S T A T E O F N E W Y O R K

6225

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. BARRA -- Multi-Sponsored by -- M. of A. TOWNSEND -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to the disposition of family offenses

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

Section 1. Section 841 of the family court act, as amended by chapter 706 of the laws of 1988, subdivisions (c) and (d) as amended and subdivision (e) as added by chapter 222 of the laws of 1994 and the closing paragraph as amended by chapter 326 of the laws of 2008, is amended to read as follows:

S 841. Orders of disposition. 1. At the conclusion of a dispositional hearing under this article, AS TO ANY ALLEGATION IN A PETITION WHICH THE COURT FINDS IS NOT SUPPORTED BY A FAIR PREPONDERANCE OF THE EVIDENCE, the court [may] SHALL enter an order:

(a) dismissing the [petition, if the] allegations of the petition WHICH are not established; or

(b) suspending judgment for a period not in excess of six months[; or

(c)].

2. AT THE CONCLUSION OF A DISPOSITIONAL HEARING UNDER THIS ARTICLE, AS TO ANY ALLEGATION IN A PETITION WHICH THE COURT FINDS IS SUPPORTED BY A FAIR PREPONDERANCE OF THE EVIDENCE, THE COURT SHALL ENTER AN ORDER:

(A) placing the respondent on probation for a period not exceeding [one year] THREE YEARS, and requiring respondent to participate in AND SUCCESSFULLY COMPLETE a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if respondent has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; [or] AND

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

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[(d)] (B) making an order of protection in accord with section eight hundred forty-two of this part; [or] AND

[(e)] (C) directing payment of restitution, WHEN WARRANTED, in an amount not to exceed ten thousand dollars. An order of restitution may be made in conjunction with any order of disposition authorized under [subdivisions (b), (c), or (d)] PARAGRAPH (B) OF SUBDIVISION ONE of this section OR PARAGRAPH (A) OR (B) OF THIS SUBDIVISION. In no case shall an order of restitution be issued where the court determines that the respondent has already paid such restitution as part of the disposition or settlement of another proceeding arising from the same act or acts alleged in the petition before the court[.]; AND

(D) DIRECTING THE DEFENDANT TO PAY A FINE PURSUANT TO THE PROVISIONS OF ARTICLE EIGHTY OF THE PENAL LAW FOR THE FAMILY OFFENSE FOUND TO HAVE BEEN COMMITTED AS IF THE DEFENDANT WERE CONVICTED THEREOF IN A COURT OF CRIMINAL JURISDICTION.

3. No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counter-claim in accordance with section one hundred fifty-four-b of this act. Nothing in this section shall preclude the issuance of a temporary order of protection ex parte, pursuant to section eight hundred twenty-eight of this article.

4. Nothing in this section shall preclude the issuance of both an order of probation and an order of protection as part of the order of disposition.

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

6. (A) FOR PURPOSES OF THIS SECTION, "ELECTRONIC MONITORING" SHALL MEAN THE TECHNOLOGY USED WHEN A DEVICE IS ATTACHED TO ANY OFFENDER'S PERSON BY THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES TO LIMIT AND MONITOR THE OFFENDER'S MOVEMENTS.

(B) IN LIEU OF AN ORDER OF PROBATION, AN ORDER FOR THE OFFENDER TO PARTICIPATE IN AN ELECTRONIC MONITORING PROGRAM MAY BE ENTERED AT THE DISCRETION OF THE COURT. THE COURT SHALL TAKE INTO ACCOUNT THE NATURE OF THE OFFENSE AND THE PRIOR HISTORY OF THE OFFENDER INCLUDING THE OFFENDER'S MENTAL HISTORY OR PRIOR CRIMINAL RECORD. ANY PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A FELONY SHALL NOT BE ELIGIBLE FOR ELECTRONIC MONITORING.

(C) (I) ANY PERSON SENTENCED TO ELECTRONIC MONITORING SHALL BE ORDERED TO REMAIN CONFINED IN THEIR OWN RESIDENCES BUT SHALL BE PERMITTED TO LEAVE FOR MEDICAL AND/OR EMPLOYMENT PURPOSES ONLY OR FOR OTHER PURPOSES IN THE DISCRETION OF THE SENTENCING COURT.

(II) ANY PERSON WHO VIOLATES ANY OF THE CONDITIONS IMPOSED UPON HIM BY THE COURT, MAY AFTER A HEARING BEFORE THE COURT, BE DEEMED INELIGIBLE TO CONTINUE HIS PARTICIPATION IN SUCH ALTERNATIVE PROGRAM, IN WHICH EVENT THE COURT SHALL MAKE ANY OTHER AUTHORIZED DISPOSITION.

(III) IN DETERMINING WHETHER A VIOLATION HAS OCCURRED, THE COURT SHALL MAKE A FINDING AS TO THE ACCURACY OF THE DEVICE USED TO MONITOR THE MOVEMENTS OF THE PERSON SUBJECT TO THE ORDER, AND IT SHALL WHEN NECESSARY CONSULT WITH THE SUPPLIER OF SUCH DEVICE.

(D) THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES SHALL SUPERVISE, AND ADMINISTER THE ELECTRONIC MONITORING PROGRAM ON A TEST BASIS FOR TWO YEARS FOR OFFENDERS SUBJECT TO AN ORDER OF ELECTRONIC

MONITORING. THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES SHALL CHOOSE AN APPROPRIATE VENDOR OF THE ELECTRONIC MONITORING EQUIPMENT. SUCH VENDOR SHALL BE APPROVED SUBJECT TO COMPETITIVE BIDDING PROCEDURES UNDER THE STATE ADMINISTRATIVE PROCEDURE ACT. SUCH VENDOR SHALL ENTER INTO A CONTRACT TO SUPPLY THE NEEDED PERSONNEL AND EQUIPMENT WITH THE DIVISION. ANY OTHER RULES OR REGULATIONS NEEDED TO PERFORM SUCH DUTIES SHALL BE PROMULGATED BY SUCH DIVISION. THE DIVISION SHALL SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE ON OR BEFORE THE DATE OCCURRING EIGHTEEN MONTHS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, TOGETHER WITH ANY LEGISLATIVE PROPOSALS DEEMED NECESSARY OR ADVISABLE FOR THE CONTINUATION OR ALTERATION OF SUCH PROGRAM AND CONCERNING THE EFFECTIVENESS OF THE PROGRAM INCLUDING RECIDIVISM RATES AND COMPARISON OF COSTS AMONG ELECTRONIC MONITORING AND INTENSIVE SUPERVISION.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.