

5696--A

2009-2010 Regular Sessions

I N S E N A T E

May 28, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the domestic relations law, in relation to the issuance of orders of protection

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

1 Section 1. Section 446 of the family court act is amended by adding a
2 new closing paragraph to read as follows:
3 IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN
4 ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY
5 ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEM-
6 PORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE
7 ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A
8 FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.
9 S 2. Section 551 of the family court act is amended by adding a new
10 closing paragraph to read as follows:
11 IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN
12 ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY
13 ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEM-
14 PORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE
15 ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A
16 FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.
17 S 3. Section 656 of the family court act is amended by adding a new
18 closing paragraph to read as follows:
19 IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN
20 ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY
21 ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEM-
22 PORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE

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

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1 ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A
2 FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

3 S 4. Section 759 of the family court act is amended by adding a new
4 closing paragraph to read as follows:

5 IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN
6 ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY
7 ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEM-
8 PORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE
9 ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A
10 FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

11 S 5. The opening paragraph of subdivision 1 of section 812 of the
12 family court act, as amended by chapter 476 of the laws of 2009, is
13 amended to read as follows:

14 The family court and the criminal courts shall have concurrent juris-
15 diction over any proceeding concerning acts which would constitute
16 disorderly conduct, harassment in the first degree, harassment in the
17 second degree, aggravated harassment in the second degree, sexual
18 misconduct, forcible touching, sexual abuse in the third degree, sexual
19 abuse in the second degree as set forth in subdivision one of section
20 130.60 of the penal law, stalking in the first degree, stalking in the
21 second degree, stalking in the third degree, stalking in the fourth
22 degree, criminal mischief, menacing in the second degree, menacing in
23 the third degree, reckless endangerment, assault in the second degree,
24 assault in the third degree or an attempted assault between spouses or
25 former spouses, or between parent and child or between members of the
26 same family or household except that if the respondent would not be
27 criminally responsible by reason of age pursuant to section 30.00 of the
28 penal law, then the family court shall have exclusive jurisdiction over
29 such proceeding. Notwithstanding a complainant's election to proceed in
30 family court, the criminal court shall not be divested of jurisdiction
31 to hear a family offense proceeding pursuant to this section. IN ANY
32 PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF
33 PROTECTION, OR DISMISS A PETITION, SOLELY ON THE BASIS THAT THE ACTS OR
34 EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE
35 PETITION, THE CONCLUSION OF THE FACT-FINDING OR THE CONCLUSION OF THE
36 DISPOSITIONAL HEARING. For purposes of this article, "disorderly
37 conduct" includes disorderly conduct not in a public place. For purposes
38 of this article, "members of the same family or household" shall mean
39 the following:

40 S 6. The opening paragraph of section 842 of the family court act, as
41 amended by chapter 579 of the laws of 2003, is amended to read as
42 follows:

43 An order of protection under section eight hundred forty-one of this
44 part shall set forth reasonable conditions of behavior to be observed
45 for a period not in excess of two years by the petitioner or respondent
46 or for a period not in excess of five years upon (i) a finding by the
47 court on the record of the existence of aggravating circumstances as
48 defined in paragraph (vii) of subdivision (a) of section eight hundred
49 twenty-seven of this article; or (ii) a finding by the court on the
50 record that the conduct alleged in the petition is in violation of a
51 valid order of protection. Any finding of aggravating circumstances
52 pursuant to this section shall be stated on the record and upon the
53 order of protection. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY
54 ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL
55 ORDER. Any order of protection issued pursuant to this section shall
56 specify if an order of probation is in effect. Any order of protection

1 issued pursuant to this section may require the petitioner or the
2 respondent:

3 S 7. Section 1056 of the family court act is amended by adding a new
4 subdivision 6 to read as follows:

5 6. IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY
6 AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER,
7 SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY
8 CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF
9 THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A
10 FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

11 S 8. Paragraph e of subdivision 3 of section 240 of the domestic
12 relations law, as amended by chapter 597 of the laws of 1998, is amended
13 to read as follows:

14 e. No order of protection may direct any party to observe conditions
15 of behavior unless: (i) the party requesting the order of protection has
16 served and filed an action, proceeding, counter-claim or written motion
17 and, (ii) the court has made a finding on the record that such party is
18 entitled to issuance of the order of protection which may result from a
19 judicial finding of fact, judicial acceptance of an admission by the
20 party against whom the order was issued or judicial finding that the
21 party against whom the order is issued has given knowing, intelligent
22 and voluntary consent to its issuance. The provisions of this subdivi-
23 sion shall not preclude the court from issuing a temporary order of
24 protection upon the court's own motion or where a motion for such relief
25 is made to the court, for good cause shown. IN ANY PROCEEDING PURSUANT
26 TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR
27 DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE
28 ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE
29 OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY
30 TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE
31 LENGTH OR ISSUANCE OF ANY FINAL ORDER.

32 S 9. This act shall take effect immediately and shall apply to all
33 orders of protection pending or entered on or after such effective date.