] after it shall have become a law and shall apply to actions and proceedings commenced on or after such effective date."

Derivation

CPA of 1920, § 1172-d, added L.1944, c. 109; and repealed by [CPLR 10001](#).

McKinney's D. R. L. § 238, NY DOM REL § 238

Current through L.2010, chapters 1 to 59 and 61 to 481.

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