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

7873

2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

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

AN ACT to amend the executive law, the domestic relations law, the insurance law, the criminal procedure law, and the family court act, in relation to extending orders of protection to last for the life of the party against whom the order is issued where the party is a repeat offender, provides that the expiration of the order of protection is calculated from the date that the party's jail sentence expires and authorizes the creation of a computer registry of violations of orders of protection

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

Section 1. Subdivision 3 of section 221-a of the executive law, as amended by chapter 107 of the laws of 2004, is amended to read as follows:

3. Whenever any court issues an order of protection or special order of conditions, the sheriff's office or appropriate municipal police department in the county in which the complainant or petitioner resides, or if he or she resides within a city, the police department of such city, which receives a copy of the order of protection or special order of conditions from the clerk of the court or otherwise pursuant to law, shall promptly transmit such information on the order of protection or special order of conditions as required by rule and regulation over the law enforcement communication system, including but not limited to: the names of the parties to the proceeding giving rise to such order, the date such order becomes effective, the date such order was served or whether the defendant or respondent had actual knowledge of such order because he or she was present in court when such order was issued, [the date such order is to expire,] and the terms and conditions of such order. When any peace officer, acting pursuant to his or her special duties, or police officer receives a warrant issued by family court,

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

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supreme court or by a criminal court pertaining to an order of protection or special order of conditions, as described in subdivision one of this section, the officer shall cause specific information on the warrant as required by rule and regulation to be promptly dispatched over the law enforcement communication system. For purposes of this subdivision, municipal shall have the same meaning as municipality, as defined in subdivision six of section eight hundred thirty-five of this chapter. Notwithstanding the provisions of article fifty-four of the civil practice law and rules, a person entitled to protection under an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, may file such order without fee with the clerk of a court in this state having jurisdiction over family, criminal or matrimonial proceedings; such order shall be accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified. Upon such filing, information regarding such order shall be transmitted to the statewide computerized registry in accordance with this section, provided, however, that such filing and registry entry shall not be required for enforcement of such order.

S 2. The opening paragraph of paragraph a of subdivision 3 of section 240 of the domestic relations law, as amended by chapter 597 of the laws of 1998, is amended to read as follows:

The court may make an order of protection in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed [for a specified time] by any party. SUCH ORDER SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE REMAINDER OF HIS OR HER LIFE OR UNTIL LIFTED BY A COURT OF COMPETENT JURISDICTION, WHICHEVER OCCURS FIRST. Such an order may require any party:

S 3. Subdivision 3 of section 252 of the domestic relations law, as added by chapter 349 of the laws of 1995, is amended to read as follows:

3. An order of protection entered pursuant to this subdivision may be made in the final judgment in any matrimonial action, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. [The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order.] SUCH ORDER SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE REMAINDER OF HIS OR HER LIFE OR UNTIL LIFTED BY A COURT OF COMPETENT JURISDICTION, WHICHEVER OCCURS FIRST. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.

S 4. Subsections (f) and (g) of section 2612 of the insurance law, subsection (f) as amended by chapter 246 of the laws of 2005 and subsection (g) as added by chapter 361 of the laws of 2006, are amended to read as follows:

(f) If any person covered by an insurance policy issued to another person as the policyholder delivers to the insurer that issued the policy, at its home office, a valid order of protection against the policyholder, issued by a court of competent jurisdiction in this state, the insurer shall be prohibited [for the duration of the order] from disclosing to the policyholder the address and telephone number of the insured, or of any person or entity providing covered services to the insured. If a child is the covered person, the right established by this

subsection may be asserted by, and shall also extend to, the parent or guardian of the child. The superintendent, in consultation with the commissioner of health and the office of children and family services and the office for the prevention of domestic violence, shall promulgate rules to guide and enable insurers to guard against the disclosure of the address and location of an insured who is a victim of domestic violence.

(g) If any person covered by a group insurance policy delivers to the insurer that issued the policy, at its home office, a valid order of protection against another person covered by the group policy, issued by a court of competent jurisdiction in this state, the insurer shall be prohibited [for the duration of the order] from disclosing to the person against whom the valid order of protection was issued the address and telephone number of the insured person covered by the order of protection, or of any person or entity providing covered services to the insured person covered by the order of protection. If a child is the covered person, the right established by this subsection may be asserted by, and shall also extend to, the parent or guardian of the child. The superintendent, in consultation with the commissioner of health, the office of children and family services and the office for the prevention of domestic violence, shall promulgate rules to guide and enable insurers to guard against the disclosure of the address and location of an insured who is a victim of domestic violence.

S 5. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by chapter 215 of the laws of 2006, is amended to read as follows:

Upon conviction of any crime or violation between spouses, parent and child, or between members of the same family or household, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed [the greater of: (i) eight years from the date of such conviction, or (ii)] eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed five years from the date of such conviction, PROVIDED, HOWEVER THAT IF JAIL-TIME IS IMPOSED, FIVE YEARS FROM THE DATE OF THE EXPIRATION OF SUCH JAIL SENTENCE; or in the case of a conviction for any other offense, shall not exceed two years from the date of conviction, PROVIDED, HOWEVER THAT IF JAIL-TIME IS IMPOSED, TWO YEARS FROM THE DATE OF THE EXPIRATION OF SUCH JAIL SENTENCE. THE COURT MAY DECIDE THAT THE ORDER OF PROTECTION SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE REMAINDER OF HIS OR HER LIFE IF IT HAS BEEN FOUND SUCH PERSON IS A REPEAT OFFENDER. For purposes of [determining the duration of an order of protection entered pursuant to] this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant:

S 6. The closing paragraph of subdivision 6 of section 530.12 of the criminal procedure law, as added by chapter 222 of the laws of 1994, is amended to read as follows:

Such order of protection shall plainly state the date that such order expires OR IF IT IS VALID AND ENFORCEABLE FOR THE REMAINDER OF SUCH PERSON'S LIFE.

S 7. The opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law, as amended by chapter 215 of the laws of 2006, is amended to read as follows:

Upon conviction of any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed [the greater of: (i) eight years from the date of such conviction, or (ii)] eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed five years from the date of such conviction, PROVIDED, HOWEVER THAT IF JAIL-TIME IS IMPOSED, FIVE YEARS FROM THE DATE OF THE EXPIRATION OF SUCH JAIL TERM; or in the case of a conviction for any other offense, shall not exceed two years from the date of conviction, PROVIDED, HOWEVER THAT IF JAIL-TIME IS IMPOSED, FIVE YEARS FROM THE DATE OF THE EXPIRATION OF SUCH JAIL TERM. THE ORDER OF PROTECTION SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE REMAINDER OF HIS OR HER LIFE IF IT HAS BEEN FOUND SUCH PERSON IS A REPEAT OFFENDER. For purposes of [determining the duration of an order of protection entered pursuant to] this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

S 8. Subdivision 5 of section 530.13 of the criminal procedure law, as amended by chapter 462 of the laws of 2002, is amended to read as follows:

5. The court shall inquire as to the existence of any other orders of protection between the defendant and the person or persons for whom the order of protection is sought. An order of protection issued under this section shall plainly state the date that such order expires OR IF IT IS VALID AND ENFORCEABLE FOR THE REMAINDER OF SUCH PERSON'S LIFE. Orders of protection issued to protect victims of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall be on uniform statewide forms that shall be promulgated by the chief administrator of the courts in a manner to ensure the compatibility of such forms with the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law. A copy of an order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, or four of this section shall be filed by the clerk of the court with the sheriff's office in the county in which such victim or victims reside, or, if the victim or victims reside within a city, with the police department of such city. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the victim or victims at the appropriate police department or sheriff's office having

jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided.

S 9. Subdivision 1 of section 154-c of the family court act, as added by chapter 186 of the laws of 1997, is amended to read as follows:

1. Expiration dates. Any [order of protection or] temporary order of protection issued under articles four, five[,] AND six [and eight] of this act shall plainly state the date that such order expires OR IF IT IS VALID AND ENFORCEABLE FOR THE REMAINDER OF SUCH PERSON'S LIFE.

S 10. Subdivision 2 of section 352.3 of the family court act, as added by chapter 683 of the laws of 1984, is amended to read as follows:

(2) An order of protection shall remain in effect for the period specified by the court, OR IN THE ALTERNATIVE AGAINST ANY PARTY FOR THE REMAINDER OF HIS OR HER LIFE, but shall not exceed the period of time specified in any order of disposition or order adjourning a proceeding in contemplation of dismissal.

S 11. The opening paragraph and the second undesignated paragraph of section 446 of the family court act, the opening paragraph as amended by chapter 706 of the laws of 1988 and the second undesignated paragraph as amended by chapter 948 of the laws of 1984, are amended to read as follows:

The court may make an order of protection in assistance or as a condition of any other order made under this part. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by the petitioner or respondent or both OR FOR THE REMAINDER OF SUCH PERSON'S LIFE IF IT HAS BEEN FOUND A PERSON IS A REPEAT OFFENDER. 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. Such an order may require the petitioner or the respondent:

The court may also award custody of the child[, during the term of the order of protection] to either parent, or to an appropriate relative within the second degree. 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 religious faith shall be preserved and protected.

S 12. The opening paragraph of section 551 of the family court act, as amended by chapter 706 of the laws of 1988, is amended to read as follows:

The court may make an order of protection in assistance or as a condition of any other order made under this article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by the petitioner or respondent or both OR FOR THE REMAINDER OF SUCH PERSON'S LIFE IF IT HAS BEEN FOUND A PERSON IS A REPEAT OFFENDER. 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. Such an order may require the petitioner or the respondent:

S 13. The second undesignated paragraph of section 551 of the family court act, as amended by chapter 948 of the laws of 1984, is amended to read as follows:

The court may also award custody of the child[, during the term of the order of protection] to either parent, or to an appropriate relative within the second degree. 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 religious faith shall be preserved and protected.

S 14. The opening paragraph of section 656 of the family court act, as amended by chapter 706 of the laws of 1988, is amended to read as follows:

The court may make an order of protection and an order of probation in assistance or as a condition of any other order made under this part. The order of protection may set forth reasonable conditions of behavior to be observed for a specific time by any petitioner or any respondent OR FOR THE REMAINDER OF SUCH PERSON'S LIFE IF IT HAS BEEN FOUND A PERSON IS A REPEAT OFFENDER, and shall specify if an order of probation is in effect. 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. Such an order may require the petitioner or the respondent:

S 15. The opening paragraph of section 759 of the family court act, as amended by chapter 948 of the laws of 1984, is amended to read as follows:

The court may make an order of protection in assistance or as a condition of any order issued under this article. The order of protection may set forth reasonable conditions of behavior to be observed [for a specified time] by a person who is before the court and is a parent or other person legally responsible for the child's care or the spouse of the parent or other person legally responsible for the child's care, or respondent or both. Such an order may require any such person:

S 16. The second undesignated paragraph of section 759 of the family court act, as amended by chapter 948 of the laws of 1984, is amended to read as follows:

The court may also award custody of the child[, during the term of the order of protection] to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any 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 religious faith shall be preserved and protected.

S 17. The opening paragraph of section 842 of the family court act, as amended by chapter 579 of the laws of 2003, is amended to read as follows:

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed [for a period not in excess of two years] by the petitioner or respondent [or for a period not in excess of five years] 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 section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. SUCH ORDER SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE PERIOD OF TIME DETERMINED BY THE COURT OR THE REMAINDER OF HIS OR HER LIFE IF THE

PERSON IS FOUND TO BE A REPEAT OFFENDER. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

S 18. The first undesignated paragraph of section 842 of the family court act, as amended by chapter 222 of the laws of 1994, is amended to read as follows:

The court may also award custody of the child[, during the term of the order of protection] to either parent, or to an appropriate relative within the second degree. 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. The court may also upon the showing of special circumstances extend the order of protection for a reasonable period of time.

S 19. The opening paragraph of subdivision 1, subdivisions 2 and 4 of section 1056 of the family court act, the opening paragraph of subdivision 1 as amended and subdivision 4 as added by chapter 622 of the laws of 1990 and subdivision 2 as amended by chapter 220 of the laws of 1989, are amended to read as follows:

The court may make an order of protection in assistance or as a condition of any other order made under this part. Such order of protection shall remain in effect concurrently with[, shall expire no later than the expiration date of, and may be extended concurrently with,] such other order made under this part, except as provided in subdivision four of this section. The order of protection may set forth reasonable conditions of behavior to be observed [for a specified time] by a person who is before the court and is a parent or a person legally responsible for the child's care or the spouse of the parent or other person legally responsible for the child's care, or both. SUCH ORDER SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE PERIOD OF TIME DETERMINED BY THE COURT OR THE REMAINDER OF HIS OR HER LIFE IF THE PERSON IS FOUND TO BE A REPEAT OFFENDER. Such an order may require any such person

2. The court may also award custody of the child[, during the term of the order of protection] to either parent, or to an appropriate relative within the second degree. 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 religious faith shall be preserved and protected.

4. The court may enter an order of protection independently of any other order made under this part, against a person who was a member of the child's household or a person legally responsible as defined in section one thousand twelve of this chapter, and who is no longer a member of such household at the time of the disposition and who is not related by blood or marriage to the child or a member of the child's household. [An order of protection entered pursuant to this subdivision may be for any period of time up to the child's eighteenth birthday and upon such conditions as the court deems necessary and proper to protect the health and safety of the child and the child's caretaker.]

S 20. Clause (D) of subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(D) The court may make an order of protection in the manner specified by section one thousand fifty-six of this act in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed [for a specified period of time] by a person before the court. SUCH ORDER SHALL REMAIN VALID AND ENFORCEABLE AGAINST ANY PARTY FOR THE

PERIOD OF TIME DETERMINED BY THE COURT OR THE REMAINDER OF HIS OR HER LIFE IF THE PERSON IS FOUND TO BE A REPEAT OFFENDER.

S 21. The executive law is amended by adding a new section 221-e to read as follows:

S 221-E. COMPUTER REGISTRY OF VIOLATIONS OF ORDERS OF PROTECTION. 1. THE SUPERINTENDENT, IN CONSULTATION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, OFFICE OF COURT ADMINISTRATION, THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES, THE STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE AND THE DIVISION FOR WOMEN, SHALL DEVELOP A COMPREHENSIVE PLAN FOR THE ESTABLISHMENT AND MAINTENANCE OF A STATEWIDE COMPUTERIZED REGISTRY OF ALL INDIVIDUALS WHO HAVE VIOLATED THE PROVISIONS OF AN ORDER OF PROTECTION ISSUED PURSUANT TO ARTICLES FOUR, FIVE, SIX AND EIGHT OF THE FAMILY COURT ACT, SECTIONS 530.12 AND 530.13 OF THE CRIMINAL PROCEDURE LAW AND SECTIONS TWO HUNDRED FORTY AND TWO HUNDRED FIFTY-TWO OF THE DOMESTIC RELATIONS LAW, AND ORDERS OF PROTECTION ISSUED BY COURTS OF COMPETENT JURISDICTION IN ANOTHER STATE, TERRITORIAL OR TRIBAL JURISDICTION.

2. INFORMATION ON THE REGISTRATION AUTHORIZED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL INCLUDE, BUT NOT BE LIMITED TO:

A. NAME;

B. ALL ALIASES USED;

C. DATE OF BIRTH;

D. SEX;

E. RACE;

F. HEIGHT;

G. WEIGHT;

H. EYE COLOR;

I. DRIVER'S LICENSE NUMBER;

J. HOME ADDRESS;

K. A DESCRIPTION OF THE OFFENSES FOR WHICH THE ORDER OF PROTECTION WAS ISSUED AND THE VIOLATIONS RELATED THERETO; AND

L. ANY OTHER INFORMATION DEEMED PERTINENT BY THE SUPERINTENDENT.

S 22. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all criminal actions whenever commenced provided sentence therein has not been imposed prior to such effective date; provided, however, that the amendments to the opening paragraph of subdivision 5 of section 530.12 and the opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law made by sections five and seven of this act shall not affect the expiration of such paragraphs and shall be deemed to expire therewith; provided, further, that effective immediately the superintendent of state police is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement the provisions of section twenty-one of this act on or before such effective date.