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

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I N A S S E M B L Y

May 14, 2010

Introduced by M. of A. WEINSTEIN, JOHN, PAULIN, ROSENTHAL -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to service of orders of protection including applications to extend and petitions for violations of orders of protection and temporary orders of protection in family court

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

Section 1. Section 153-b of the family court act, as amended by chapter 46 of the laws of 1994, subdivisions (c) and (d) as amended by chapter 429 of the laws of 1995, is amended to read as follows:

S 153-b. Service of process request for order of protection. Whenever a petitioner requests an order of protection or temporary order of protection OR FILES FOR AN EXTENSION OF SUCH ORDER OR A PETITION OR MOTION FOR MODIFICATION OR A VIOLATION OF SUCH AN ORDER under any article of this act:

(a) the summons and the petition and, if one has been issued, the temporary order of protection, ORDER OF PROTECTION ISSUED UPON A DEFAULT, or a copy or copies thereof, may be served on any day of the week, and at any hour of the day or night;

(b) a peace officer, acting pursuant to his or her special duties, or a police officer [may] SHALL, UPON RECEIPT, serve OR PROVIDE FOR THE SERVICE OF the summons and the petition TOGETHER WITH ANY ASSOCIATED PAPERS and, if one has been issued, the temporary order of protection, OR ORDER OF PROTECTION ISSUED UPON A DEFAULT AND SHALL NOT CHARGE A FEE FOR SUCH SERVICE, INCLUDING, BUT NOT LIMITED TO, FEES AS PROVIDED UNDER SECTION EIGHT THOUSAND ELEVEN OF THE CIVIL PRACTICE LAW AND RULES;

(c) if a temporary order of protection has been issued, or an order of protection has been issued upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection TOGETHER WITH ANY

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

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ASSOCIATED PAPERS THAT MAY BE SERVED SIMULTANEOUSLY INCLUDING THE SUMMONS AND PETITION, to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or to any other county or municipal officer who may be directed to effect service under section two hundred fifty-five of [the family court] THIS act, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided [hereunder] IN THIS SECTION shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition if not previously served. Service of such temporary order of protection, or order of protection, and associated papers, shall insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this [subdivision] SECTION, and his or her employer, shall not be liable for damages resulting from THE failure to achieve service where, having made a reasonable effort, such officer is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order[.];

(d) [a] WHERE THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION AND PAPERS, IF ANY, HAVE BEEN SERVED, SUCH OFFICER OR DESIGNATED PERSON SHALL PROVIDE THE COURT WITH AN AFFIRMATION, CERTIFICATE OR AFFIDAVIT OF SERVICE WHEN THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION HAS BEEN SERVED, AND SHALL PROVIDE NOTIFICATION OF THE DATE AND TIME OF SUCH SERVICE TO THE STATEWIDE COMPUTER REGISTRY ESTABLISHED PURSUANT TO SECTION TWO HUNDRED TWENTY-ONE-A OF THE EXECUTIVE LAW. A statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of the service of the summons, petition and temporary order of protection or order of protection[. When the temporary order of protection or order of protection and other papers, if any, have been served, such officer or designated person shall provide the court with an affirmation, certificate or affidavit of service when the temporary order of protection has been served and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law.];

(E) WHERE AN OFFICER OR DESIGNATED PERSON OBLIGED TO PERFORM SERVICE PURSUANT TO THIS SECTION IS UNABLE TO COMPLETE SERVICE OF THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION SUCH OFFICER OR DESIGNATED PERSON SHALL PROVIDE THE COURT WITH PROOF OF ATTEMPTED SERVICE OF THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION WITH INFORMATION REGARDING THE DATES, TIMES, LOCATIONS AND MANNER OF ATTEMPTED SERVICE. AN AFFIRMATION, CERTIFICATE OR AFFIDAVIT OF SERVICE WITH A STATEMENT SUBSCRIBED BY THE OFFICER OR DESIGNATED PERSON, AND AFFIRMED BY HIM OR HER TO BE TRUE UNDER THE PENALTIES OF PERJURY, STATING THE NAME OF THE PARTY AND THE PAPERS ATTEMPTED TO BE SERVED ON SAID PERSON, AND FOR EACH ATTEMPTED SERVICE, THE DATE, TIME, ADDRESS OR IN THE EVENT THERE IS NO ADDRESS, PLACE, AND MANNER OF ATTEMPTED SERVICE, SHALL BE PROOF OF ATTEMPTED SERVICE.

S 2. Subdivision 3-a of section 240 of the domestic relations law, as added by chapter 429 of the laws of 1995, is amended to read as follows:

3-a. Service of order of protection. (A) If a temporary order of protection has been issued OR AN ORDER OF PROTECTION HAS BEEN ISSUED upon a default, unless the party requesting the order states on the record that she or he will arrange for other means for service or deliver the order to a peace or police officer directly for service, the court shall immediately deliver a copy of the temporary order of protection or order of protection TOGETHER WITH ANY ASSOCIATED PAPERS THAT MAY BE SERVED SIMULTANEOUSLY INCLUDING THE SUMMONS AND PETITION, to a peace officer, acting pursuant to his or her special duties and designated by the court, or to a police officer as defined in paragraph (b) or (d) of subdivision thirty-four of section 1.20 of the criminal procedure law, or, in the city of New York, to a designated representative of the police department of the city of New York. Any peace or police officer or designated person receiving a temporary order of protection or an order of protection as provided [hereunder] IN THIS SECTION shall serve or provide for the service thereof together with any associated papers that may be served simultaneously, at any address designated therewith, including the summons and petition or complaint if not previously served. Service of such temporary order of protection or order of protection and associated papers shall, insofar as practicable, be achieved promptly. An officer or designated person obliged to perform service pursuant to this subdivision, and his or her employer, shall not be liable for damages resulting from failure to achieve service where, having made a reasonable effort, such officer or designated person is unable to locate and serve the temporary order of protection or order of protection at any address provided by the party requesting the order.

(B) WHEN THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION AND ASSOCIATED PAPERS, IF ANY, HAVE BEEN SERVED, SUCH OFFICER OR DESIGNATED PERSON SHALL PROVIDE THE COURT WITH AN AFFIRMATION, CERTIFICATE OR AFFIDAVIT OF SERVICE WHEN THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION HAS BEEN SERVED, AND SHALL PROVIDE NOTIFICATION OF THE DATE AND TIME OF SUCH SERVICE TO THE STATEWIDE COMPUTER REGISTRY ESTABLISHED PURSUANT TO SECTION TWO HUNDRED TWENTY-ONE-A OF THE EXECUTIVE LAW. A statement subscribed by the officer or designated person, and affirmed by him or her to be true under the penalties of perjury, stating the papers served, the date, time, address or in the event there is no address, place, and manner of service, the name and a brief physical description of the party served, shall be proof of service of the summons, petition and temporary order of protection or order of protection. [When the temporary order of protection or order of protection and other papers, if any, have been served, such officer or designated person shall provide the court with an affirmation, certificate or affidavit of service and shall provide notification of the date and time of such service to the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law.]

(C) WHERE AN OFFICER OR DESIGNATED PERSON OBLIGED TO PERFORM SERVICE PURSUANT TO THIS SECTION IS UNABLE TO COMPLETE SERVICE OF THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION, SUCH OFFICER OR DESIGNATED PERSON SHALL PROVIDE THE COURT WITH PROOF OF ATTEMPTED SERVICE OF THE TEMPORARY ORDER OF PROTECTION OR ORDER OF PROTECTION WITH INFORMATION REGARDING THE DATES, TIMES, LOCATIONS AND MANNER OF ATTEMPTED SERVICE. AN AFFIRMATION, CERTIFICATE OR AFFIDAVIT OF SERVICE WITH A STATEMENT SUBSCRIBED BY THE OFFICER OR DESIGNATED PERSON, AND AFFIRMED BY HIM OR HER TO BE TRUE UNDER THE PENALTIES OF PERJURY, STATING THE NAME OF THE

PARTY AND THE PAPERS ATTEMPTED TO BE SERVED ON SAID PERSON, AND FOR EACH ATTEMPTED SERVICE, THE DATE, TIME, ADDRESS OR IN THE EVENT THERE IS NO ADDRESS, PLACE, AND MANNER OF ATTEMPTED SERVICE, SHALL BE PROOF OF ATTEMPTED SERVICE.

(D) ANY PEACE OR POLICE OFFICER OR DESIGNATED PERSON PERFORMING SERVICE UNDER THIS SUBDIVISION SHALL NOT CHARGE A FEE FOR SUCH SERVICE, INCLUDING, BUT NOT LIMITED TO, FEES AS PROVIDED UNDER SECTION EIGHT THOUSAND ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

S 3. This act shall take effect immediately.