



Bits and Bytes™

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Special Editon

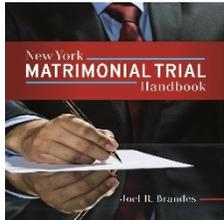
Volume 15

Welcome to Bits and Bytes,™ an electronic newsletter written for the New York divorce and family law bench and bar by **Joel R. Brandes**, the author of [Law and The Family New York, 2d \(9 volumes\)](#), and [Law and the Family New York Forms 2d \(5 volumes\) \(both Thomson Reuters\)](#), and the [New York Matrimonial Trial Handbook](#).



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The Law Firm of Joel R. Brandes P.C. concentrates its practice in divorce and family law appeals, and complex divorce, custody and international child abduction litigation. **The Law Firm of Joel R. Brandes P.C.** advises and works with attorneys, as a consultant, co-counsel, as an expert, or appellate counsel on litigated matters pending in all of the state and federal courts in New York. We assist attorneys with trial preparation, and all aspects of a trial or appeal, including drafting questions for the examination and cross-examination of witnesses and experts.



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Table of Effective dates of Revisions to Domestic Relations Law §§ 236, 237, and 240

The Maintenance, Child Support and Counsel Fee provisions of the Domestic Relations Law have been amended numerous times since the statutes were enacted, the last amendment being on September 13, 2019. Different versions of Domestic Relations Law §§ 236, 237, and 240 apply in matrimonial actions depending upon the date of the commencement of an action. The following table has been created to enable counsel to quickly find the version applicable to actions commenced since 1999.

Domestic Relations Law § 236 – 1999 to date

DRL §236, effective September 18, 1999 to September 21, 2003 ¹

DRL §236, effective September 22, 2003 to August 31, 2009 ²

DRL §236, effective September 1, 2009 to September 13, 2009 ³

DRL §236, effective September 14, 2009 to August 12, 2010 ⁴

DRL §236, effective August 13, 2010 to October 11, 2010 ⁵

DRL § 236, effective October 12, 2010 to October 12, 2010 ⁶

¹ L.1999, c. 275, § 2, eff. Sept. 18, 1999. (The chapter, among other things, added the following sentence to DRL § 236 [B][8][a]: “A copy of such order shall be served, by registered mail, on the home office of the insurer specifying the name and mailing address of the spouse or children, provided that failure to so serve the insurer shall not affect the validity of the order.”)

² L.2003, c. 595, § 1, eff. Sept. 22, 2003. (This Chapter, among other things, added the following sentence to DRL § 236[B][3]: “Notwithstanding any other provision of law, an acknowledgment of an agreement made before marriage may be executed before any person authorized to solemnize a marriage pursuant to subdivisions one, two and three of section eleven of this chapter.”)

³ L.2009, c. 72, § 1, eff. Sept. 1, 2009; L 2010, c. 32, § 1, eff. March 30, 2010, deemed eff. Sept. 1, 2009 (These chapters added to DRL § 236[B] [2] [b] provisions for “automatic orders in matrimonial actions”.)

⁴ L.2009, c. 229, §§ 1 to 3, eff. Sept. 14, 2009. (This chapter added to DRL § 236[B] [5] [d] and DRL § 236[B] [6] [a] “the loss of health insurance benefits upon dissolution of the marriage” as a factor for the court to consider in awarding maintenance and equitable distribution.)

⁵ L.2010, c. 371, § 3, eff. Aug. 13, 2010. (This chapter, among other things, enacted DRL § 236 [B][5-a] providing for temporary maintenance guidelines; and added to DRL § 236[B][6] the following six additional maintenance factors: (5) the need of one party to incur education or training expenses; (6) the existence and duration of a pre-marital joint household or a pre-divorce separate household; (7) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law; (11) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity; (12) the inability of one party to obtain meaningful employment due to age or absence from the workforce; (13) the need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment).

⁶ L.2010, c. 371, §§ 1, 2, 4, eff. Oct. 12, 2010. (This chapter, among other things, amended DRL §236 [B] by adding a new subdivision 5–a Temporary maintenance awards, which requires the court to make its award in accordance with this subdivision, except where the parties have entered into an agreement pursuant to subdivision 5–a. DRL §236[B] was amended to change the factors, except factor (1), as follows: (2) length of the marriage; (3) the age and health of both parties; (4) the present

DRL §236, effective October 13, 2010 to October 24, 2015 ⁷

and future earning capacity of both parties; (5) the need of one party to incur education or training expenses; (6) the existence and duration of a pre-marital joint household or a pre-divorce separate household; (7) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law; (8) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor; (9) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage; (10) the presence of children of the marriage in the respective homes of the parties; (11) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity; (12) the inability of one party to obtain meaningful employment due to age or absence from the workforce; (13) the need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment; (14) the tax consequences to each party; (15) the equitable distribution of marital property; (16) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party; (17) the wasteful dissipation of marital property by either spouse; (18) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; (19) the loss of health insurance benefits upon dissolution of the marriage, and the availability and cost of medical insurance for the parties; and (20) any other factor which the court shall expressly find to be just and proper.)

⁷ L.2010, c. 182, §§ 7, 9, eff. Oct. 13, 2015. (This chapter, among other things, added subdivision (2) to DRL §236 [B][9][b], as follows:

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

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

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

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

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

DRL §236, effective October 25 2015 to January 22, 2016 ⁸

DRL §236, effective January 23, 2016 ⁹

retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an immediate execution for support enforcement as provided for by this chapter, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support.

This chapter, among other things, also added subdivision [d] to DRL §236[B][7], as follows:

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

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

⁸ L.2015, c. 269, § 3, eff. Oct. 25, 2015. (This chapter, among other things, modified DRL §236 [B][5][d][7] to add the following sentence: "The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse.")

⁹ L.2015, c. 269, §§ 1, 2, 4, 5, eff. Jan. 23, 2016. (This chapter, among other things, modified the temporary maintenance provisions of DRL §236 [B] [5-a]. It also modified the post-divorce maintenance provisions of DRL §236 [B] [6] [a] to add post-divorce maintenance guidelines and added additional factors for consideration by the court in determining maintenance. The fourteen (14) factors are now:

- (a) the age and health of the parties;
- (b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;
- (c) the need of one party to incur education or training expenses;
- (d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;
- (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;
- (f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
- (g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
- (h) the availability and cost of medical insurance for the parties;
- (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;
- (j) the tax consequences to each party;

DRL §236, effective September 23, 2019 ¹⁰

Domestic Relations Law § 237 – 1992 to date

DRL §237, effective July 17, 1992, to October 11, 2012 ¹¹

DRL §237, effective October 12, 2010 to November 19, 2015 ¹²

DRL §237, effective November 20, 2015 ¹³

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- (k) the standard of living of the parties established during the marriage;
 - (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;
 - (m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;
 - (n) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
 - (o) any other factor which the court shall expressly find to be just and proper.)

¹⁰ Laws of 2019, Ch 313, enacted and effective September 13, 2019 amended Domestic Relations Law § 236 [B] (9) (b) (2) (i) to provide that incarceration shall not be considered voluntary unemployment in modifying child support obligations and shall not be a bar to establish a substantial change in circumstances, except in certain situations. Domestic Relations Law § 236 [B] (9) (b) (2) (i) was amended to read as follows:

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

¹¹ L.1992, c. 422, § 1

¹² L.2010, c. 329, § 1, eff. Oct. 12, 2010. (This chapter, among other things, modified DRL § 237 (a) and (b) to provide that there shall be rebuttable presumption that counsel fees shall be awarded to the less monied spouse. Both parties and their respective attorneys must file an affidavit with the court detailing the financial agreement between the party and the attorney. The affidavit must include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses.)

¹³ L.2015, c. 447, § 1, eff. Nov. 20, 2015. (This chapter, among other things, amended DRL § 237 (a) and (b) to provide that an unrepresented litigant shall not be required to file an affidavit detailing fee arrangements when making an application for an award of counsel fees and expenses; provided he or she has submitted an affidavit that he or she is unable to afford counsel with supporting proof, including a statement of net worth, and, if available, W-2 statements and income tax returns for himself or herself.)

Domestic Relations Law §240 – 1998 to present

DRL § 240, effective December 22, 1998 to July 26, 1999¹⁴

DRL§ 240, effective July 27, 1999 to November 8, 1999 ¹⁵

DRL§ 240, effective November 9, 1999 to October 1, 2002¹⁶

DRL § 240, effective October 2, 2002 to June 17, 2003 ¹⁷

DRL § 240, effective June 18, 2003 to September 30, 2007 ¹⁸

DRL § 240, effective October 1, 2007 to September 3, 2008¹⁹

DRL § 240, effective September 4, 2008 to December 2, 2008 ²⁰

DRL§ 240, effective December 3, 2008 to January 22, 2009 ²¹

DRL § 240, effective January 23, 2009 to August 10, 2009 ²²

DRL§ 240, effective August 11, 2009 to October 8, 2009 ²³

¹⁴ L.1998, c. 597, §§ 1, 2, eff. Dec. 22, 1998

¹⁵ L.1999, c. 378, § 1, eff. July 27, 1999

¹⁶ L.1999, c. 606, § 1

¹⁷ L.2002, c. 624, § 4, eff. Oct. 2, 2002

¹⁸ L.2003, c. 81, § 11, eff. June 18, 2003

¹⁹ L.2007, c. 616, § 3, eff. Oct. 1, 2007

²⁰ L.2008, c. 538, § 1, eff. Sept. 4, 2008

²¹ L.2008, c. 532, § 6, eff. Dec. 3, 2008

²² L.2008, c. 595, § 1, eff. January 23, 2009

²³ L.2009, c. 295, § 1, eff. Aug. 11, 2009

DRL §240, effective Oct. 9, 2009 to November 14, 2009 ²⁴

DRL §240, effective November 15, 2009, effective November 15, 2009 ²⁵

DRL§ 240, effective November 15, 2009 to December 14, 2009 ²⁶

DRL§ 240, effective December 15, 2009 to January 30, 2010 ²⁷

DRL §240, effective August 11, 2009, to January 30, 2010 ²⁸

DRL §240, effective January 31, 2010 to April 13, 2010 ²⁹

DRL §240, effective April 14, 2010 to July 29, 2010 ³⁰

DRL §240, effective July 30, 2010 to August 12, 2010 ³¹

²⁴ L.2009, c.215, §2, 4, 6 and 8, eff. Oct. 9, 2009. (This chapter, among other things, amended DRL §240, subd.1, par. A-1 dealing with custody orders.)

²⁵ L.2009, c. 473, § 2, eff. Nov. 15, 2009 (This chapter amended Domestic Relations Law § 240 to add to subdivision 1 of section 240 a new paragraph, (a-2) and amended Family Court Act § 651 (to add a new paragraph (f)) both of which are titled “Military Service by parent: effect on child custody orders.”)

²⁶ L.2009, c. 295, § 1, eff. Aug. 11, 2009. (This chapter, among other things, amended Paragraph (a-1) of subdivision 1 of section 240 of the domestic relations law and Family Court Act §651 to provide that prior to the issuance of any permanent or temporary order of custody or visitation, the court shall conduct a review of related decisions in court proceedings initiated pursuant to article ten of the Family Court Act; and (ii) reports of the statewide computerized registry of orders of protection, and reports of the sex offender registry.)

²⁷ L.2009, c. 476, § 2, eff. Dec. 15, 2009. (This chapter, among other things, amended various sections of the Domestic Relations Law, Family Court Act and CPLR to replace the term “Law guardian” with the term “attorney for the child.”)

²⁸ L.2009, c.295, §1, eff. August 11, 2009. (This chapter, among other things, repealed DRL§ 240 (1-b) (c) (5) and added a new subparagraph 5 dealing with cash medical support and health insurance benefits. DRL§ 240, subd. 1 (b) was amended by adding a new paragraph 3 dealing with health insurance benefits. DRL§ 240 subd.1 (c) (2) (iii) dealing with health insurance benefits was amended.)

²⁹ L.2009, c. 343, § 7, eff. Jan. 31, 2010. (This chapter, among other things, amended DRL §240, (1-b) dealing with “combined parental income.”)

³⁰ L.2010, c. 41, § 7, eff. April 14, 2010. (This chapter, among other things, amended DRL §240, (1-c) (c) dealing with custody.)

³¹ L.2010, c. 261, § 2, eff. July 30, 2010. (This chapter, among other things, amended DRL §240, (3-a) dealing with service of an order of protection and temporary order of protection.)

DRL§ 240, effective August 13, 2010 to August 29, 2010 ³²

DRL §240, effective August 30, 2010 to November 14, 2011 ³³

DRL §240, effective November 15, 2011 to March 15, 2013 ³⁴

DRL §240, effective March 16, 2013 to September 26, 2013 ³⁵

DRL §240, effective September 27, 2013 to November 12, 2013 ³⁶

DRL §240, effective November 13, 2013 to December 17, 2013 ³⁷

DRL §240, effective December 18, 2013 to January 11, 2014 ³⁸

DRL § 240, effective January 12, 2014 to January 23, 2016 ³⁹

DRL §240, effective January 24, 2016 to June 17, 2016 ⁴⁰

³² L.2010, c. 341, § 8, eff. Aug. 13, 2010 L.2010, c. 341, § 8, eff. Aug. 13, 2010. (This chapter, among other things, amended DRL§ 240 (3) (e) to add the following sentences: “In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss an application for such an order, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the application or the conclusion of the action. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. “)

³³ L.2010, c.446, §2, effective August 30, 2010. (This chapter amended FCA §153-b and DRL§240 to allow individuals to serve court issued permanent or temporary orders of protection as well as other legal documents during the later stages of family offense proceedings using a peace or police officer. It also prohibited the charging of any fee associated with the servicing of these documents.)

³⁴ L.2011, c.436, §1, effective November 15, 2011. L. 2010, c.446, §2, eff. Aug. 30, 2011. (This chapter amended DRL §240 (3-a) with regard to service of an order of protection.)

³⁵ L.2013, c. 1, § 11, eff. March 16, 2013. (This chapter, among other things, amended DRL §240, subd. 3 dealing with orders of protection.)

³⁶ L.2013, c. 371, § 1, eff. Sept. 27, 2013. (This chapter, among other things, amended DRL §240, (1-c) (b) dealing with custody.)

³⁷ L.2013, c. 480, § 1, eff. Nov. 13, 2013. (This chapter, among other things, amended DRL §240, subd. 3, d. dealing with orders of protection.)

³⁸ L.2013, c. 526, § 8, eff. Dec. 18, 2013. (This chapter, among other things, amended DRL §240, subd.3 a. 7 and 8, dealing with orders of protection.)

³⁹ L.2015, c. 567, § 12, eff. June 18, 2016.

⁴⁰ L.2015, c. 387, §§ 3, 4, eff. Jan. 24, 2016. (This chapter, among other things, amended DRL § 240 (1-b) (5)(iii) subclauses (G) and (H) to add a new subclause (I) to read as follows: (G) fellowships and stipends, and(H) annuity payments;; and(I) alimony or maintenance actually paid or to be paid to

DRL§ 240, effective June 18, 2016.⁴¹

DRL§ 240, effective July 19, 2017 ⁴²

DRL§ 240, effective September 13, 2019 ⁴³

a spouse who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article.

DRL § 240 (1-b) (b)(5)(vii) subclause (C) was amended to read as follows: (C) alimony or maintenance actually paid or to be paid to a spouse that who is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, provided in which event the order or agreement provides shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse,; provided, however, that the specific adjustment in the amount of child support is without prejudice to either party's right to seek a modification in accordance with subparagraph two of paragraph b of subdivision nine of part B of section two hundred thirty-six of this article. In an action or proceeding to modify an order of child support, including an order incorporating without merging an agreement, issued prior to the effective date of this subclause, the provisions of this subclause shall not, by themselves, constitute a substantial change of circumstances pursuant to paragraph b of subdivision nine of part B of section two hundred thirty-six of this article.)

⁴¹ L.2015, c. 567, § 12, eff. June 18, 2016. (This chapter, added to DRL § 240 (a) the following: “If a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court must determine custody or visitation in accordance with the terms of this section.)

⁴² L.2017, c. 55, pt. BB, § 4, eff. July 19, 2017. (This chapter amended DRL §240 Subdivision 3 by adding a new paragraph, a-1 which is titled “Translation and interpretation of orders of protection.” An identical amendment was made to the Family Court Act which added Family Court Act §169.)

⁴³ Laws of 2019, Ch 313, enacted and effective September 13, 2019, amended Domestic Relations Law to specify that the incarceration of the child support obligor is not to be treated as voluntary unemployment unless the incarceration is the result of non-payment of a child support order, or an

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offense against the custodial parent or child who is the subject of the order or judgment. Domestic Relations Law § 240 (1-b) (b) (5) (v) was amended to read as follows:

(v) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support; provided that incarceration shall not be considered voluntary unemployment, unless such incarceration is the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment;