NEW YORK STATE UNIFIED COURT SYSTEM
FAMILY VIOLENCE TASK FORCE
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FAMILY LAW AND DOMESTIC VIOLENCE LEGISLATIVE UPDATE: 2015

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Information and copies of bills: The New York State Legislative session concluded in late June, 2015 and all have been sent to the Governor for action. Information regarding the status of all legislation, as well as copies of texts and supporting memoranda of all measures, can be obtained by calling **1 800 342 9860** (toll-free) and are available on-line at www.nysenate.gov and www.nyassembly.gov. Copies of enacted measures are posted on the intranet website of the OCA Office of Legislative Counsel on **CourtNet** (Outlook).

I. NYS LEGISLATION SIGNED BY THE GOVERNOR

A. CHILD WELFARE

1. Kin-GAP Successor Guardians; Permanency Planning in Child Protective and Juvenile Justice Proceedings; Standards for Foster Care [Laws of 2014, ch. 56, Part L; S 2006-b/A 3006-b, Part L]: As part of the New York State budget for Fiscal Year 2015-2016, legislation was enacted as required by the federal *Preventing Sex Trafficking and Strengthening Families Act* [Public Law 113-183], *infra,* that makes significant changes to child welfare and ju8venile justice statutes.

With respect to subsidized kinship guardianships (Kin-GAP), sections 458-a and 458-b of the Social Services Law have been amended to provide that a Kin-GAP agreement between a proposed guardian and the local social services agency may include a proposed prospective successor guardian in the event of the death or incapacity of the guardian. This designation may be in the original Kin-GAP agreement or may be included later in an amended agreement. The successor guardian must be approved by the local social services agency, after a national criminal records check and a New York State child abuse registry check of the successor guardian and individuals over the age of 18 living in the successor guardian's home, pursuant to Social Services Law §§378-a and 422 *et seq.*, respectively. However, the successor guardian need not be related to the child and need not have been a foster parent to the child for the six-month period required of kinship guardians. Failure of a local social services agency to approve a proposed successor guardian may be appealed administratively to the NYS Office of Children and Family Services. Once the guardian dies or becomes incapacitated, a guardianship petition must be approved by the Family or Surrogate's Court in accordance with section 1707 of the Surrogate's Court Procedure Act for the actual appointment of the successor guardian to be made.

The measure also makes several significant amendments to the permanency planning provisions of the juvenile delinquency, Persons in Need of Supervision, child protective and permanency planning hearing provisions of the Family Court Act. First, as of September 29, 2015, the permanency goal of "Alternative Permanent Planned Living Arrangement" (APPLA) will no longer be permitted with respect to youth under the age of 16. For youth 16 and older with an APPLA goal, the permanency plan must include designation of a person with whom the youth has a significant connection and who is willing to be a permanency resource. At the permanency hearing, the Family Court must ask the juvenile directly "about the desired permanency outcome." In all APPLA goal cases, the local social services agency must document to the Court and the Court must find:

- that the agency made "intensive, ongoing and, as of the date of the hearing, unsuccessful

efforts" to return the child home, place the child with a fit and willing relative (including adult siblings) or place the child with legal guardians or adoptive parents. These efforts must include "search technology including social media to find biological family members for children;"

• that the agency took steps to insure that the foster family home or child care facility "is following the reasonable and prudent parent standard," as required by the federal law and related US Department of Health and Human Services guidance, and that the child has "regular, ongoing opportunities to engage in age- or developmentally appropriate activities including by consulting with the [child] in an age-appropriate manner about the opportunities ...to participate in activities;" and

• that there are compelling reasons for the Court to determine that permanency goals other than APPLA would not be in the child's best interests and that APPLA with a significant connection to a permanency resource is "the best permanency plan" for the child.

Additionally, services, if any, needed to assist a youth to transition to independent living must be delineated for youth 14 and older and such youth must be involved in the planning process.

Since the federal statute requires that youth aging out of foster care be given their birth certificates and other identification documents and in light of the early, intensive efforts that must be made to identify kin, including both parents, sections 4173 and 4174 of the Public Health Law are amended to authorize representatives of the NYS Office of Children and Family Services and local departments of social services to obtain birth certificates for youth in their care and custody or custody and guardianship.

Finally, with regard to youth absconding from foster care, section 837-a of the Executive Law is amended to expand the Missing Children's Registry to include youth under the age of 21 in the care of NYS OCFS or a local department of social services, where the agency "has reasonable cause to believe that the youth is or is at risk of being a sex trafficking victim..."

Effective: • Sept. 29, 2014: Kin-GAP successor guardians [signed Apr. 13, 2015 but retroactive];
• Sept. 1, 2015: Limitation of APPLA goal to youth 16 and older, involvement of youth 14 and older in planning, findings regarding position of youth 16 and older on APPLA goal, provision of birth certificates and other documents for aging-out youth, normalcy standards for foster care; identification of service needs of trafficked youth.
• Jan.. 1, 2016: Expansion of Missing Children's Registry.

2. Recertification, Decertification, Non-renewal and Removal of Children from foster homes [Laws of 2015, ch. 142; A 731]: This chapter amendment to chapter 539 of the Laws of 2014,[1] amends Social Services Law §§376(1) and 377 to clarify that the reviews done by local social services agencies regarding applications for licensure of foster homes are to be done in conjunction with the Statewide Automated Child Welfare Information System (SACWIS) pursuant to regulations of the New York State Office of Children and Family Services. Further, only removals of children from foster homes for "health and safety reasons," not removals for unrelated reasons, are relevant

[1] Chapter 539 of the Laws of 2014 required authorized child care agencies to determine whether applicants to be foster parents have ever had a certificate or license or approval in the past and if so, whether it had been revoked, suspended or not renewed and whether any children had been removed from the home. The agency must determine, pursuant NYS Office of Children and Family Services regulations, whether the circumstances of the earlier closure or discontinuation of the home as a foster home warrant reopening the home and issuing a new licence, certificate or approval.

considerations in determining applications for recertification, decertification and renewal of licenses for foster homes. **Effective: Aug. 13, 2015 (immediately upon the Governor's signature); retroactive to effective date of laws of 2014, ch. 539.**

3. Child fatality review reports; comments by local departments of social services [Laws of 2015, ch.145; S 1518/A 872]: This chapter amendment to chapter 544 of the Laws of 2014,[2] provides that the comments submitted by local departments of social services to child fatality reports must protect the confidentiality rights of the deceased child, his or her siblings, parents, persons legally responsible and the sources of reports to the State Central Registry of Child Abuse and Maltreatment. Comments regarding the facts of the fatality must be "factually accurate." The reports must be furnished to the local social services department 20 (instead of 30) days in advance of its release and the local agencies have 10 (instead of 20) days in which to submit responses. Although not in the bill, the memo indicates that the agreement for the chapter amendment provided that comments may be up to 2000 characters in length, which would be noted in an informational letter to be issued by NYS OCFS. **Effective: Aug. 13, 2015 (immediately upon the Governor's signature); retroactive to effective date of Laws of 2014, ch. 544.**

4. Severe child abuse and entry of orders of protection in child abuse and neglect cases onto the statewide registry of orders of protection [Laws of 2015, ch. 492; S 5054/A 7644]: This measure, proposed by the Family Court Advisory and Rules Committee, fills a gap in the severe abuse statutes by authorizing the Family Court to render an enhanced finding by clear and convincing evidence with respect to a respondent in a Family Court Act Article 10 child abuse case who is not a parent of the child. The enhanced finding, which may later be used in a termination of parental rights action regarding the respondent's own child, may be made with respect to any individual against whom a child protective proceeding may be brought, including a non-parent who is deemed a "person legally responsible." Further, it amends Executive Law §221-a to require that all temporary and final orders of protection issued pursuant to Family Court Act §§1029 and 1056 be entered onto the statewide registry established as part of the New York State Police "NYSPIN" system, pursuant to the *Family Protection and Domestic Violence Intervention Act of 1994* [L. 1994, c. 222, 224], **Effective: Feb. 18, 2016 (90th day after the Governor's Nov. 20, 2015 signature).**

5. State Central Registry of Child Abuse and Maltreatment [Laws of 2015, ch. 426; A 5803/S 3520-a]: This measure amends Social Services Law §§412 and 422 to substitute a definition of "criminal justice agency" for the enumerated prosecutors and law enforcement officials who have access to reports to the State Central Registry of Child Abuse and Maltreatment and related records. Such reports are to be made available where necessary for missing children investigations when a parent, guardian or sibling is the subject of a report. If a local social services department does not make the information available, the criminal justice agency may contact the New York State Office of Children and Family Services for an immediate administrative review of the failure. The NYS OCFS Commissioner shall designate a supervisor or other employee to conduct and determine the review. If access is granted, the reports must be provided immediately. **Effective: Jan. 19, 2016 (60th day after the Governor's Nov. 20, 2015 signature).**

1. Roles, rights and responsibilities of non-respondent parents in child neglect and abuse proceedings in Family Court [Laws of 2015, ch. 567; A 6715/S 5018-a]: This measure,

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[2] Chapter 544 of the laws of 2014 amended Social Services Law §20(5) to provide that 30 days prior to release of a report regarding a child fatality, the NYS Office of Children and Family Services must forward the report to the local department of social services which may submit comments within 20 days that must be included in the report.

proposed by the Family Court Advisory and Rules Committee, inserts provisions into Article 10 of the Family Court Act that explicitly encourage earlier and greater identification and participation by non-respondent parents in abuse and neglect proceedings concerning their children. It amends Family Court Act §1012 to define "parent," "relative" and "suitable person" and amends Family Court Act §1017 to require notices regarding the pendency of the action to be provided to a broader group of individuals, including "notice fathers," that is, those listed on the putative father register and those who have a pending paternity petition or have been identified by the child's parent in a sworn written statement. Notices of pendency under Family Court Act §1035 must advise non-respondent parents of their right to counsel, including appointed counsel if indigent. *See Matter of Sasha S.*, 256 A.D.2d 468 (2d Dept., 1998). As in child custody cases, the Court must check the domestic violence registry, sex offender registry and the Family Court database for warrants for all persons caring for children under Family Court Act §1017, 1054 and 1056. Such individuals may be required to submit to the jurisdiction of the Family Court for purposes connected to the care of the children, including cooperation, *inter alia*, with court-ordered visits with parents, siblings and others, appointments with and in-person visits by caseworkers and appointments with the children's attorneys, clinicians and programs providing services to the children.

The measure reorganizes the dispositional provisions in Article 10 of the Family Court Act, making clear that a respondent may be placed under supervision while a child has been released to a non-respondent parent or placed directly with a relative or suitable person for a designated period. *See* Family Court Act §§1054, 1057. Both the period of release and the period of supervision of the respondent may be for up to one year, which may be extended for an additional year for good cause. Finally, it includes non-respondent parents in the provisions of Family Court Act §§1055-b and 1089-a through which a child abuse, neglect or permanency proceeding may be resolved through an order of custody in cases in which the Court determines that further involvement by the Family Court and local social services agency is not necessary. Conforming amendments are made to clarify that, while custody and child protective or permanency hearings may be held jointly, custody determinations are to be made in accordance with Family Court Act §651 and Domestic Relations Law §240 and applicable case law, including, *inter alia*, *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976). **Effective: June 18, 2016 (180th day after the Governor's Dec. 21, 2015 signature).**

7. Notice to, and attendance by, children 10 years of age and older in permanency hearings [Laws of 2015, ch. 573; A 7679/S 5258-a]: This measure, proposed by the New York State Bar Association Children and the Law Committee, amends Family Court Act §1089(b)(1) to require that notices of permanency hearings be sent directly to children 10 years of age and older. Such children have a right to be present at the hearings unless they waive that right after consultation with their attorneys. The Family Court must grant a child's attorney's application for an adjournment of the permanency hearing "whenever necessary to protect the child's right to meaningfully participate in the hearing." NOTE: The measure is likely to be modified in early 2016 by a chapter amendment. **Effective: Dec. 22, 2015 (immediately upon the Governor's signature).**

B. <u>DOMESTIC VIOLENCE AND SEX TRAFFICKING</u>

1. Mandatory and Presumptive Arrest: 2-year Extension [Laws of 2015, ch. 55, Part B, §17]:[3]This provision of the "public protection" legislation, which was enacted as part of the FY 2015 NYS budget, extends the expiration date of Criminal Procedure Law §140.10(4), the mandatory and presumptive arrest provisions of the *Family Protection and Domestic Violence Intervention Act of 1994*, for an additional two years to September 1, 2017. **Effective: April 1, 2015; expires on Sept. 1, 2017**.

[3] These provisions have been extended every two years since their original enactment in 1994; only the most recent extension has been included in this summary.

2. Expiration dates of criminal orders of protection [Laws of 2015, ch. 240; A 1797-a/ S 4340-b]: This measure amends Criminal Procedure Law §§530.12 and 530.13 to provide that, where a sentence of probation is ordered, the expiration of an order of protection coincides with the term of probation. In felony sexual assault probation cases, orders of protection last for ten years, and in misdemeanor sexual assault probation cases for six years, as compared to eight years for other felony cases and five years for other misdemeanor cases. **Effective: Oct. 22, 2015 (30th day after Governor's Sept. 22, 2015 signature (applicable to offenses committed on or after that date).**

3. Authorization for pilot programs for obtaining orders of protection by video-conference [Laws of 2015, ch. 367; signed Oct. 21, 2015; S 6/ A 6262]: This measure, a component of the Governor's "Women's Equality Agenda" and similar to a proposal made by the Family Court Advisory and Rules Committee, amends section 212 of the Judiciary Law to authorize the Chief Administrator of the Courts to establish pilot programs in designated Family Courts for the filing of petitions for temporary orders of protection by electronic means and for the issuance of such orders by audio-visual means from remote locations, such as Family Justice Centers, senior centers and domestic violence programs. Family Court Act §153-c would delineate details of the pilot programs, definitions, consultation required and elements of proposed plans. While eliminating the need for the initial appearance, the fact-finding proceeding would ultimately need to be an in-person hearing in Family Court. Participation in the programs would be strictly voluntary, would require the consent of the petitioner on the record and would be limited to *ex parte* applications for temporary orders of protection. Proceedings must be on the record and preserved for transcription and documentary evidence, if any, must be electronically transmitted and formally introduced into evidence. Existing laws requiring personal service of process and confidentiality of, as well as the parties' access to, records would not in any way be altered.

This measure facilitates utilization of the "Advocate-Assisted Family Offense Petition Program," an easy-to-use, automated program, developed in conjunction with the New York State Courts Access to Justice Program, which permits an applicant for a temporary order of protection, with the aid of a trained domestic violence advocate, to prepare a family offense petition and, if needed, an address confidentiality affidavit, for filing in Family Court. The program is available at courthouse locations and may be installed in remote sites, such as Family Justice Centers, senior centers and domestic violence programs. With video or computer equipment connected to judges or court attorney referees at courthouses, court proceedings may thus be convened on the record for the issuance of temporary orders of protection. **Effective: April 1, 2016**.

4. Prohibition of housing discrimination against victims of domestic violence [Laws of 2015, ch. 366; S 5/A 6354-b]: This measure, a component of the Governor's "Women's Equality Agenda," adds a new section 227-d to the Real Property Law to prohibit discrimination in housing based upon status as a domestic violence victim. The measure covers all owners and managers of residential properties (other than owner-occupied dwellings containing two or fewer units) and prohibits refusals to rent property or to attach rental conditions to leases based upon domestic violence victim status. A violation is punishable as a misdemeanor, with a fine of $1000 to $2000 per violation. A private civil right of action is also authorized for compensatory and punitive damages, as well as attorneys' fees. Provisions of rental preferences and other services to victims of domestic violence is not prohibited; nor are municipalities prohibited from providing greater protections against discrimination to such victims. The measure also adds a new section 744 to the Real Property Law to prohibit evictions based upon a lessee's status as a victim of domestic violence. Also applicable to residential properties (other than owner-occupied dwellings containing two or fewer units), the provision makes a lessee's domestic violence victim status a defense to an eviction where the landlord lacks other lawful eviction grounds. A landlord may not be held civilly liable to other tenants,

guests, invitees or licensees for a good-faith attempt to comply with the provision. **Effective: January 19, 2016 (90th day after Governor's Oct. 21, 2015 signature).**

5. Trafficking Victims Protection and Justice Act [Laws of 2015, ch. 368; S 7/A 506]: In addition to changing terminology from "prostitute" to "person for prostitution," this measure, originally part of the Governor's "Women's Equality Act," makes the following changes to prostitution-related offenses, among others:

- upgrades and enhances penalties for various patronizing prostitution-related offenses;
- adds affirmative defense to prostitution offenses where defendant was a victim of compelled prostitution or human trafficking under State or Federal law;
- changes terminology from "prostitute" to "person for prostitution";
- provides a civil right of action by victim against perpetrator of trafficking or compelling prostitution.

Effective: January 19, 2016 (90th day after Governor's Oct. 21, 2015 signature).

6. Waiver of DNA Fee [Laws of 2015, ch. 426; S 4394-a/A2469-a]: This measure amends Section 430.25 of the Criminal Procedure Law to exempt individuals convicted of prostitution or loitering for the purposes of prostitution (although not loitering for the purposes of patronizing a person for prostitution), as well as those convicted of a petty offense in lieu of such a conviction, from the DNA data-bank fee. In 2014, an exemption was provided from the mandatory surcharge and crime victim assistance fee. *See* Laws of 2014, ch. 385. Where convicted of any misdemeanor enumerated in Executive Law §995(7), the measure also exempts those found by the Court to be victims of sex trafficking under Penal Law §230.34 or under the federal *Trafficking Victims Protection Act* [22 U.S.C. ch. 78] from all such fees. **Effective: Nov. 21, 2015 (immediately upon the Governor's Nov. 21, 2015 signature)**

7. Translations of Domestic Incident Reports [Laws of 2015, ch. 432; A 4347/S 4288]: This measure amends Executive Law §214-b(b) to require State Police, when taking statements from victims in domestic violence cases in languages other than English, to provide translations on the "Domestic Incident Report" and to provide a notification of rights in the victim's native language. A similar amendment regarding translations of statements in the "Domestic Incident Report" and notification of rights is made to Criminal Procedure Law §140.10(5). Executive Law §840 is amended to require the translation of the "Domestic Incident Report," including the notification of rights, into the languages most common in New York State and to provide the translations to all local law enforcement agencies. **Effective: Feb. 19, 2016 (90th day after Governor's Nov. 21, 2015 signature).**

C. CHILD SUPPORT AND SPOUSAL MAINTENANCE

1. Administrative Drivers' License Suspensions: 2-year Extension [Laws of 2015, ch. 29]: The statute, originally enacted in 1995, authorizing child support agencies to direct the Department of Motor Vehicles to administratively suspend drivers' licenses for non-payment of child support has been extended for another two years until August 31, 2017. **Effective: June 30, 2015 (expires: August 31, 2017).**

2. Temporary and permanent spousal maintenance guidelines [Laws of 2015, ch. 269; S 5678/A 7645]: This measure, developed by representatives of organizations and bar associations and endorsed by the Matrimonial Practice Advisory Committee, makes changes to the existing provisions regarding temporary spousal maintenance [Domestic Relations Law §236B(5-a)], establishes formulae and procedures for setting post-divorce (final) maintenance [Domestic Relations Law §236B(6)] and applies both the temporary and final maintenance statutes to spousal support awards in Family Court [Family Court Act §412].

Perhaps most important, the measure establishes two alternative formulae to be used for both temporary and final maintenance in Supreme Court and spousal support in Family Court:

- one for cases in which there is also an order of child support to be paid by the maintenance payor, that is, reduce the payor's income by 25% of the payee's income, multiply the combined income by 40% and subtract the payee's income from the result, and apply the lower of the two results as the guidelines amount;[4] and

- the other for cases either without such an order or where the maintenance payee is the child support payor, that is, subtract 20% of the maintenance payee's income from 30% of the payor's income, multiply the combined income by 40% and subtract the payee's income from the result, and apply the lower of the two results as the guidelines amount.

Where the guidelines amount in either formula would reduce the payor's income to an amount less than the self-support reserve, the guidelines amount is redefined as the difference between the payor's income and the self-support reserve, but if the payor's income is already below the self-support reserve, a "rebuttable presumption" of no maintenance or spousal support applies.

The income cap used as a benchmark for application of the formulae for both temporary and final maintenance is reduced from $543,000, the current amount, to $175,000. The cap is to be revised every two years starting on on January 31, 2016. The above formulae are applicable to income below the cap unless the Supreme or Family Court makes a decision on the record that it is unjust or inappropriate, based upon a consideration in Supreme Court of 13 designated departure factors for temporary maintenance and 15 factors for post-divorce maintenance and based upon 14 enumerated departure factors for spousal support in Family Court. *See* Domestic Relations Law §§236B(5-a)(h)(1), 236B((6)(e)(1) and Family Court Act §412(6)(a), respectively. For income above the cap, the Court may award additional maintenance amounts, again based upon a decision stated on the record in Supreme Court regarding 13 enumerated factors for temporary and 15 factors for final maintenance and based upon 14 factors for spousal support in Family Court. *Id.*

Temporary maintenance awards in Supreme Court terminate upon divorce or upon the death of either party. Family Court spousal support awards terminate upon a written or oral stipulation on the record, divorce or other matrimonial order or death of either party and may be modified based upon a substantial change in circumstances. Post-divorce maintenance awards in Supreme Court terminate upon the death of either party or upon the remarriage of the payee. However, the Supreme Court has discretion to limit the duration of temporary maintenance based upon consideration of designated percentages relating to the length of the marriage. When determining duration of post-divorce maintenance, Supreme Court must consider, *inter alia*, anticipated retirement-related benefits and assets. Such maintenance in Supreme Court may be modified in light of full or partial retirement. Where the payor defaults, temporary and post-divorce maintenance may be set based upon the needs of the payee, but may be modified based upon "newly discovered evidence" without a showing of a change in circumstances.

With respect to temporary spousal maintenance, the measure permits particular expenses to be allocated between the parties. For post-divorce maintenance, factors to be considered include, among others, termination of child support. Income considered for post-divorce maintenance includes that which is subject to equitable distribution, including income from income-producing property, as

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[4] Maintenance must be determined prior to child support, since the amount of maintenance is "subtracted from the payor's income and added to the payee's incopme as part of the child support calculation." *See also* S 5691/A 7637, *supra*.

well as imputed income. However, enhanced earning capacity from a "license, degree, celebrity goodwill, or career enhancement" is not to be considered a marital asset, although "the court shall consider the direct or indirect contribution s to the development during the marriage of the enhanced earning capacity of the other spouse" in determining equitable distribution.

Finally, where either party is unrepresented, the Court must advise the unrepresented party of the guideline amount prior to setting maintenance. *See* Domestic Relations Law §§236B(5-a)(h)(3); 236B(6)(g); Family Court Act §412(6)(c).

Effective: temporary maintenance Oct. 25, 2015 (30th day after Governor's Sept. 25, 2015 signature) and final spousal maintenance and Family Court provisions Jan. 23, 2015 (120th day after Governor's Sept. 25, 2015 signature); applicable to all matrimonial + Family Court actions commenced on or after those dates.

3. Calculation of Combined Parental Income Amount and 2008 Amendments to the *Uniform Interstate Family Support Act* [Laws of 2015, ch. 347; S 5658/A 7636-b]: This measure, proposed by the NYS Office of Temporary and Disability Assistance, makes a technical change in the calculation of the Combined Parental Income Amount (the "cap") and conforms New York law to a recently enacted federal statute.

First, it amends Social Services law §111-i(2)(b) to provide that the cap is adjusted on March 1st, instead of January 31st, every two years in order to be consistent with other biennial adjustments, that is, to the self-support reserve and poverty level.

Second, as required by the federal *Preventing Sex Trafficking and Strengthening Families Act* [Public Law 113-183], *infra,* the measure incorporates the 2001 and 2008 amendments to the *Uniform Interstate Family Support Act [UIFSA]* into Article 5-B of the Family Court Act. These amendments conform New York law to the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* by including references to foreign countries – defined to include the 32 that have ratified the Hague Convention, as well as those with similar UIFSA procedures, those with which states have reciprocal relationships and those declared by the US to be reciprocating nations. Parts 1 through 6 are made applicable to foreign orders and tribunals and Part 7 specifically delineates procedures for Hague Convention cases. Part 7 specifies the documents required to be filed, the longer time-frames applicable to the cases, and applicable defenses, including lack of due process and contravention of New York State public policy. US employers need not honor income withholding orders issued by foreign countries but foreign orders may be administratively enforced by registering them in New York State and sending them to the enforcement agency.

The UIFSA amendments recommended by the Uniform Law Commission in 2001 are also incorporated into the statute, including, *inter alia*:

- Electronic testimony must be permitted for out-of-state parties and "record" includes electronically transmitted testimony;
- Modifications are permitted where all parties consent, even if none live in the state, and in such cases, any income withholding orders are to be sent to the state where the support obligee receives IV-D support services;
- "Under oath" is replaced by with "under penalties of perjury";
- The law of the issuing state governs the duration of the order and interest, and in cases of consolidated arrears, the law applicable to interest going forward is that of the controlling state;
- Registration requires just one certified copy and one additional copy.

Finally, the measure provides that, upon request of a UIFSA petitioner, New York State must provide child support (IV-D) services. **Effective: Social Services Law §111-l effective Dec. 24, 2015 (90th day after Governor's Sept. 25, 2015 signature); Family Court Act Art. 5-B (UIFSA) Jan. 1, 2016.**

4. Consideration of spousal maintenance in calculating child support in Supreme and Family Court proceedings [Laws of 2015, ch. 387; S 5691/A 7637]: This measure, proposed by the Family Court Advisory and Rules Committee, clarifies the treatment of spousal maintenance with respect to the income of both the recipient and the payor spouse in calculating orders of child support. It amends Family Court Act §413(1)(b)(5)(iii) and Domestic Relations Law §240(1-b)(5)(iii) to add a new subclause (l) that would provide that alimony or spousal maintenance actually paid to a spouse who is a party to the action must be added to the recipient spouse's income, provided that the order contains an automatic adjustment to take effect upon the termination of the maintenance award. Codifying several appellate cases, this addition would be based upon the amount already paid, *e.g.*, an amount reported on the recipient spouse's last income tax return and would not simply be an estimate of future payments. Further, the measure amends the existing provision in both Family Court Act §413(1)(b)(5)(vii)(C) and Domestic Relations Law §240(1-b)(5)(vii) (C) to clarify that where spousal maintenance payments are deducted from the payor's income, the order must contain a specific provision adjusting the child support amount automatically upon the termination of the spousal maintenance award. This relieves the custodial parent of the burden of moving for a modification of the child support order upon the termination of maintenance but leaves open the possibility for either or both parties to seek a modification of the automatic adjustment if at the point that maintenance terminates, the income of either of the parties has changed in an amount that would qualify for a modification. The specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with Family Court Act §451(3) or Domestic Relations Law §236B(9)(b)(2). **Effective: Jan. 24, 2016 (90th day after Governor's Oct. 26, 2015 signature).**

5. Attorneys' fees and expenses in matrimonial proceedings [Laws of 2015, ch. 447; A 7221/ S 5190]: This measure, proposed by the OCA Matrimonial Practice Advisory Committee, amends Domestic Relations Law §237(a) to exempt unrepresented litigants from filing an affidavit detailing fee arrangements when applying for attorneys' fees. The litigant must file an affidavit stating an inability to afford counsel, along with a Statement of Net Worth, W-2 statements and income tax returns. The measure was recommended in the 2006 Report of the Chief Judge's Matrimonial Commission and is consistent with *Prichep v. Prichep*, 52 A.D.3d 61 (2nd Dept., 2008). **Effective: Nov. 21, 2015 (immediately upon Governor's Nov. 21, 2015 signature (applicable to all actions whenever commenced).**

D. JUVENILE JUSTICE

1. *Interstate Compact on Juveniles*: 5-year Extension [Laws of 2015, ch. 195; S 4906/A 7972]: This NYS Office of Children and Family Services bill extends the expiration date of the *Interstate Compact on Juveniles* [Exec. Law §501-e; Laws of 2011, ch. 29; Laws of 2013, ch. 335] from Sept. 1, 2015 to Sept. 1, 2020. All states, plus Washington, D.C. and the U.S. Virgin Islands, are parties to the Compact. Further information can be obtained at www.juvenilecompact.org. **Effective: Aug. 13, 2015 (immediately upon Governor's signature); expires: Sept. 1, 2020, unless extended.**

2. Persons in need of supervision and juvenile delinquency proceedings: procedures for admissions and violations of orders of disposition [Laws of 2015, ch. 499; S 5286/A 5897]: This measure, proposed by the Family Court Advisory and Rules Committee, clarifies the various provisions of Articles 3 and 7 of the Family Court Act regarding violations of orders of disposition by juveniles. First, it clarifies that, as in probation violation cases, the period of a conditional discharge

would be tolled during the pendency of a violation petition. *See* Matter of Donald MM, 231 A.D.2d 810, 647 N.Y.S.2d 312 (3d Dept., 1996), *lve. app. denied*, 89 N.Y.2d 804 (1996). Second, it delineates the procedures for violations of suspended judgment and probation in PINS cases, drawing upon existing juvenile delinquency provisions. *See* F.C.A. §§360.2, 360.3. Finally, with respect to the fact-finding stage of PINS proceedings, in response to a long line of appellate cases,[5] the measure adds a new section 743 to the Family Court Act, establishing a judicial allocution procedure for accepting admissions in PINS cases, analogous to the allocution provision in juvenile delinquency cases [Family Court Act §321.3]. **Effective: Feb. 18, 2016 (90th day after Governor's Nov. 20, 2015 signature).**

E. SEXUAL ASSAULT

1. Campus sexual assault, dating violence, domestic violence and stalking [Laws of 2015, ch. 76; S 5965/A 8244]: This Governor's Program bill, part of the Governor's "Enough is enough" campaign, adds a new Article 129-B to the Education Law that extends to all colleges and universities in New York State the procedures previously implemented in the State university system. It requires colleges and universities to adopt codes of conduct that include a requirement of affirmative consent to sexual activity, defined as follows::

> Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Students are to be provided with a "Bill of Rights" that includes, *inter alia*, the right to report incidents to the university or law enforcement or not to report, the right to be free from retaliation and the right to access services. Victims or other persons reporting incidents shall be immune from charges of drinking or substance abuse in violation of the institution's conduct code. Upon reporting an incident, victims must receive a notice indicating:

> You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.

Individuals reporting incidents must have emergency access to a Title IX coordinator or other individual trained in interviewing sexual assault victims, as well as a sexual assault forensic examination or other means of preserving evidence. Those reporting must be given confidentiality as appropriate, as well as the ability to access services.

Colleges and universities must develop and conduct a year-round public education campaign to prevent sexual assault, dating violence, domestic violence and stalking. They must also provide aggregate data on incidents, as well as an assessments of the "campus climate." to the State Education Department. **Effective: $5 million appropriation for establishment of State Police Sexual Assault Victims Unit and $5 million for rape crisis centers immediately; aggregate reporting and campus climate assessment reporting July 7, 2016; and remaining sections Oct. 5 2015 (90th day after July 7, 2015 Governor's signature).**

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[5] *See, e.g., Matter of Ashley R.*, 42 A.D.3d 689 (3d Dept., 2007); *Matter of Marquis S.*, 26 A.D.3d 757 (4th Dept., 2006); *Matter of Steven Z.*, 19 A.D.3d 783 (3d Dept., 2005); *Matter of Matthew RR*, 9 A.D.3d 514 (3d Dept., 2004); *Matter of Nichole A.*, 300 A.D.2d 947 (3d Dept., 2002); *Matter of Jodi VV.*, 295 A.D.2d 659 (3d Dept., 2002); *Matter of Shaun U.*, 288 A.D.2d 708 (3d Dept., 2001); *Matter of Tabitha E.*, 271 A.D.2d 719, 720 (3d Dept., 2000).

2. Forcible touching [Laws of 2015, ch. 250; signed Sept. 25, 2015; S 3203-a/A 4969-b)]: This measure amends Penal Law §130.52 to add subjection of a passenger on public or private transportation to sexual contact to the definition of sexual touching, a Class A misdemeanor. The conduct must be intended for the defendant's sexual gratification and to degrade or abuse the passenger and must be without any legitimate purpose, **Effective: November 1, 2015.**

F, MISCELLANEOUS

1. Electronic Filing (E-filing) of Court Proceedings [Laws of 2015, ch. 237; S 5833/A 8083]: This measure, proposed by the judiciary, makes permanent several features of earlier legislatuion authorizing e-filing in New York State Courts [Laws of 2011, ch. 543] and expands the authorization to include the Appellate Divisions. The e-filing program in Supreme Court is made permanent, but continues to exclude, *inter alia*, matrimonial proceedings, election law proceedings, Article 78 proceedings and proceedings under the Mental Hygiene Law, The authorization for up to six e-filing pilot projects in Family Court for juvenile delinquency and child protective proceedings is extended, as is the Advisory Committee created in 2011 regarding the projects, although to date, no pilot projects have been implemented. In addition to the pilot projects, the measure amends family Court §214 to permit the Chief Administrative Judge, with the authorization of the Administrative Board, to promulgate court rules permitting the establishment of a "strictly voluntary" e-filing program in Family Court. While a party may file a petition without the other party's consent, that party would have immediate access to hard copies. No party may be compelled to participate and where parties are unrepresented, the clerk must provide notice of their options in plain language. It also adds a new section 1122 to the Family Court Act to implement voluntary e-filing of Family Court appeals in accordance with rules to be promulgated by the Appellate Divisions. **Effective: Aug. 31, 2015 (immediately upon Governor's signature); Family Court provisions expire Sept. 1, 2019.**

2. Limit on publication regarding name-change [Laws of 2015, ch. 241; S 5240/A 2242]: This measure amends Civil Rights Law §64-a to enhance the protections afforded to individuals seeking a name change. It provides that if the Court finds, based upon a totality of the circumstances, that publication of the applicant's name would jeopardize the applicant's personal safety, the Court may waive publication of the name. A waiver of publication may not be denied solely because the applicant "lacks specific instances of or a personal history of threat to personal safety." **Effective: Sept. 22, 2015 (immediately upon Governor's Sept. 22, 2015 signature).**

3. Interpreters for hearing-impaired parties, witnesses and jurors [Laws of 2015, ch. 272; S 5533-b/A 7939-a): This bill amends Judiciary Law §390 to add "hard of hearing" to the provisions regarding the right of deaf individuals to interpreters and to add jurors and prospective jurors to the categories of individuals to whom the right applies. It also provides that, in lieu of an interpreter, a court, on its own motion or at the request of a deaf or hearing-impaired person, may provide an assistive listening device, a stenographer who can provide instantaneous translation through a real-time feed (Communication-access Real-time translation" or CART) or "any other appropriate auxiliary aid or service." **Effective: Sept. 25, 2015 (immediately upon Governor's Sept. 25, 2015 signature).**

II. RESOLUTION [Passed both houses but does not require action by the Governor]

A. ACCESS TO COUNSEL **[C776/B2995]:** As proposed by Chief Judge Jonathan Lippman, both houses of the Legislature resolved that, in light of the serious gaps in the availability of civil legal services,"it should be policy of the State of New York that every New Yorker in need have effective legal assistance in matters involving the essentials of life (housing, family matters, access to healthcare, education and subsistence income)" and, to that end, "the state must continue its efforts to achieve the ideal of civil justice for all." The resolution followed up on the 2010 resolution [J 6368/ K 1621], which invited the Chef Judge's Task Force to Expand Access to Civil Legal Services in New

York to convene annual public hearings and report annually to the Governor and Legislature on the extent and nature of the State's unmet civil legal service needs.

III. FEDERAL LEGISLATION

A. *Preventing Sex Trafficking and Strengthening Families Act* [Public Law 113-183; H.R. 4890]: This comprehensive bill, signed by President Obama on September 29, 2014, establishes federal requirements affecting state Family Court and agency practice in the areas of foster care, child welfare, adoption and child support, in addition to establishing an advisory committee and reporting requirements on the federal level regarding sex trafficking and other issues. Among the many provisions affecting state practices, some of which are reflected in recent statutory, rules and forms changes, *inter alia*, are the following:

• In child welfare cases, the "Alternative Planned Permanent Living Arrangement" (APPLA) goal may not be applied to youth under 16 and if it is used for youth 16 and older, the court must document why each of the other possible goals are NOT in the child's best interests;

• Youth in foster care 14 and older must be actively involved in the development of their case plans and may designate an adult to participate with them;

• Upon aging out of foster care, youth must be provided with their medical records, birth certificates, social security cards, health insurance information and driver's licenses or state-issued identifications;

• For each permanency hearing, agencies must document and report steps taken to ensure that the foster parents are following a "reasonable and prudent parent" standard and engaging the youth in developmentally- and age- appropriate activities;

• Incentives are provided not only for adoptions, but also for kinship guardianship cases, with extra incentives for guardianships and adoptions of children 14 and older;

• Not less than 30% of the funds saved by states from the "de-linking" of foster care eligibility from AFDC eligibility must be directed toward post-adoption and post-guardianship services;

• in case of death or incapacity of a kinship guardian, a substitute guardian named in the kinship guardianship agreement may continue to receive the guardianship subsidy;

• In addition to relatives, parents of siblings must be notified of foster care proceedings in order to increase placement of siblings together;

• The 2008 amendments to the *Uniform Interstate Family Support Act* [UIFSA] must be enacted by all states to conform to the *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*;

• Other Hague-signatory countries, as well as Indian tribes and nations, must be afforded access to the federal parent locator service; and

• Electronic withholding of child support, already done in NYS, is authorized in federal law.

Effective: • Sept. 29, 2014: Successor guardians, encouragement of sibling placements, extension and expansion of adoption incentive payments, de-linking foster fund eligibility from old AFDC status and reporting regarding youth in foster care at risk of trafficking.

• Sept. 29, 2015: Limitation of APPLA goal to youth 16 and older, involvement of youth 14 and older in planning, findings regarding position of youth 16 and older on APPLA goal, provision of birth certificates and other documents for aging-out youth, normalcy standards and age-appropriate activities for foster care; identification of service needs of trafficked youth;

• End of 1st State legislative session after Sept. 29, 2014 signing: 2008 amendments to *Uniform Interstate Family Support Act* (UIFSA);

• Sept. 29, 2016: Advisory Committee report to Congress.