

STATE OF NEW YORK

3063

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to eliminating the ability of a court to commit a respondent to jail as a penalty for violation of a support order; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subdivision 3 of section 454 of the family court act, as
2 amended by chapter 892 of the laws of 1986, paragraph (b) as added and
3 paragraph (c) as relettered by chapter 699 of the laws of 1996, is
4 amended to read as follows:

5 3. Upon a finding by the court that a respondent has willfully failed
6 to obey any lawful order of support, the court shall order respondent to
7 pay counsel fees to the attorney representing petitioner pursuant to
8 section four hundred thirty-eight of this act and may in addition to or
9 in lieu of any or all of the powers conferred in subdivision two of this
10 section or any other section of law:

11 (a) [~~commit the respondent to jail for a term not to exceed six~~
12 ~~months. For purposes of this subdivision, failure to pay support, as~~
13 ~~ordered, shall constitute prima facie evidence of a willful violation.~~
14 ~~Such commitment may be served upon certain specified days or parts of~~
15 ~~days as the court may direct, and the court may, at any time within the~~
16 ~~term of such sentence, revoke such suspension and commit the respondent~~
17 ~~for the remainder of the original sentence, or suspend the remainder of~~
18 ~~such sentence. Such commitment does not prevent the court from subse-~~
19 ~~quently committing the respondent for failure thereafter to comply with~~
20 ~~any such order, or~~

21 ~~(b)~~ require the respondent to participate in a rehabilitative program
22 if the court determines that such participation would assist the
23 respondent in complying with such order of support and access to such a

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

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1 program is available. Such rehabilitative programs shall include, but
2 not be limited to, work preparation and skill programs, non-residential
3 alcohol and substance abuse programs and educational programs; or
4 ~~[(a)]~~ (b) place the respondent on probation under such conditions as
5 the court may determine and in accordance with the provisions of the
6 criminal procedure law.

7 § 2. Section 455 of the family court act is REPEALED.

8 § 3. Subdivision (a) of section 439 of the family court act, as
9 amended by section 1 of chapter 468 of the laws of 2012, is amended to
10 read as follows:

11 (a) The chief administrator of the courts shall provide, in accordance
12 with subdivision (f) of this section, for the appointment of a suffi-
13 cient number of support magistrates to hear and determine support
14 proceedings. Except as hereinafter provided, support magistrates shall
15 be empowered to hear, determine and grant any relief within the powers
16 of the court in any proceeding under this article, articles five,
17 five-A, and five-B and sections two hundred thirty-four and two hundred
18 thirty-five of this act, and objections raised pursuant to section five
19 thousand two hundred forty-one of the civil practice law and rules.
20 Support magistrates shall not be empowered to hear, determine and grant
21 any relief with respect to ~~[issues specified in section four hundred~~
22 ~~fifty-five of this article,]~~ issues of contested paternity involving
23 claims of equitable estoppel, custody, visitation including visitation
24 as a defense, and orders of protection or exclusive possession of the
25 home, which shall be referred to a judge as provided in subdivision (b)
26 or (c) of this section. Where an order of filiation is issued by a judge
27 in a paternity proceeding and child support is in issue, the judge, or
28 support magistrate upon referral from the judge, shall be authorized to
29 immediately make a temporary or final order of support, as applicable. A
30 support magistrate shall have the authority to hear and decide motions
31 and issue summonses and subpoenas to produce persons pursuant to section
32 one hundred fifty-three of this act, hear and decide proceedings and
33 issue any order authorized by subdivision (g) of section five thousand
34 two hundred forty-one of the civil practice law and rules, issue subpoe-
35 nas to produce prisoners pursuant to section two thousand three hundred
36 two of the civil practice law and rules and make a determination that
37 any person before the support magistrate is in violation of an order of
38 the court as authorized by section one hundred fifty-six of this act
39 subject to confirmation by a judge of the court who shall impose any
40 punishment for such violation as provided by law. A determination by a
41 support magistrate that a person is in willful violation of an order
42 under subdivision three of section four hundred fifty-four of this arti-
43 cle and that recommends commitment shall be transmitted to the parties,
44 accompanied by findings of fact, but the determination shall have no
45 force and effect until confirmed by a judge of the court.

46 § 4. Subdivision (a) of section 439 of the family court act, as
47 amended by section 21 of part L of chapter 56 of the laws of 2020, is
48 amended to read as follows:

49 (a) The chief administrator of the courts shall provide, in accordance
50 with subdivision (f) of this section, for the appointment of a suffi-
51 cient number of support magistrates to hear and determine support
52 proceedings. Except as hereinafter provided, support magistrates shall
53 be empowered to hear, determine and grant any relief within the powers
54 of the court in any proceeding under this article, articles five,
55 five-A, five-B and five-C and sections two hundred thirty-four and two
56 hundred thirty-five of this act, and objections raised pursuant to

1 section five thousand two hundred forty-one of the civil practice law
2 and rules. Support magistrates shall not be empowered to hear, determine
3 and grant any relief with respect to [~~issues specified in section four~~
4 ~~hundred fifty-five of this article,~~] issues of contested parentage
5 involving claims of equitable estoppel, custody, visitation including
6 visitation as a defense, determinations of parentage made pursuant to
7 section 581-407 of this act, and orders of protection or exclusive
8 possession of the home, which shall be referred to a judge as provided
9 in subdivision (b) or (c) of this section. Where an order of filiation
10 is issued by a judge in a paternity proceeding and child support is in
11 issue, the judge, or support magistrate upon referral from the judge,
12 shall be authorized to immediately make a temporary or final order of
13 support, as applicable. A support magistrate shall have the authority to
14 hear and decide motions and issue summonses and subpoenas to produce
15 persons pursuant to section one hundred fifty-three of this act, hear
16 and decide proceedings and issue any order authorized by subdivision (g)
17 of section five thousand two hundred forty-one of the civil practice law
18 and rules, issue subpoenas to produce prisoners pursuant to section two
19 thousand three hundred two of the civil practice law and rules and make
20 a determination that any person before the support magistrate is in
21 violation of an order of the court as authorized by section one hundred
22 fifty-six of this act subject to confirmation by a judge of the court
23 who shall impose any punishment for such violation as provided by law. A
24 determination by a support magistrate that a person is in willful
25 violation of an order under subdivision three of section four hundred
26 fifty-four of this article and that recommends commitment shall be tran-
27 smitted to the parties, accompanied by findings of fact, but the deter-
28 mination shall have no force and effect until confirmed by a judge of
29 the court.

30 § 5. Subdivision (a) of section 439 of the family court act, as
31 amended by section 2 of chapter 468 of the laws of 2012, is amended to
32 read as follows:

33 (a) The chief administrator of the courts shall provide, in accordance
34 with subdivision (f) of this section, for the appointment of a suffi-
35 cient number of support magistrates to hear and determine support
36 proceedings. Except as hereinafter provided, support magistrates shall
37 be empowered to hear, determine and grant any relief within the powers
38 of the court in any proceeding under this article, articles five,
39 five-A, and five-B and sections two hundred thirty-four and two hundred
40 thirty-five of this act, and objections raised pursuant to section five
41 thousand two hundred forty-one of the civil practice law and rules.
42 Support magistrates shall not be empowered to hear, determine and grant
43 any relief with respect to [~~issues specified in section four hundred~~
44 ~~fifty-five of this article,~~] issues of contested paternity involving
45 claims of equitable estoppel, custody, visitation including visitation
46 as a defense, and orders of protection or exclusive possession of the
47 home, which shall be referred to a judge as provided in subdivision (b)
48 or (c) of this section. Where an order of filiation is issued by a judge
49 in a paternity proceeding and child support is in issue, the judge, or
50 support magistrate upon referral from the judge, shall be authorized to
51 immediately make a temporary or final order of support, as applicable. A
52 support magistrate shall have the authority to hear and decide motions
53 and issue summonses and subpoenas to produce persons pursuant to section
54 one hundred fifty-three of this act, hear and decide proceedings and
55 issue any order authorized by subdivision (g) of section five thousand
56 two hundred forty-one of the civil practice law and rules, issue subpoe-

1 nas to produce prisoners pursuant to section two thousand three hundred
2 two of the civil practice law and rules and make a determination that
3 any person before the support magistrate is in violation of an order of
4 the court as authorized by section one hundred fifty-six of this act
5 subject to confirmation by a judge of the court who shall impose any
6 punishment for such violation as provided by law. A determination by a
7 support magistrate that a person is in willful violation of an order
8 under subdivision three of section four hundred fifty-four of this arti-
9 cle and that recommends commitment shall be transmitted to the parties,
10 accompanied by findings of fact, but the determination shall have no
11 force and effect until confirmed by a judge of the court.

12 § 6. Subdivision (c) of section 439 of the family court act, as
13 amended by chapter 576 of the laws of 2005, is amended to read as
14 follows:

15 (c) The support magistrate, in any proceeding in which [~~issues speci-~~
16 ~~fied in section four hundred fifty-five of this act, or~~] issues of
17 custody, visitation, including visitation as a defense, orders of
18 protection or exclusive possession of the home are present or in which
19 paternity is contested on the grounds of equitable estoppel, shall make
20 a temporary order of support and refer the proceeding to a judge. Upon
21 determination of such issue by a judge, the judge may make a final
22 determination of the issue of support, or immediately refer the proceed-
23 ing to a support magistrate for further proceedings regarding child
24 support or other matters within the authority of the support magistrate.

25 § 7. This act shall take effect on the thirtieth day after it shall
26 have become a law, provided that the amendments to subdivision (a) of
27 section 439 of the family court act made by section four of this act
28 shall take effect on the same date and in the same manner as section 21
29 of chapter 56 of the laws of 2020, takes effect and be subject to the
30 expiration and reversion of such subdivision pursuant to subdivision 19
31 of section 246 of chapter 81 of the laws of 1995 as amended, when upon
32 such date the provisions of section five of this act shall take effect.