Bits and Bytes™

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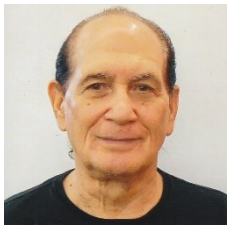

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The Law Firm of Joel R. Brandes, P.C concentrates its law practice on appeals in divorce, equitable distribution, custody, and family law cases as well as post-judgment enforcement and modification proceedings. Mr. Brandes also serves as counsel to attorneys with all levels of experience assisting them with their difficult appeals and litigated matters. Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."

Recent Legislation

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Domestic Relations Law §§170 & 200, Family Court Act §§117, 308.1, 344.4, 347.1, &1052, Penal Law §130.00 (1), (2) and (10) and other laws recently amended effective on September 1, 2024.

Laws of 2023 Ch 777, signed by the Governor on January 30, 2024, and effective January 1, 2024, amended, among other things, Domestic Relations Law §§170 & 200, and Family Court Act §§117, 308.1, 344.4, 347.1, & 1052; in addition to several sections of the penal law (including Penal Law §130 (1) and (2), the criminal procedure law, the correction law, the social services law, the vehicle and traffic law, the family court act, the civil rights law, the civil practice law and rules, the agriculture and markets law, the judiciary law and the domestic relations law, in relation to sex offenses; and repealed certain provisions of the penal law relating to sex offenses. The purpose of the Bill was to amend the penal law to remove the penetration requirement from the rape statutes as well as to define rape as sexual intercourse, oral sexual conduct, or anal sexual conduct. This bill removed the penetration requirement from the rape statutes and redefined rape to include oral and anal sexual conduct (which are now referred to as "criminal sexual act,") within the definition of rape so that these other forms of sexual assault are recognized by the law as rape and made conforming changes throughout various areas of law. (See NY Legis Memo 777 (2023) (legislative bills numbers S. 3161 and A. 3340)

Laws of 2024, Chapter 23, signed by the Governor on January 30, 2024, effective January 1, 2024, amended, among other things, Domestic Relations Law §§170 & 200, and Family Court Act §§117, 308.1, 344.4, 347.1, & 1052; in addition to several sections of the penal law (including Penal Law § 130 (1)(2) and (10), the criminal procedure law, the correction law, the social services law, the vehicle and traffic law, the family court act, the civil rights law, the civil practice law and rules, the agriculture and markets law and the judiciary law, in relation to certain sex offenses; and to amended a chapter of the laws of 2023, amending the penal law, the criminal procedure law, the correction law, the social services law, the vehicle and traffic law, the family Court act, the civil rights law, the civil practice law and rules, the agriculture and markets law, the judiciary law and the domestic relations law relating to sex offenses, as proposed in legislative bills numbers S. 3161 and A. 3340, in relation to the effectiveness thereof.

This amendment introduces technical changes related to cross-referencing other crimes in the penal law. The legislation incorporates language acknowledging the repealed sections of the penal law as formerly existing sections. The effective date has been extended from January 1, 2024, to September 1, 2024. This legislation is a negotiated change to the underlying chapter. The Executive wanted to clarify the legislature's intent by referencing the repealed sections related to the crime of criminal sexual acts. The addition

of the term 'formerly' in the newly amended statutes provides a reference point, reducing potential issues in prosecuting cases that existed before the amendments. (See NY Legis Memo 23 (2024) This legislation amends §130.00 (10) of the penal law, to redefine "Sexual conduct".

This act is effective on September 1, 2024, and applicable to any offense committed on or after the effective date (Laws of 2024, Ch 23, § 66).

Laws of 2024, Ch 23, § 46 provides that: This act shall take effect immediately; provided, however, that sections one through forty-four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2023, amending the penal law, the criminal procedure law, the correction law, the social services law, the vehicle and traffic law, the family court act, the civil rights law, the civil practice law and rules, the agriculture and markets law, the judiciary law and the domestic relations law relating to sex offenses, as proposed in legislative bills numbers S. 3161 and A. 3340, takes effect.

Note: The Domestic Relations Law, Family Court Act, and Social Services statutes that were amended, which are of interest to Family Law Practitioners, are below. The amended portion(s) of the statutes are in bold type indicating the portion of each statute that is effective immediately and the portion that is effective on September 1, 2024.

<u>Penal Law §130.00 (1)(2) and (10)</u>

Penal Law §130.00 (1)(2) and (10) were amended to read as follows:

§ 130.00 Sex offenses; definitions of terms

The following definitions are applicable to this article:
1. [Eff. until Sept. 1, 2024. See, also, subd. 1 below.] "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.
1. [Eff. Sept. 1, 2024. See, also, subd. 1 above.] "Vaginal sexual contact" means conduct between persons consisting of contact between the penis and the vagina or vulva.
2. [Eff. until Sept. 1, 2024. See, also, subd. 2 below.] (a) "Oral sexual conduct" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
(b) "Anal sexual conduct" means conduct between persons consisting of contact between the penis and anus.
2. [Eff. Sept. 1, 2024. See, also, subd. 2 above.] (a) "Oral sexual contact" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
(b) "Anal sexual contact" means conduct between persons consisting of contact between the penis and anus.
3. "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

4. For the purposes of this article "married" means the existence of the relationship between the actor and the victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article against the victim.
5. "Mentally disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.
6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.
7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
8. "Forcible compulsion" means to compel by either:
a. use of physical force; or
b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.
9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury.
10. [Eff. until Sept. 1, 2024. See, also, subd. 10 below.] "Sexual conduct" means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.
10. [Eff. Sept. 1 2024. See, also, subd. 10 above.] "Sexual conduct" means vaginal sexual contact, oral sexual contact, anal sexual contact, aggravated sexual contact, or sexual contact.
11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.
12. "Health care provider" means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the education law.
13. "Mental health care provider" shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.
(As amended by L.2023, c. 777, § 2, eff. Sept. 1, 2024; L.2024, c. 23, § 1, eff. Sept. 1, 2024.)

Domestic Relations Law §170(4)

Domestic Relations Law § 170 was amended as follows:

§ 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) [Eff. until Sept. 1, 2024. See, also, subd. (4) below.] 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.
(4) [Eff. Sept. 1, 2024. See, also, subd. (4) above.] 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 vaginal sexual contact, oral sexual contact or anal sexual contact, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual contact and anal sexual contact include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision four 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.
(L.2023, c. 777, § 59, eff. Sept. 1, 2024.)

Domestic Relations Law §200(4)

Domestic Relations Law §200(4) was amended to read as follows:

§ 200. Action for separation
An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever, or for a limited time, for any of the following causes:
1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.
2. The abandonment of the plaintiff by the defendant.
3. The neglect or refusal of the defendant-spouse to provide for the support of the plaintiff-spouse where the defendant-spouse is chargeable with such support under the provisions of section thirty-two of this chapter or of section four hundred twelve of the family court act.
4. [Eff. until Sept. 1, 2024. See, also, subd. 4 below.] The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.
4. [Eff. Sept. 1, 2024. See, also, subd. 4 above.] The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of vaginal sexual contact, oral sexual contact or anal sexual contact, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual contact and anal sexual contact include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision four of section 130.20 of the penal law.
5. The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.
(L.2023, c. 777, § 64, eff. Sept. 1, 2024.)

<u>Family Court Act §117(b)</u>

Family Court Act §117(b) **opening paragraph was amended to read as follows:**

§ 117. Parts of court

(a) There is hereby established in the family court a "child abuse part". Such part shall be held separate from all other proceedings of the court, and shall have jurisdiction over all proceedings in the family court involving abused children, and shall be charged with the immediate protection of these children. All cases involving abuse shall be originated in or be transferred to this part from other parts as they are made known to the court unless there is or was before the court a proceeding involving any members of the same family or household, in which event the judge who heard said proceeding may hear the case involving abuse. Consistent with its primary purpose, nothing in this section is intended to prevent the child abuse part from hearing other cases.
(b) [Eff. until Sept. 1, 2024. See, also, opening par. below.] For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in clause (i), (ii) or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor, committed by a person at least twelve but less than eighteen years of age, but only where there have been two prior findings by the court that such person has committed a prior act which, if committed by an adult, would be a felony:

(b) [Eff. Sept. 1, 2024. See, also, opening par. above.] For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); former section 130.50; sections 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree), but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree); or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen, fifteen, sixteen, or seventeen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in clause (i), (ii) or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor, committed by a person at least twelve but less than eighteen years of age, but only where there have been two prior findings by the court that such person has committed a prior act which, if committed by an adult, would be a felony:

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

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

(c) The chief administrator of the courts may establish one or more separate support parts in each family court for the purpose of expediting support proceedings instituted pursuant to articles four, five and five-A of this act. Where such separate support parts are established, all such proceedings shall be originated in or be transferred to this part or

parts as they are made known to the court and shall be heard by support magistrates in accordance with section four hundred thirty-nine of this act.
(d) The appellate division of the supreme court in each department may provide, in accordance with the standards and policies established by the administrative board of the judicial conference, that the family court in counties within its department shall or may be organized into such other parts, if any, as may be appropriate.
(L.2023, c. 777, § 38, eff. Sept. 1, 2024; L.2024, c. 23, § 35, eff. Sept. 1, 2024.)

Family Court Act 308.1(4)

Family Court Act 308.1(4)was amended to read as follows:

§ 308.1. Rules of court for preliminary procedure
1. Rules of court shall authorize and determine the circumstances under which the probation service may confer with any person seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons concerning the advisability of requesting that a petition be filed.
2. Except as provided in subdivisions three and four of this section, the probation service may, in accordance with rules of court, adjust suitable cases before a petition is filed. The inability of the respondent or his or her family to make restitution shall not be a factor in a decision to adjust a case or in a recommendation to the presentment agency pursuant to subdivision six of this section. Nothing in this section shall prohibit the probation service or the court from directing a respondent to obtain employment and to make restitution from the earnings from such employment. Nothing in this section shall prohibit the probation service or the court from directing an eligible person to complete an education reform program in accordance with section four hundred fifty-eight-l of the social services law.
3. The probation service shall not adjust a case in which the child has allegedly committed a designated felony act unless it has received the written approval of the court.
4. [Eff. until Sept. 1, 2024. See, also, subd. 4 below.] The probation service shall not adjust a case in which the child has allegedly committed a delinquent act which would be a crime defined in section 120.25, (reckless endangerment in the first degree), subdivision one of section 125.15, (manslaughter in the second degree), subdivision one of section 130.25, (rape in the third degree), subdivision one of section 130.40, (criminal sexual act in the third degree), subdivision one or two of section 130.65, (sexual abuse in the first degree), section 135.65, (coercion in the first degree), section 140.20, (burglary in the third degree), section 150.10, (arson in the third degree), section 160.05, (robbery in the third degree), subdivision two, three or four of section 265.02, (criminal possession of a weapon in the third degree), section 265.03, (criminal possession of a weapon in the second degree), or section 265.04, (criminal possession of a dangerous weapon in the first degree) of the penal law where the child has previously had one or more adjustments of a case in which such child allegedly committed an act which would be a crime specified in this subdivision unless it has received written approval from the court and the appropriate presentment agency.
4. [Eff. Sept. 1, 2024. See, also, subd. 4 above.] The probation service shall not adjust a case in which the child has allegedly committed a delinquent act which would be a crime defined in section 120.25, (reckless endangerment in the first degree), subdivision one of section 125.15, (manslaughter in the second degree), subdivisions one, two and three of section 130.25, (rape in the third degree), subdivision one of former section 130.40, subdivision one

or two of section 130.65, (sexual abuse in the first degree), section 135.65, (coercion in the first degree), section 140.20, (burglary in the third degree), section 150.10, (arson in the third degree), section 160.05, (robbery in the third degree), subdivision two, three or four of section 265.02, (criminal possession of a weapon in the third degree), section 265.03, (criminal possession of a weapon in the second degree), or section 265.04, (criminal possession of a dangerous weapon in the first degree) of the penal law where the child has previously had one or more adjustments of a case in which such child allegedly committed an act which would be a crime specified in this subdivision unless it has received written approval from the court and the appropriate presentment agency.

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

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

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

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

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

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

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

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

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

14. Notwithstanding subdivisions three, four and thirteen of this section, the probation service may adjust a proceeding where the court has referred a case to the probation service in accordance with section 320.6 of this article in conjunction with or subsequent to the issuance of an order pursuant to subdivision one of section 345.1 of this article where such order does not include a fact-finding for an act which would constitute a juvenile offense, designated felony or offense listed in subdivision four of this section. Where a

proceeding has been referred to the probation service in which an order issued pursuant to section 345.1 of this article consists solely of a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, the probation service shall adjust the matter unless good cause is shown and is documented in its records.
(L.2023, c. 777, § 39, eff. Sept. 1, 2024; L.2024, c. 23, § 36, eff. Sept. 1, 2024.)

Family Court Act 344.4(3)

Family Court Act 344.4(3) was amended to read as follows:

§ 344.4. Rules of evidence; admissibility of evidence of victim's sexual conduct in sex offense cases
Evidence of a victim's sexual conduct shall not be admissible in a juvenile delinquency proceeding for a crime or an attempt to commit a crime defined in article one hundred thirty of the penal law unless such evidence:
1. proves or tends to prove specific instances of the victim's prior sexual conduct with the accused; or
2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 of the penal law within three years prior to the sex offense which is the subject of the juvenile delinquency proceeding; or
3. [Eff. until Sept. 1, 2024. See, also, subd. 3 below.] rebuts evidence introduced by the presentment agency of the victim's failure to engage in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact during a given period of time; or
3. [Eff. Sept. 1, 2024. See, also, subd. 3 above.] rebuts evidence introduced by the presentment agency of the victim's failure to engage in vaginal sexual contact, oral sexual contact, anal sexual contact or sexual contact during a given period of time; or
4. rebuts evidence introduced by the presentment agency which proves or tends to prove that the accused is the cause of pregnancy or disease of the victim, or the source of semen found in the victim; or
5. is determined by the court after an offer of proof by the accused, or such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination, to be relevant and admissible in the interests of justice.
(Added L.1987, c. 761, § 1, eff. Nov. 1, 1987. Amended L.2003, c. 264, § 62, eff. Nov. 1, 2003; L.2023, c. 777, § 58, eff. Sept. 1, 2024.)

Family Court Act 347.1(1)

Family Court Act 347.1(1) was amended to read as follows:

§ 347.1. Required testing of the respondent in certain proceedings
1. [Eff. until Sept. 1, 2024. See, also, subd. 1 below.] (a) In any proceeding where the respondent is found pursuant to section 345.1 or 346.1 of this article, to have committed a

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

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

1. [Eff. Sept. 1, 2024. See, also, subd. 1 above.] (a) In any proceeding where the respondent is found pursuant to section 345.1 or 346.1 of this article, to have committed a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, for which an act of "vaginal sexual contact", "oral sexual contact" or "anal sexual contact", as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the respondent submit to human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the respondent and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law.

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

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

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

4. The application for an order to compel a respondent to undergo an HIV related test may be made by the victim but, if the victim is an infant or incompetent person, the application may also be made by a representative as defined in section twelve hundred one of the civil practice law and rules. The application must state that (a) the applicant was the victim of the

offense, enumerated in paragraph (a) of subdivision one of this section, which the court found the defendant to have committed; and (b) the applicant has been offered counseling by a public health officer and been advised of (i) the limitations on the information to be obtained through an HIV test on the proposed subject; (ii) current scientific assessments of the risk of transmission of HIV from the exposure he or she may have experienced; and (iii) the need for the applicant to undergo HIV related testing to definitively determine his or her HIV status.
5. The court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense the respondent was found to have committed. The court ordered test must be performed within fifteen days of the date on which the court ordered the test, provided however that whenever the respondent is not tested within the period prescribed by the court, the court must again order that the respondent undergo an HIV related test.
6. (a) Test results shall be disclosed subject to the following limitations, which shall be specified in any order issued pursuant to this section:
(i) disclosure of confidential HIV related information shall be limited to that information which is necessary to fulfill the purpose for which the order is granted;
(ii) disclosure of confidential HIV related information shall be limited to the person making the application; redisclosure shall be permitted only to the victim, the victim's immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk of HIV transmission and shall not be permitted to any other person or the court.
(b) Unless inconsistent with this section, the court's order shall direct compliance with and conform to the provisions of article twenty-seven-F of the public health law. Such order shall include measures to protect against disclosure to others of the identity and HIV status of the applicant and of the person tested and may include such other measures as the court deems necessary to protect confidential information.
7. Any failure to comply with the provisions of this section or section twenty-seven hundred eighty-five-a of the public health law shall not impair the validity of any order of disposition entered by the court.
8. No information obtained as a result of a consent, hearing or court order for testing issued pursuant to this section nor any information derived therefrom may be used as evidence in any criminal or civil proceeding against the respondent which relates to events that were the basis for the respondent's conviction, provided however that nothing herein shall prevent prosecution of a witness testifying in any court hearing held pursuant to this section for perjury pursuant to article two hundred ten of the penal law.
(Amended L.2023, c. 777, § 49, eff. Sept. 1, 2024.)

Family Court Act 1052(c)

Family Court Act 1052(c) was amended to read as follows:

§ 1052. Disposition on adjudication

(a) At the conclusion of a dispositional hearing under this article, the court shall enter an order of disposition directing one or more of the following:
(i) suspending judgment in accord with section one thousand fifty-three of this part; or

(ii) releasing the child to a non-respondent parent or parents or legal custodian or custodians or guardian or guardians, who is not or are not respondents in the proceeding, in accord with section one thousand fifty-four of this part; or
(iii) placing the child in accord with section one thousand fifty-five of this part; or
(iv) making an order of protection in accord with section one thousand fifty-six of this part; or
(v) releasing the child to the respondent or respondents or placing the respondent or respondents under supervision, or both, in accord with section one thousand fifty-seven of this part; or
(vi) granting custody of the child to a respondent parent or parents, a relative or relatives or a suitable person or persons pursuant to article six of this act and section one thousand fifty-five-b of this part; or
(vii) granting custody of the child to a non-respondent parent or parents pursuant to article six of this act.
However, the court shall not enter an order of disposition combining placement of the child under paragraph (iii) of this subdivision with a disposition under paragraph (i) or (ii) of this subdivision. An order granting custody of the child pursuant to paragraph (vi) or (vii) of this subdivision shall not be combined with any other disposition under this subdivision.
(b)(i) The order of the court shall state the grounds for any disposition made under this section. If the court places the child in accord with section one thousand fifty-five of this part, the court in its order shall determine:
(A) whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his or her home and if the child was removed from the home prior to the date of such hearing, that such removal was in the child's best interests and, where appropriate, reasonable efforts were made to make it possible for the child to safely return home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding, or if the permanency plan for the child is adoption, guardianship or another permanent living arrangement other than reunification with the parent or parents of the child, the court order shall include a finding that reasonable efforts, including consideration of appropriate in-state and out-of-state placements, are being made to make and finalize such alternate permanent placement.
For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where, upon motion with notice by the social services official, the court determines that:
(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision (j) of section one thousand twelve of this article;
(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;
(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;
(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause two, three or four of this subparagraph, and the victim of such offense was the child or another child of the parent; or
(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;
unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.
(7) If the court determines that reasonable efforts are not to be required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether or when the child: (i) will be returned to the parent; (ii) should be placed for adoption with the social services official filing a petition for termination of parental rights; (iii) should be referred for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child, if the child is age sixteen or older and if the requirements of clause (E) of subparagraph (i) of paragraph two of subdivision (d) of section one thousand eighty-nine of the chapter have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements, and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.
For the purpose of this section, in determining reasonable effort to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.
For the purpose of this section, a sibling shall include a half-sibling;
(B) if the child has attained the age of sixteen, the services needed, if any, to assist the child to make the transition from foster care to independent living. Where the court finds that the local department of social services has not made reasonable efforts to prevent or eliminate

the need for placement, and that such efforts would be appropriate, it shall direct the local department of social services to make such efforts pursuant to section one thousand fifteen-a of this article, and shall adjourn the hearing for a reasonable period of time for such purpose when the court determines that additional time is necessary and appropriate to make such efforts; and

(C) whether the local social services district made a reasonable search to locate relatives of the child as required pursuant to section one thousand seventeen of this article. In making such determination, the court shall consider whether the local social services district engaged in a search to locate any non-respondent parent and whether the local social services district attempted to locate all of the child's grandparents, all suitable relatives identified by any respondent parent and any non-respondent parent and all relatives identified by a child over the age of five as relatives who play or have played a significant positive role in the child's life.

(ii) The court shall also consider and determine whether the need for placement of the child would be eliminated by the issuance of an order of protection, as provided for in paragraph (iv) of subdivision (a) of this section, directing the removal of a person or persons from the child's residence. Such determination shall consider the occurrence, if any, of domestic violence in the child's residence.

(c) [Eff. until Sept. 1, 2024. See, also, subd. (c) below.] Prior to granting an order of disposition pursuant to subdivision (a) of this section following an adjudication of child abuse, as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of this act or a finding of a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65 and 130.70 of the penal law, the court shall advise the respondent that any subsequent adjudication of child abuse, as defined in paragraph (i) of subdivision (e) of section one thousand twelve of this act or any subsequent finding of a felony sex offense as defined in those sections of the penal law herein enumerated, arising out of acts of the respondent may result in the commitment of the guardianship and custody of the child or another child pursuant to section three hundred eighty-four-b of the social services law. The order in such cases shall contain a statement that any subsequent adjudication of child abuse or finding of a felony sex offense as described herein may result in the commitment of the guardianship and custody of the child, or another child pursuant to section three hundred eighty-four-b of the social services law.

(c) [Eff. Sept. 1, 2024. See, also, subd. (c) above.] Prior to granting an order of disposition pursuant to subdivision (a) of this section following an adjudication of child abuse, as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of this act or a finding of a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65 and 130.70 of the penal law, the court shall advise the respondent that any subsequent adjudication of child abuse, as defined in paragraph (i) of subdivision (e) of section one thousand twelve of this act or any subsequent finding of a felony sex offense as defined in those sections of the penal law herein enumerated, arising out of acts of the respondent may result in the commitment of the guardianship and custody of the child or another child pursuant to section three hundred eighty-four-b of the social services law. The order in such cases shall contain a statement that any subsequent adjudication of child abuse or finding of a felony sex offense as described herein may result in the commitment of the guardianship and custody of the child, or another child pursuant to section three hundred eighty-four-b of the social services law.

(L.2023, c. 777, § 40, eff. Sept. 1, 2024; L.2024, c. 23, § 37, eff. Sept. 1, 2024.)

Social Services Law 384-b 8 (a) (ii); (b)(i) and (ii) and (8)(e)

Social Services Law 384-b (a) (ii); (b)(i) and (ii) and (8)(e) were amended to read as follows:

§ 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights
1. Statement of legislative findings and intent.
(a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:
(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;
(ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;
(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and
(iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.
(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.
It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.
2. For the purposes of this section, (a) "child" shall mean a person under the age of eighteen years; and, (b) "parent" shall include an incarcerated parent unless otherwise qualified.
3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section one thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and

custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency.
(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to section one thousand eighty-nine of the family court act or by a relative with care and custody of the child or, if an authorized agency ordered by the court to originate a proceeding under this section fails to do so within the time fixed by the court, by the child's attorney or guardian ad litem on the court's direction.
(c) Where a child was placed or continued in foster care pursuant to article ten, ten-A or ten-C of the family court act or section three hundred fifty-eight-a of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten, ten-A or ten-C of the family court act or section three hundred fifty-eight-a of this chapter was last heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to section one thousand fifty-five, one thousand eighty-nine or one thousand ninety-five of the family court act, all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten, ten-A or ten-C of the family court act regarding any of the children who are the subjects of the proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing an attorney for the child, appoint an attorney who has previously represented the child.
(c-1) Before hearing a petition under this section, the court in which the termination of parental rights petition has been filed shall ascertain whether the child is under the jurisdiction of a family court pursuant to a placement in a child protective or foster care proceeding or continuation in out-of-home care pursuant to a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If the court determines that the child is under the jurisdiction of a different family court, the court in which the termination of parental rights petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the court that exercised jurisdiction over the most recent proceeding. The communication shall be recorded or summarized on the record by the court in which the termination of parental rights petition was filed. Both courts shall notify the parties and child's attorney, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction. The court that exercised jurisdiction over the most recent proceeding shall determine whether it will accept or decline jurisdiction over the termination of parental rights petition. This determination of jurisdiction shall be incorporated into an order regarding jurisdiction that shall be issued by the court in which the termination of parental rights petition was filed

within thirty days of such filing. If the court that exercised jurisdiction over the most recent proceeding determines that it should exercise jurisdiction over the termination of parental rights petition, the order shall require that the petition shall be transferred to that court forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the judge who heard the most recent proceeding. If the court that exercised jurisdiction over the most recent proceeding declines to exercise jurisdiction over the adoption petition, the court in which the termination of parental rights petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraph (c), (d) or (e) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraph (a) or (b) of subdivision four of this section, except as provided in paragraphs (c) and (c-1) of this subdivision.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act. When the proceeding is initiated on the grounds of abandonment of a child less than one year of age at the time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of subdivision (b) of section one thousand fifty-five of the family court act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to the extent that they do not conflict with the specific provisions of this section. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g)(i) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in subdivision four of this section are based upon clear and convincing proof.

(ii) Where a proceeding has been properly commenced under this section by the filing of a petition before the eighteenth birthday of a child, an order committing the guardianship and custody of a child pursuant to this section upon a finding under subdivision four of this section shall be granted after the eighteenth birthday of a child where the child consents to such disposition.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of section three hundred eighty-four of this chapter.

(k) Where the child is over fourteen years of age, the court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

(l)(i) Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or (D) the parent or parents are incarcerated, in immigration detention or immigration removal proceedings, or participating in a residential substance abuse treatment program, or the prior incarceration, immigration detention or immigration removal proceedings, or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided that the parent maintains a meaningful role in the child's life based on the criteria set forth in subparagraph (v) of this paragraph and the agency has not documented a reason why it would otherwise be appropriate to file a petition pursuant to this section.

(ii) For the purposes of this section, a compelling reason whereby a social services official is not required to file a petition for termination of parental rights in accordance with subparagraph (i) of this paragraph includes, but is not limited to, where:

(A) the child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living;
(B) the child has a permanency goal other than adoption;
(C) the child is fourteen years of age or older and will not consent to his or her adoption;
(D) there are insufficient grounds for filing a petition to terminate parental rights; or
(E) the child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian.
(iii) For the purposes of this paragraph, the date of the child's entry into foster care is the earlier of sixty days after the date on which the child was removed from the home or the date the child was found by a court to be an abused or neglected child pursuant to article ten of the family court act.
(iv) In the event that the social services official or authorized agency having care and custody of the child fails to file a petition to terminate parental rights within sixty days of the time required by this section, or within ninety days of a court direction to file a proceeding not otherwise required by this section, such proceeding may be filed by the foster parent of the child without further court order or by the attorney for the child on the direction of the court. In the event of such filing the social services official or authorized agency having care and custody of the child shall be served with notice of the proceeding and shall join the petition.
(v) For the purposes of clause (D) of subparagraph (i) of this paragraph, an assessment of whether a parent maintains a meaningful role in his or her child's life shall be based on evidence, which may include the following: a parent's expressions or acts manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; efforts by the parent to communicate and work with the authorized agency, attorney for the child, foster parent, the court, and the parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel for the purpose of complying with the service plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to the authorized agency's diligent efforts as defined in paragraph (f) of subdivision seven of this section; and whether the continued involvement of the parent in the child's life is in the child's best interest. In assessing whether a parent maintains a meaningful role in his or her child's life, the authorized agency shall gather input from individuals and agencies in a reasonable position to help make this assessment, including but not limited to, the authorized agency, attorney for the child, parent, child, foster parent or other individuals of importance in the child's life, and parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel. The court may make an order directing the authorized agency to undertake further steps to aid in completing its assessment.
4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:
(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or
(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or intellectual disability, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or
(d) The child is a permanently neglected child; or
(e) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination.
5. (a) For the purposes of this section, a child is "abandoned" by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.
(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.
6. (a) For the purposes of this section, "mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.
(b) For the purposes of this section, "intellectual disability" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act; provided, however, that case law regarding use of the phrase "mental retardation" under this section shall be applicable to the term "intellectual disability".
(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.
(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in section 730.10 of the criminal procedure law in the case of a parent alleged to be mentally ill or retarded, such psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

7. (a) For the purposes of this section, "permanently neglected child" shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. The court shall consider the special circumstances of an incarcerated parent or parents, or of a parent or parents participating in a residential substance abuse treatment program, when determining whether a child is a "permanently neglected child" as defined in this paragraph. In such cases, the court also shall consider the particular constraints, including but not limited to, limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful relationship between the parent and his or her child, that may impact the parent's ability to substantially and continuously or repeatedly maintain contact with his or her child and to plan for the future of his or her child as defined in paragraph (c) of this subdivision. Where a court has previously determined in accordance with paragraph (b) of subdivision three of section three hundred fifty-eight-a of this chapter or section one thousand thirty-nine-b, subparagraph (A) of paragraph (i) of subdivision (b) of section one thousand fifty-two, paragraph (b) of subdivision two of section seven hundred fifty-four or paragraph (c) of subdivision two of section 352.2 of the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as defined in this section. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial

circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.
(d) For the purposes of this subdivision:
(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and
(ii) The time during which a parent is actually hospitalized or institutionalized shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.
(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when:
(i) The parent has failed for a period of six months to keep the agency apprised of his or her location, provided that the court may consider the particular delays or barriers an incarcerated parent or parents, or a parent or parents participating in a residential substance abuse treatment program, may experience in keeping the agency apprised of his or her location; or
(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.
(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:
(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;
(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;
(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;
(4) informing the parents at appropriate intervals of the child's progress, development and health;
(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated

parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

(6) providing information which the authorized agency shall obtain from the office of children and family services, outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program whose child is in custody of an authorized agency, and on social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child. Wherever possible, such information shall include transitional and family support services located in the community to which an incarcerated parent or parent participating in a residential substance abuse treatment program shall return.

8. (a) For the purposes of this section a child is "severely abused" by his or her parent if (i) the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of section 10.00 of the penal law; or

(ii) [Eff. until Sept. 1, 2024. See, also, subpar. (ii) below.] the child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the purposes of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(ii) [Eff. Sept. 1, 2024. See, also, subpar. (ii) above.] the child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the purposes of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(iii) (A) the parent of such child has been convicted of murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and

such abuse was a factor in causing the attempted homicide; (B) the parent of such child has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; (C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or (D) the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause (A), (B) or (C) of this subparagraph; and

(iv) the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(b) For the purposes of this section a child is "repeatedly abused" by his or her parent if:

(i) [Eff. until Sept. 1, 2024. See, also, subpar. (i) below.] the child has been found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

(i) [Eff. Sept. 1, 2024. See, also, subpar. (i) above.] the child has been found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

(ii) [Eff. until Sept. 1, 2024. See, also, subpar. (ii) below.] (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, in the case of a finding of abuse as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in

sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (B) the parent has been convicted of a crime under section 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(ii) [Eff. Sept. 1, 2024. See, also, subpar. (ii) above.] (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, in the case of a finding of abuse as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (B) the parent has been convicted of a crime under section 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(iii) the agency has made diligent efforts, to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(c) Notwithstanding any other provision of law, the requirements of paragraph (g) of subdivision three of this section shall be satisfied if one of the findings of abuse pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision is found to be based on clear and convincing evidence.

(d) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that the child was a severely abused child as defined in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall establish that the child was a severely abused child in accordance with this section. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) [Eff. until Sept. 1, 2024. See, also, par. (e) below.] A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused[1] as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law shall establish that the child was an abused child for the purpose of

a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) [Eff. Sept. 1, 2024. See, also, par. (e) above.] A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law shall establish that the child was an abused child for the purpose of a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(f) Upon a finding pursuant to paragraph (a) or (b) of this subdivision that the child has been severely or repeatedly abused by his or her parent, the court shall enter an order of disposition either (i) committing the guardianship and custody of the child, pursuant to this section, or (ii) suspending judgment in accordance with section six hundred thirty-three of the family court act, upon a further finding, based on clear and convincing, competent, material and relevant evidence introduced in a dispositional hearing, that the best interests of the child require such commitment or suspension of judgment. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be completed pursuant to section one thousand eighty-nine of the family court act.

9. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to contact with siblings, inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent. Notwithstanding any other provision of law, a child committed to the custody and guardianship of an authorized agency pursuant to this section shall be deemed to continue in foster care until such time as an adoption or another planned permanent living arrangement is finalized. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be held pursuant to section one thousand eighty-nine of the family court act.

10. Upon the court's order transferring custody and guardianship to the commissioner, the attorney for the petitioning authorized agency shall promptly serve upon the persons who have been approved by such agency as the child's adoptive parents, notice of entry of such order and advise such persons that an adoption proceeding may be commenced. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

11. Upon the entry of an order committing the guardianship and custody of a child pursuant to this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.
12. Repealed by L.2022, c. 828, § 9, eff. Dec. 30, 2022.
13. A petition to modify a disposition of commitment of guardianship and custody in order to restore parental rights may be brought in accordance with part one-A of article six of the family court act where the conditions enumerated in section six hundred thirty-five of such part have been met.
(L.2023, c. 777, § 36, eff. Sept. 1, 2024; L.2024, c. 23, § 33, eff. Sept. 1, 2024.)

Laws of 2024, Ch 94 amended Family Court Act §783 effective March 7, 2024

This was a chapter amendment that made changes to provisions of Laws of 2023, Ch. 691, as it relates to expunging records of persons in need of supervision (PINS) cases in Family Court. The legislation amended the underlying chapter by creating a carve out for service records maintained by social service departments from the records destroyed as part of the expungement process in Section 1. Section 1 further clarifies that all foster care and preventive service records maintained by a local district will remain subject to the confidentiality provisions that govern said records within article six of the social services law. The legislation also adds local educational agencies to the list of entities with expungement responsibilities in cases where the educational agency is a petitioner in a PINS case. Additionally, the legislation makes modifications to the purposes for which a lead agency is able to access their own sealed records, including the addition of when the information is necessary for the department to make eligibility determinations or for federal audit purposes. The effective date of the legislation was modified from ninety days to one year, with the office of children and family services being required to update necessary systems to effectuate the requirements of the bill on or before one hundred and eighty days after it shall have become law. This act takes effect on the same day and in the same manner as a chapter of the laws of 2023 amending the family court act relating to expungement of records in persons in need of supervision cases in the family court, as proposed in legislative bills number 5.7444 and A.6544, takes effect. (NY Legis Memo 94 (2024)

Family Court Act 783 reads as follows:

§ 783. Use of records in other court; expungement of records
Currentness

(a) Neither the fact that a person was before the family court under this article for a hearing nor any confession, admission or statement made by him or her to the court or to any officer thereof in any stage of the proceeding is admissible as evidence against him or her or his or her interests in any other court.

(b) For purposes of this section, "expungement" shall mean that all official records and papers, including judgments and orders of the court, but not including public court decisions or opinions or records and briefs on appeal, relating to the arrest, prosecution and court proceedings and records of the probation service and designated lead agency, including all duplicates or copies thereof, on file with the court, police department and law enforcement agency, probation service, designated lead agency and presentment agency, if any, shall be destroyed and, except for records sealed as provided in paragraphs (v) and (vi) of subdivision (c) of this section, shall not be made available to any person or public or private agency. Provided, however, that foster care and preventive service records maintained by social services departments relating to a proceeding under this article shall not be subject to expungement or sealing under this section and shall be held confidential in accordance with article six of the social services law.

(c) Automatic expungement of records of a proceeding under this article that is terminated in favor of the respondent. (i) Upon termination of a proceeding under this article in favor of the respondent, the clerk of the court shall immediately notify and direct the directors of the appropriate probation department, designated lead agency pursuant to section seven hundred thirty-five of this article, a local educational agency if an official of such agency was the petitioner pursuant to section seven hundred thirty-three of this article and, if a presentment agency represented the petitioner in the proceeding, such agency, that the proceeding has terminated in favor of the respondent and that the records, if any, of such action or proceeding on file with such offices shall be expunged. If the respondent had been the subject of a warrant or an arrest in connection with the proceeding, or law enforcement was the referring agency or petitioner pursuant to section seven hundred thirty-three of this article, the notice shall also be sent to the appropriate police department or law enforcement agency. Upon receipt of such notification, the records shall be expunged in accordance with subdivision (b) of this section. The attorney for the respondent shall be notified by the clerk of the court in writing of the date and agencies and departments to which such notifications were sent.
(ii) For the purposes of this section, a proceeding under this article shall be considered terminated in favor of a respondent where the proceeding has been:
(A) diverted prior to the filing of a petition pursuant to subdivision (g) of section seven hundred thirty-five of this article or subsequent to the filing of a petition pursuant to subdivision (b) of section seven hundred forty-two of this article; or
(B) withdrawn or dismissed for failure to prosecute, or for any other reason at any stage; or
(C) dismissed following an adjournment in contemplation of dismissal pursuant to subdivision (a) of section seven hundred forty-nine of this article; or
(D) resulted in an adjudication where the only finding was for a violation of former section 221.05 or section 230.00 of the penal law; provided, however, that with respect to findings under this paragraph, the expungement required by this section shall not take place until the conclusion of the period of any disposition or extension under this article.

(iii) If, with respect to a respondent who had been the subject of a warrant or an arrest in connection with the proceeding, or law enforcement was the referring agency, the designated lead agency diverts a case either prior to or subsequent to the filing of a petition under this article, the designated lead agency shall notify the appropriate probation service and police department or law enforcement agency in writing of such diversion. Such notification may be on a form prescribed by the chief administrator of the courts. Upon receipt of such notification, the probation service and police department or law enforcement agency shall expunge any records in accordance with subdivision (b) of this section in the same manner as is required thereunder with respect to an order of a court.
(iv) If, following the referral of a proceeding under this article for the filing of a petition, the petitioner or, if represented by a presentment agency, such agency, elects not to file a petition under this article, the petitioner or, if applicable, the presentment agency, shall notify the appropriate probation service and designated lead agency of such determination. Such notification may be on a form prescribed by the chief administrator of the courts and may be transmitted by electronic means. If the respondent had been the subject of a warrant or an arrest in connection with the proceeding, or law enforcement was the referring agency, the notification shall also be sent to the appropriate police department or law enforcement agency. Upon receipt of such notification, the records shall be expunged in accordance with subdivision (b) of this section in the same manner as is required thereunder with respect to an order of a court, provided, however, that the designated lead agency may have access to its own records in accordance with paragraph (v) of this subdivision.
(v) Where a proceeding has been diverted pursuant to subparagraph (A) of paragraph (ii) of this subdivision or where a proceeding has been referred for the filing of a petition but the potential petitioner or, if represented by a presentment agency, such agency, elects not to file a petition in accordance with paragraph (iv) of this subdivision, upon receipt of written notice the designated lead agency shall seal any records related to the proceeding under this section that are in its possession, but shall have access to such records solely for the following purposes:
(A) where there is continuing or subsequent contact with the child under this article; or
(B) where the information is necessary for such department to determine what services had been arranged or provided to the family or where the commissioner determines that the information is necessary in order for the commissioner of such department to comply with section four hundred twenty-two-a of the social services law.
(vi) Records sealed under this section shall be made available to the juvenile or his or her agent and, where the petitioner or potential petitioner is a parent or other person legally responsible for the juvenile's care, such parent or other person. No statement made to a designated lead agency by the juvenile or his or her parent or other person legally responsible that is contained in a record expunged or sealed under this section shall be admissible in any court proceeding, except upon the consent or at the request, respectively, of the juvenile or his or her parent or other person legally responsible for the juvenile's care.
(vii) A respondent in whose favor a proceeding was terminated prior to the effective date of this paragraph may, upon motion, apply to the court, upon not less than twenty days notice to the petitioner or (where the petitioner is represented by a presentment agency) such agency, for an order granting the relief set forth in paragraph (i) of this subdivision. Where a proceeding under this article was terminated in favor of the respondent in accordance with paragraph (iii) or (iv) of this subdivision prior to the effective date of this paragraph, the

respondent may apply to the designated lead agency, petitioner or presentment agency, as applicable, for a notification as described in such paragraphs granting the relief set forth therein and such notification shall be granted.

(d) Motion to expunge after an adjudication and disposition. (i) If an action has resulted in an adjudication and disposition under this article, the court may, in the interest of justice and upon motion of the respondent, order the expungement of the records and proceedings.
(ii) Such motion must be in writing and may be filed at any time subsequent to the conclusion of the disposition, including, but not limited to, the expiration of the period of placement, suspended judgment, order of protection or probation or any extension thereof. Notice of such motion shall be served not less than eight days prior to the return date of the motion upon the petitioner or, if the petitioner was represented by a presentment agency, such agency. Answering affidavits shall be served at least two days before the return date.
(iii) The court shall set forth in a written order its reasons for granting or denying the motion. If the court grants the motion, all court records, as well as all records in the possession of the designated lead agency, the probation service, the presentment agency, if any, and, if the respondent had been the subject of a warrant or an arrest in connection with the proceeding, or if the police or law enforcement agency was the referring agency or petitioner pursuant to section seven hundred thirty-three of this article, the appropriate police or law enforcement agency, shall be expunged in accordance with subdivision (b) of this section.

(e) Automatic expungement of court records. All records under this article shall be automatically expunged upon the respondent's twenty-first birthday unless earlier expunged under this section, provided that expungement under this paragraph shall not take place until the conclusion of the period of any disposition or extension under this article.
(f) Expungement of court records; inherent power. Nothing contained in this article shall preclude the court's use of its inherent power to order the expungement of court records.

(L.1962, c. 686. Amended L.2023, c. 691, § 1, eff. March 7, 2024; L.2024, c. 94, § 1, eff. March 7, 2024.)

Court Rules

22 NYCRR 202.12 Preliminary Conference rule Amended

The Preliminary Conference rule in 22 NYCRR 202.12 was amended on May 13, 2024 (AO/156/24) effective May 20, 2024. The amended 22 NYCRR 202.12 (k) provides that the provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement only to the extent that these provisions are not inconsistent with the provisions of 22 NYCRR 202.16.

S22 NYCRR 202.16 (k) provides that the provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, only to the extent that these provisions are not inconsistent with the provisions of 22 NYCRR 202.16. It appears that the Preamble, and subdivisions (a), (b) (c) (d) (e) (f) and (g) are inconsistent with 22 NYCRR 202.16, and subdivisions (h) (i) (j) and (k) are not inconsistent with 22 NYCRR 202.16 (k)

The amended rule provides:

Section 202.12 Preliminary Conference.

Preamble.

The parties, with the court's assistance, are encouraged to consider as early as possible how best to achieve the most efficient, expeditious and cost-effective resolution of every case. A preliminary conference will frequently be a useful and even critical tool for furthering these goals. A preliminary conference should be held before the assigned judge, soon after commencement of the case and after the parties have conferred. An in-person conference should not be held, however, if such conference will be non-substantive or involve only the submission of a stipulated order (for example, because of the nature of the case or the caseload of the particular court or the assigned judge, or otherwise). In such cases, stipulations should be submitted or a scheduling order should be issued in accordance with subdivisions (b) or (g) of this section and counsel should not be required to appear. Further, pursuant to section 202.10 of this part, the court may also in its discretion, address preliminary conference matters, in whole or in part, telephonically or by remote technology with the attorneys for all parties.
When preliminary conferences are held, the court shall engage the parties in a discussion of the merits of the case aimed at determining how best to resolve the dispute as expeditiously and efficiently as possible. Among other topics, the court and the parties may consider at the preliminary conference:

- **the principal factual and legal issues in dispute;**
- **the timing of presumptive mediation and the appropriateness of other forms of alternative dispute resolution for the dispute;**
- **the timetable for the proceedings, including the appropriateness of sequencing motion practice, discovery or other aspects of the case, to address threshold dispositive issues while discovery on other issues is held in abeyance;**
- **other matters as set forth in subdivision (c) of this section; and**
- **the date for a subsequent conference to follow-up on the matters discussed at the preliminary conference.**

(a) A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses, and telephone numbers and email addresses of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order a date for preliminary conference in any action upon such request and subject to the following

(b) In the absence of a party request as set forth in subdivision (a), and except as provided in subdivision (g), after the filing of a request for judicial intervention, the court shall promptly email to all parties the form of a stipulation and order, prescribed by the Chief Administrator of the Courts which shall provide for completion of disclosure within twelve (12) months of the filing of the request for judicial intervention for a standard case, or within fifteen (15) months of such filing for a complex case. The form of the stipulation shall contain a certification by attorneys for the parties that they have met and conferred on the items set forth in sections 202.11 and 202.12(c). If all parties sign the form and return it to the court within thirty (30) days, such form shall be "so ordered" by the court and no preliminary conference shall be held unless the court orders otherwise. If such stipulation is not returned signed by all parties, the court shall schedule a conference to be held virtually before the court or, in the court's discretion, nonjudicial personnel, for the purpose of completing the form stipulation. Except where a party appears in the action pro se, an attorney thoroughly familiar with the action and authorized to act on behalf of the party shall appear at such conference.

(1) If the parties agree on the form stipulation it may be "so ordered" by the court. Where the parties cannot agree, or where issues arise that need judicial intervention, the court may schedule a conference before the assigned judge or before the judge in charge of the preliminary conference part. At the discretion of the court, the conference may be held virtually or in person.
(2) At the preliminary conference the parties shall be prepared to discuss the items set forth in sections 202.11 and 202.12(c) and such other items as the court may direct.

(c) Where a case is reasonably likely to include electronic discovery, attorneys for all parties shall meet and confer on the subject of electronic discovery. If the parties are unable to reach a stipulation governing electronic discovery, the court may direct a conference on the subject. The parties or attorneys appearing at such conference must be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery, and attorneys may bring a client representative or outside expert to assist in such e-discovery discussions. A non-exhaustive list of considerations for determining whether a case is reasonably likely to include electronic discovery is:

(1) Does potentially relevant electronically stored information ("ESI") exist;
(2) Do any of the parties intend to seek or rely upon ESI;
(3) Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;
(4) The cost and burden of preserving and producing ESI and whether such costs and burdens are proportional to the amount in controversy; and
(5) What is the likelihood that discovery of ESI will aid in the resolution of the dispute.

(d) The court may, in its discretion, either in advance of the preliminary conference or in response to the filing of the stipulation and order contemplated by subdivision (b) of this section, require the parties to provide to the court their positions on each of the items in sections 202.11 and 202.12(c) and such other matters as the court deems necessary or appropriate.

(e) The matters which may be considered at a preliminary conference or at the first conference before the court if the preliminary conference has been cancelled under sections 202.12(b) or 202.12(g), shall include:

(1) the positions of the litigants on the matters described in sections 202.11 and 202.12(c), particularly alternative methods for resolving the dispute, simplification and limitation of factual and legal issues, where appropriate, expedited disposition of the action, and effective controls to prevent protracted litigation due to lack of judicial management;
(2) the terms, provisions and schedule included in the stipulation described above submitted by the attorneys for the litigants, and the establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed within the timeframes set forth in subdivision (b) of this section, unless otherwise shortened or extended by the court depending upon the circumstances of the case;
(3) Where the court deems appropriate, it may establish the method and scope of any electronic discovery. In establishing the method and scope of electronic discovery, the court may consider the following non-exhaustive list, including but not limited to:

(i) identification of potentially relevant types or categories of ESI and the relevant time frame;
(ii) disclosure of the applications and manner in which the ESI is maintained;
(iii) identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible;
(iv) implementation of a preservation plan for potentially relevant ESI;
(v) identification of the individual(s) responsible for preservation of ESI;
(vi) the scope, extent, order, and form of production;
(vii) identification, redaction, labeling, and logging of privileged or confidential ESI;
(viii) claw-back or other provisions for privileged or protected ESI;
(ix) the scope or method for searching and reviewing ESI; and
(x) the anticipated cost and burden of data recovery and proposed initial allocation of such cost.

(4) addition of other necessary parties;
(5) settlement of the action;
(6) removal to a lower court pursuant to CPLR 325, where appropriate; and
(7) any other matters that the court may deem relevant.

(f) At the conclusion of the conference, the court shall make a written order including its directions to the parties as well as stipulations of the parties' attorneys. Alternatively, in the court's discretion, all directions of the court and stipulations of the attorneys may be recorded by a reporter. Where the latter procedure is followed, the parties shall procure and share equally the cost of a transcript thereof unless the court in its discretion otherwise provides. The transcript, corrected if necessary on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court. The transcript shall be filed by the plaintiff with the clerk of the court.

(g) In its discretion, taking into account the caseload of the court, the nature of the claim, the absence of an IAS judge to preside, the inability of a defendant to retain counsel, the failure of an insurer to appoint counsel, or the inability of the parties to meet and confer,

the presiding court, either in advance of the preliminary conference or at the request of one of the parties, may issue to all parties a case scheduling order setting forth a timetable which shall provide for completion of disclosure within 12 months of the filing of the request for judicial intervention for a standard case, or within 15 months of such filing for a complex case. If a case scheduling order is issued by the court the order may also provide for other terms and conditions as the court deems appropriate, and the preliminary conference shall be cancelled. In response to such scheduling order, any party may, within 10 days of entry of the scheduling order, object thereto and request a preliminary conference as described above.

(h) In the discretion of the court, failure by a party to comply with the order or transcript resulting from the preliminary conference, or with the so-ordered stipulation or scheduling order provided for in subdivisions (b) and (g) of this section, or the making of unnecessary or frivolous motions by a party, shall result in the imposition upon such party of costs or such other sanctions as are authorized by law.

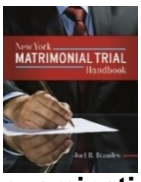
(i) A party may request the court to advance the date of a preliminary conference upon a showing of appropriate circumstances. During the course of the case, any party may request such additional conferences as appropriate. The court will give the attorneys notice of the conference at least one week before any conference unless there are special circumstances requiring an earlier conference.

(j) The court, in its discretion, at any time may order such conferences as the court may deem helpful or necessary in any matter before the court.

(k) The provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, in medical malpractice actions, and in real property tax assessment review proceedings within the City of New York, only to the extent that these provisions are not inconsistent with the provisions of sections 202.16, 202.56 and 202.60 of this Part, respectively.

(l) The provisions of this section shall apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407 only to the extent that the provisions of this section are not inconsistent with the provisions of CPLR 3407. In an action governed by CPLR 3407 the request for a preliminary conference may be filed at any time after commencement of the action, and shall be accompanied by the physician's affidavit required by that provision.

Amended (a) - (l) on May 13, 2024, effective May 20, 2024



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The New York Matrimonial Trial Handbook 2023 Cumulative Update is available on Amazon in hardcover, paperback, Kindle, and electronic editions. This update includes changes in the law and important cases decided by the New York Courts since the original volume was published. It brings the text and case law up to date through and including December 31, 2022, and contains additional questions for witnesses. See Table of Contents.

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