

1415

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the family court act, in relation to orders of protection in family offense proceedings; counseling for children

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

1 Section 1. Section 842 of the family court act, as amended by chapter
2 222 of the laws of 1994, the opening paragraph as amended by chapter 579
3 of the laws of 2003, subdivisions (a), (b), (c), (d) and (e) as amended
4 and subdivision (j) as added by chapter 483 of the laws of 1995, subdivision (i) as added and subdivision (j) as relettered by chapter 253 of
5 the laws of 2006, the third undesignated paragraph as amended by chapter
6 224 of the laws of 1994, the sixth undesignated paragraph as added by
7 section 8 of part D of chapter 56 of the laws of 2008, the seventh
8 undesignated paragraph as amended by chapter 326 of the laws of 2008 and
9 the closing paragraph as added by chapter 73 of the laws of 2007, is
10 amended to read as follows:

11 S 842. Order of protection. An order of protection under section eight
12 hundred forty-one of this part shall set forth reasonable conditions of
13 behavior to be observed for a period not in excess of two years by the
14 petitioner or respondent or for a period not in excess of five years
15 upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of
16 section eight hundred twenty-seven of this article; or (ii) a finding by
17 the court on the record that the conduct alleged in the petition is in
18 violation of a valid order of protection. Any finding of aggravating
19 circumstances pursuant to this section shall be stated on the record and
20 upon the order of protection. Any order of protection issued pursuant to
21 this section shall specify if an order of probation is in effect. Any
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23

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

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

3 (a) to stay away from the home, school, business or place of employ-
4 ment of any other party, the other spouse, the other parent, or the
5 child, and to stay away from any other specific location designated by
6 the court, provided that the court shall make a determination, and shall
7 state such determination in a written decision or on the record, whether
8 to impose a condition pursuant to this subdivision, provided further,
9 however, that failure to make such a determination shall not affect the
10 validity of such order of protection. In making such determination, the
11 court shall consider, but shall not be limited to consideration of,
12 whether the order of protection is likely to achieve its purpose in the
13 absence of such a condition, conduct subject to prior orders of
14 protection, prior incidents of abuse, extent of past or present injury,
15 threats, drug or alcohol abuse, and access to weapons;

16 (b) to permit a parent, or a person entitled to visitation by a court
17 order or a separation agreement, to visit the child at stated periods;

18 (c) to refrain from committing a family offense, as defined in subdi-
19 vision one of section eight hundred twelve of this act, or any criminal
20 offense against the child or against the other parent or against any
21 person to whom custody of the child is awarded, or from harassing,
22 intimidating or threatening such persons;

23 (d) to permit a designated party to enter the residence during a spec-
24 ified period of time in order to remove personal belongings not in issue
25 in this proceeding or in any other proceeding or action under this act
26 or the domestic relations law;

27 (e) to refrain from acts of commission or omission that create an
28 unreasonable risk to the health, safety or welfare of a child;

29 (f) to pay the reasonable counsel fees and disbursements involved in
30 obtaining or enforcing the order of the person who is protected by such
31 order if such order is issued or enforced;

32 (g) to require the respondent to participate in a batterer's education
33 program designed to help end violent behavior, which may include refer-
34 ral to drug and alcohol counselling, and to pay the costs thereof if the
35 person has the means to do so, provided however that nothing contained
36 herein shall be deemed to require payment of the costs of any such
37 program by the petitioner, the state or any political subdivision there-
38 of; [and]

39 (h) to provide, either directly or by means of medical and health
40 insurance, for expenses incurred for medical care and treatment arising
41 from the incident or incidents forming the basis for the issuance of the
42 order[.];

43 (i) 1. to refrain from intentionally injuring or killing, without
44 justification, any companion animal the respondent knows to be owned,
45 possessed, leased, kept or held by the petitioner or a minor child
46 residing in the household.

47 2. "Companion animal", as used in this section, shall have the same
48 meaning as in subdivision five of section three hundred fifty of the
49 agriculture and markets law.

50 (j) to observe such other conditions as are necessary to further the
51 purposes of protection.

52 The court may also award custody of the child, during the term of the
53 order of protection to either parent, or to an appropriate relative
54 within the second degree. Nothing in this section gives the court power
55 to place or board out any child or to commit a child to an institution

1 or agency. The court may also upon the showing of special circumstances
2 extend the order of protection for a reasonable period of time.

3 THE COURT SHALL ORDER COUNSELING FOR CHILDREN WHEN ONE MEMBER OF THE
4 FAMILY OR HOUSEHOLD HAS BEEN CHARGED WITH OR FOUND TO HAVE COMMITTED A
5 FAMILY OFFENSE AGAINST ANOTHER MEMBER OF THE FAMILY OR HOUSEHOLD, WHERE
6 THERE IS A DEMONSTRATED NEED FOR PSYCHOLOGICAL INTERVENTION, EVEN IF THE
7 CHILDREN WERE NOT THE DIRECT VICTIMS.

8 Notwithstanding the provisions of section eight hundred seventeen of
9 this article, where a temporary order of child support has not already
10 been issued, the court may in addition to the issuance of an order of
11 protection pursuant to this section, issue an order for temporary child
12 support in an amount sufficient to meet the needs of the child, without
13 a showing of immediate or emergency need. The court shall make an order
14 for temporary child support notwithstanding that information with
15 respect to income and assets of the respondent may be unavailable. Where
16 such information is available, the court may make an award for temporary
17 child support pursuant to the formula set forth in subdivision one of
18 section four hundred thirteen of this act. Temporary orders of support
19 issued pursuant to this article shall be deemed to have been issued
20 pursuant to section four hundred thirteen of this act.

21 Upon making an order for temporary child support pursuant to this
22 subdivision, the court shall advise the petitioner of the availability
23 of child support enforcement services by the support collection unit of
24 the local department of social services, to enforce the temporary order
25 and to assist in securing continued child support, and shall set the
26 support matter down for further proceedings in accordance with article
27 four of this act.

28 Where the court determines that the respondent has employer-provided
29 medical insurance, the court may further direct, as part of an order of
30 temporary support under this subdivision, that a medical support
31 execution be issued and served upon the respondent's employer as
32 provided for in section fifty-two hundred forty-one of the civil prac-
33 tice law and rules.

34 In any proceeding in which an order of protection or temporary order
35 of protection or a warrant has been issued under this section, the clerk
36 of the court shall issue to the petitioner and respondent and his coun-
37 sel and to any other person affected by the order a copy of the order of
38 protection or temporary order of protection and ensure that a copy of
39 the order of protection or temporary order of protection be transmitted
40 to the local correctional facility where the individual is or will be
41 detained, the state or local correctional facility where the individual
42 is or will be imprisoned, and the supervising probation department or
43 division of parole where the individual is under probation or parole
44 supervision.

45 Notwithstanding the foregoing provisions, an order of protection, or
46 temporary order of protection where applicable, may be entered against a
47 former spouse and persons who have a child in common, regardless of
48 whether such persons have been married or have lived together at any
49 time, or against a member of the same family or household as defined in
50 subdivision one of section eight hundred twelve of this article.

51 In addition to the foregoing provisions, the court may issue an order,
52 pursuant to section two hundred twenty-seven-c of the real property law,
53 authorizing the party for whose benefit any order of protection has been
54 issued to terminate a lease or rental agreement pursuant to section two
55 hundred twenty-seven-c of the real property law.

56 S 2. This act shall take effect immediately.