

STATE OF NEW YORK

7896

IN SENATE

March 7, 2018

Introduced by Sen. AVELLA -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, the social services law and the executive law, in relation to orders of protection in termination of parental rights proceedings, child protective proceedings and permanency hearings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The family court act is amended by adding a new section
2 634-a to read as follows:

3 § 634-a. Orders of protection and temporary orders of protection. (a)
4 Where the petitioner alleges that the respondent has committed a family
5 offense among the offenses enumerated in subdivision one of section
6 eight hundred twelve of this act against the child, the child's foster,
7 pre-adoptive or adoptive parent or parents or other members of the
8 household in which the child resides, the petitioner may seek an order
9 of protection against the respondent in writing, either in the petition,
10 by an order to show cause or by motion, upon notice to all parties,
11 including the attorney for the child.

12 (b) Where the court has a reasonable basis to believe that the
13 respondent has committed a family offense among the offenses enumerated
14 in subdivision one of section eight hundred twelve of this act against
15 the child, the child's foster, pre-adoptive or adoptive parent or
16 parents or other members of the household in which the child resides,
17 the court may, upon good cause, issue a temporary order of protection to
18 protect the child and the child's foster, pre-adoptive or adoptive
19 parent or parents and other designated members of the household in which
20 the child resides during the pendency of the proceeding under this arti-
21 cle or until further order of the court, whichever is earlier. Where the
22 order is granted on an emergency basis ex parte, all parties, including
23 the attorney for the child, shall be given notice and a prompt opportu-
24 nity to be heard.

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

LBD14766-01-8

1 (c) Upon disposition on an adjudication of permanent neglect, where
2 the court, after giving all parties, including the attorney for the
3 child, notice and an opportunity to be heard, determines by a preponder-
4 ance of the evidence that a family offense among the offenses enumerated
5 in subdivision one of section eight hundred twelve of this act had been
6 committed and that good cause exists, the court may issue an order of
7 protection to protect the child and the child's foster, pre-adoptive or
8 adoptive parent or parents and other designated members of the household
9 in which the child resides. An order of protection issued under this
10 section may remain in effect for a period of up to five years.

11 (d) An order of protection or temporary order of protection issued
12 under this section may direct the respondent to observe reasonable
13 conditions that further the purposes of protection, which may include,
14 among others, that the respondent stay away from the child and from the
15 home, school, business or place of employment of the child or the
16 child's foster, pre-adoptive or adoptive parent or parents or other
17 designated members of the household in which the child resides. Prior to
18 issuing the order, the court shall inquire as to the existence of any
19 other orders of protection involving the parties. The court shall state
20 its reasons on the record for issuing the order.

21 (e) Prior to the expiration of the period of an order of protection or
22 temporary order of protection issued under this section, a motion or
23 order to show cause may be filed that alleges that the respondent
24 violated the terms and conditions of such order willfully and without
25 just cause. If, after giving notice and an opportunity to be heard to
26 all parties, including the attorney for the child, the court is satis-
27 fied by competent proof that the respondent violated the order of
28 protection or temporary order of protection willfully and without just
29 cause, the court may issue an order pursuant to section eight hundred
30 forty-two-a, eight hundred forty-six or eight hundred forty-six-a of
31 this act.

32 (f) The court may, upon motion, extend the order of protection for a
33 reasonable period of time upon a showing of good cause or consent of the
34 parties. The fact that a violation of the order has not been pleaded or
35 proven during the pendency of the order shall not constitute sufficient
36 ground for denying or failing to extend the order. The court must artic-
37 ulate a basis for its decision on the record.

38 § 2. Subdivision (a) of section 1029 of the family court act, as
39 amended by chapter 41 of the laws of 2010, is amended to read as
40 follows:

41 (a) [The] Where the petitioner alleges that the respondent has commit-
42 ted a family offense among the offenses enumerated in subdivision one of
43 section eight hundred twelve of this act against the child, the child's
44 parent or parents, the child's foster, pre-adoptive or adoptive parent
45 or parents or other members of the household in which the child resides,
46 the petitioner may seek a temporary order of protection against the
47 respondent in writing, either in the petition, by order to show cause or
48 by motion, upon notice to all parties, including the attorney for the
49 child.

50 (i) Where the court has a reasonable basis to believe that the
51 respondent has committed a family offense among the offenses enumerated
52 in subdivision one of section eight hundred twelve of this act against
53 the child, the child's foster, pre-adoptive or adoptive parent or
54 parents or other members of the household in which the child resides,
55 the family court, upon [the application of any person who may originate
56 a proceeding under this article, for] good cause shown, may issue a

temporary order of protection, before or after the filing of such petition, [which] to protect the child, the child's parent, the child's foster, pre-adoptive or adoptive parent or parents and other designated members of the household in which the child resides during the pendency of the proceeding or until further order of the court, whichever is earlier.

(ii) The order may contain any of the provisions authorized on the making of an order of protection under section one thousand fifty-six of this article.

(iii) Where the order is granted on an emergency basis ex parte, all parties, including the attorney for the child, shall be given notice and a prompt opportunity to be heard.

(iv) Prior to issuing a temporary order of protection under this section, the court shall inquire as to the existence of any other orders of protection involving the parties.

(v) If such order is granted before the filing of a petition and a petition is not filed under this article within ten days from the granting of such order, the order shall be vacated. In any case where a petition has been filed and an attorney for the child has been appointed, such attorney may make application for a temporary order of protection pursuant to the provisions of this section.

§ 3. Subdivision 2 of section 1056 of the family court act, as amended by chapter 220 of the laws of 1989, is amended to read as follows:

2. ~~[The]~~ Where the petitioner alleges in writing that the respondent has committed a family offense among the offenses enumerated in subdivision one of section eight hundred twelve of this act against the child, the child's parent or parents, the child's foster, pre-adoptive or adoptive parent or parents or other members of the household in which the child resides, the order of protection against the respondent may be issued to protect such person or persons. Prior to issuing an order of protection under this section, the court shall inquire as to the existence of any other orders of protection involving the parties. Where the court [may also award] has determined, in accordance with the requirements of section one thousand seventeen, part two, section one thousand fifty-two or section one thousand fifty-five of this article to release a child to a non-respondent parent or to directly place or order custody of the child, during the term of the temporary order of protection or order of protection, as applicable, to [either parent, or to] an appropriate relative [within the second degree] or suitable person, the order of release or custody may be included in the temporary order of protection or order of protection, as applicable. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency. In making orders of protection, the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his or her religious faith shall be preserved and protected.

§ 4. Section 1072 of the family court act, as amended by chapter 1039 of the laws of 1973, the opening paragraph as amended by chapter 437 of the laws of 2006, is amended to read as follows:

§ 1072. Failure to comply with terms and conditions of supervision or order of protection. 1. If, prior to the expiration of the period of an order of supervision pursuant to section one thousand ~~[fifty-four or one thousand]~~ fifty-seven of this article, a motion or order to show cause is filed that alleges that a parent or other person legally responsible for a child's care violated the terms and conditions of an order of supervision issued under section one thousand ~~[fifty-four or one thou-~~

1 ~~sand~~] fifty-seven of this article, the period of the order of super-
2 vision shall be tolled pending disposition of the motion or order to
3 show cause. If, after hearing, the court is satisfied by competent proof
4 that the parent or other person violated the order of supervision will-
5 fully and without just cause, the court may:

6 (a) revoke the order of supervision [~~or of protection~~] and enter any
7 order that might have been made at the time the order of supervision [~~or~~
8 ~~of protection~~] was made, or

9 (b) commit the parent or other person who willfully and without just
10 cause violated the order to jail for a term not to exceed six months.

11 2. Prior to the expiration of the period of an order of protection or
12 temporary order of protection issued pursuant to section one thousand
13 twenty-nine or one thousand fifty-six of this article, a motion or order
14 to show cause may be filed that alleges that the respondent violated the
15 terms and conditions of such order willfully and without just cause.
16 If, after giving all parties, including the attorney for the child,
17 notice and an opportunity to be heard, the court is satisfied by compe-
18 tent proof that the respondent violated the order of protection or
19 temporary order of protection willfully and without just cause, the
20 court may:

21 (a) revoke or modify the order of protection or temporary order of
22 protection and enter any order that might have been made at the time
23 such order had been issued, or

24 (b) issue an order in accordance with sections eight hundred forty-
25 two-a, eight hundred forty-six, eight hundred forty-six-a or one thou-
26 sand fifty-six-a of this act; provided, however, that a commitment under
27 this paragraph to a definite jail term as a result of a determination of
28 criminal contempt, whether or not such term has been suspended, must be
29 based upon proof beyond a reasonable doubt.

30 § 5. Clause (D) of subparagraph (viii) of paragraph 2 of subdivision
31 (d) of section 1089 of the family court act is amended by adding five
32 new items (I), (II), (III), (IV) and (V) to read as follows:

33 (I) Where the petitioner alleges in writing that the child's parent or
34 person legally responsible for the child's care has committed a family
35 offense among the offenses enumerated in subdivision one of section
36 eight hundred twelve of this act against the child, the child's foster,
37 pre-adoptive or adoptive parent or parents or other members of the
38 household in which the child resides, the petitioner may seek an order
39 of protection against such parent or person. Such an order may be sought
40 against a parent or person legally responsible for the child's care
41 against whom a child protective finding had been made under article ten
42 of this act or a family offense finding under article eight of this act
43 or against a parent determined to have committed a family offense in an
44 application for an order of protection under section six hundred thir-
45 ty-four-a of this act or section three hundred eighty-four-b of the
46 social services law. Notice of the application shall be given to all
47 parties, including the attorney for the child. Where the child has been
48 freed for adoption, the parent whose rights had been terminated or
49 surrendered and against whom the order is sought shall be given notice,
50 the right to intervene, the right to counsel, including appointed coun-
51 sel if indigent, and the right to be heard regarding the application.

52 (II) Where the court has a reasonable basis to believe that the
53 respondent has committed such a family offense against the child, the
54 child's foster, pre-adoptive or adoptive parent or parents or other
55 members of the household in which the child resides, the court may, upon
56 good cause, issue a temporary order of protection to protect the child

1 and the child's foster, pre-adoptive or adoptive parent or parents and
2 other designated members of the household in which the child resides
3 during the pendency of the proceeding under this article or until
4 further order of the court, whichever is earlier. Where the order is
5 granted on an emergency basis ex parte, all parties, including the
6 attorney for the child, and respondent parent-intervenor, if any, shall
7 be given notice and a prompt opportunity to be heard.

8 (III) Upon issuance of a permanency hearing order under this subdivi-
9 sion, where the court, after giving all parties, including the attorney
10 for the child and parent-intervenor, if any, notice and an opportunity
11 to be heard, determines by a preponderance of the evidence that a family
12 offense among the offenses enumerated in subdivision one of section
13 eight hundred twelve of this act has been committed and that good cause
14 exists, the court may issue an order of protection to protect the child
15 and the child's foster, pre-adoptive or adoptive parent or parents and
16 other designated members of the household in which the child resides. An
17 order of protection issued under this paragraph may remain in effect for
18 a period of up to five years.

19 (IV) An order of protection or temporary order of protection issued
20 under this clause may direct the parent, person legally responsible for
21 the child's care or parent-intervenor, if any, to observe reasonable
22 conditions that further the purposes of protection and that may include,
23 among others, to stay away from the child and from the home, school,
24 business or place of employment of the child or the child's foster,
25 pre-adoptive or adoptive parent or parents or other designated members
26 of the household in which the child resides. Prior to issuing the order,
27 the court shall inquire as to the existence of any other orders of
28 protection involving the parties. The court shall state its reasons on
29 the record for issuing the order.

30 (V) Prior to the expiration of the period of an order of protection or
31 temporary order of protection issued under this section, a motion or
32 order to show cause may be filed that alleges that the person against
33 whom the order was issued violated the terms and conditions of such
34 order willfully and without just cause. If, after giving notice and an
35 opportunity to be heard to all parties, including the attorney for the
36 child, the court is satisfied by competent proof that such person
37 violated the order of protection or temporary order of protection will-
38 fully and without just cause, the court may issue an order pursuant to
39 section eight hundred forty-two-a, eight hundred forty-six, eight
40 hundred forty-six-a or one thousand fifty-six-a of this act; provided,
41 however, that a commitment under this paragraph to a definite jail term
42 as a result of a determination of criminal contempt, whether or not such
43 term has been suspended, must be based upon proof beyond a reasonable
44 doubt.

45 § 6. Section 384-b of the social services law is amended by adding a
46 new subdivision 14 to read as follows:

47 14. (a) Where the petitioner alleges that the respondent has committed
48 a family offense among the offenses enumerated in subdivision one of
49 section eight hundred twelve of the family court act against the child,
50 the child's foster, pre-adoptive or adoptive parent or parents or other
51 members of the household in which the child resides, the petitioner may
52 seek an order of protection against the respondent in writing, either in
53 the petition, by order to show cause or by motion, upon notice to all
54 parties, including the attorney for the child.

55 (b) Where the court has a reasonable basis to believe that the
56 respondent has committed a family offense among the offenses enumerated

1 in subdivision one of section eight hundred twelve of the family court
2 act against the child, the child's foster, pre-adoptive or adoptive
3 parent or parents or other members of the household in which the child
4 resides, the court may, upon good cause, issue a temporary order of
5 protection to protect the child and the child's foster, pre-adoptive or
6 adoptive parent or parents and other designated members of the household
7 in which the child resides during the pendency of the proceeding under
8 this article or until further order of the court, whichever is earlier.
9 Where the order is granted on an emergency basis ex parte, all parties,
10 including the attorney for the child, shall be given notice and a prompt
11 opportunity to be heard.

12 (c) Upon disposition on an adjudication terminating parental rights,
13 where the court, after giving all parties, including the attorney for
14 the child, notice and an opportunity to be heard, determines by a
15 preponderance of the evidence that a family offense among the offenses
16 enumerated in subdivision one of section eight hundred twelve of the
17 family court act had been committed and that good cause exists, the
18 court may issue an order of protection to protect the child and the
19 child's foster, pre-adoptive or adoptive parent or parents and other
20 designated members of the household in which the child resides. An order
21 of protection issued under this paragraph may remain in effect for a
22 period of up to five years.

23 (d) An order of protection or temporary order of protection issued
24 under this subdivision may direct the respondent to observe reasonable
25 conditions that further the purposes of protection, which may include,
26 among others, that the respondent stay away from the child and from the
27 home, school, business or place of employment of the child or the
28 child's foster, pre-adoptive or adoptive parent or parents or other
29 designated members of the household in which the child resides. Prior to
30 issuing the order, the court shall inquire as to the existence of any
31 other orders of protection involving the parties. The court shall state
32 its reasons on the record for issuing the order.

33 (e) Prior to the expiration of the period of an order of protection or
34 temporary order of protection issued under this subdivision, a motion or
35 order to show cause may be filed that alleges that the respondent
36 violated the terms and conditions of such order willfully and without
37 just cause. If, after giving notice and an opportunity to be heard to
38 all parties, including the attorney for the child, the court is satis-
39 fied by competent proof that the respondent violated the order of
40 protection or temporary order of protection willfully and without just
41 cause, the court may issue an order pursuant to section eight hundred
42 forty-two-a, eight hundred forty-six or eight hundred forty-six-a of the
43 family court act; provided, however, that a commitment under this para-
44 graph to a definite jail term as a result of a determination of criminal
45 contempt, whether or not such term has been suspended, must be based
46 upon proof beyond a reasonable doubt.

47 § 7. Subdivision 1 of section 221-a of the executive law, as amended
48 by chapter 492 of the laws of 2015, is amended to read as follows:

49 1. The superintendent, in consultation with the division of criminal
50 justice services, office of court administration, and the office for the
51 prevention of domestic violence, shall develop a comprehensive plan for
52 the establishment and maintenance of a statewide computerized registry
53 of all orders of protection issued pursuant to articles four, five, six,
54 eight ~~and~~, ten and ten-a of the family court act, section three
55 hundred eighty-four-b of the social services law, section 530.12 of the
56 criminal procedure law and, insofar as they involve victims of domestic

1 violence as defined by section four hundred fifty-nine-a of the social
2 services law, section 530.13 of the criminal procedure law and sections
3 two hundred forty and two hundred fifty-two of the domestic relations
4 law, and orders of protection issued by courts of competent jurisdiction
5 in another state, territorial or tribal jurisdiction, special orders of
6 conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o)
7 of subdivision one of section 330.20 of the criminal procedure law inso-
8 far as they involve a victim or victims of domestic violence as defined
9 by subdivision one of section four hundred fifty-nine-a of the social
10 services law or a designated witness or witnesses to such domestic
11 violence, and all warrants issued pursuant to sections one hundred
12 fifty-three and eight hundred twenty-seven of the family court act, and
13 arrest and bench warrants as defined in subdivisions twenty-eight, twen-
14 ty-nine and thirty of section 1.20 of the criminal procedure law, inso-
15 far as such warrants pertain to orders of protection or temporary orders
16 of protection; provided, however, that warrants issued pursuant to
17 section one hundred fifty-three of the family court act pertaining to
18 articles three and seven of such act and section 530.13 of the criminal
19 procedure law shall not be included in the registry. The superintendent
20 shall establish and maintain such registry for the purposes of ascer-
21 taining the existence of orders of protection, temporary orders of
22 protection, warrants and special orders of conditions, and for enforcing
23 the provisions of paragraph (b) of subdivision four of section 140.10 of
24 the criminal procedure law.

25 § 8. This act shall take effect on the ninetieth day after it shall
26 have become a law.