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

3869--A

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, the social services law and the executive law, in relation to orders of protection in termination of parental rights proceedings, child protective proceedings and permanency hearings regarding children freed for adoption

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

Section 1. Section 634 of the family court act, as amended by chapter 666 of the laws of 1976, is amended to read as follows:

S 634. Commitment of guardianship and custody; further orders. The court may enter an order under section six hundred thirty-one OF THIS ARTICLE committing the guardianship and custody of the child to the petitioner on such conditions, if any, as it deems proper. FOR GOOD CAUSE SHOWN, THE COURT MAY ISSUE AN ORDER OF PROTECTION TO PROTECT THE CHILD AND THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS AND OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE ORDER MAY DIRECT THE RESPONDENT TO OBSERVE REASONABLE CONDITIONS THAT MY INCLUDE, AMONG OTHERS, THAT THE RESPONDENT STAY AWAY FROM THE CHILD AND FROM THE HOME, SCHOOL, BUSINESS OR PLACE OF EMPLOYMENT OF THE CHILD OR THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS OR OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. PRIOR TO ISSUING THE ORDER, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF PROTECTION INVOLVING THE PARTIES AND SHALL GIVE THE RESPONDENT NOTICE AND AN OPPORTUNITY TO BE HEARD. THE COURT SHALL STATE ITS REASONS ON THE RECORD FOR ISSUING THE ORDER. AN ORDER OF PROTECTION ISSUED UNDER THIS SECTION MAY REMAIN IN EFFECT FOR A PERIOD OF UP TO TWO YEARS OR, IF THE

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

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COURT FINDS AGGRAVATING CIRCUMSTANCES AS DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED TWENTY-SEVEN OF THIS CHAPTER OR IF THE COURT FINDS THAT THE RESPONDENT HAS VIOLATED AN ORDER OF PROTECTION, A PERIOD OF UP TO FIVE YEARS. THE ORDER OF PROTECTION MAY BE EXTENDED CONCURRENTLY WITH ANOTHER ORDER ISSUED UNDER ARTICLE TEN-A OF THIS CHAPTER.

S 2. Subdivision (a) of section 1029 of the family court act, as amended by chapter 41 of the laws of 2010, is amended to read as follows:

(a) The family court, upon the application of any person who may originate a proceeding under this article, for good cause shown, may issue a temporary order of protection, before or after the filing of such petition, which may contain any of the provisions authorized on the making of an order of protection under section one thousand fifty-six OF THIS ARTICLE. PRIOR TO ISSUING A TEMPORARY ORDER OF PROTECTION UNDER THIS SECTION, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF PROTECTION INVOLVING THE PARTIES. If such order is granted before the filing of a petition and a petition is not filed under this article within ten days from the granting of such order, the order shall be vacated. In any case where a petition has been filed and an attorney for the child has been appointed, such attorney may make application for a temporary order of protection pursuant to the provisions of this section.

S 3. The opening paragraph and paragraph (a) of subdivision 1 and subdivision 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, paragraph (a) of subdivision 1 as amended by chapter 483 of the laws of 1995, are amended to read as follows:

The court may [make] ISSUE an order of protection in assistance or as a condition of any other order made under this part. [Such] PRIOR TO ISSUING AN ORDER OF PROTECTION UNDER THIS SECTION, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF PROTECTION INVOLVING THE PARTIES. AN order of protection [shall] ISSUED UNDER THIS SECTION MAY remain in effect [concurrently with, shall expire no later than the expiration date of, and] FOR A PERIOD OF UP TO TWO YEARS OR, IF THE COURT FINDS AGGRAVATING CIRCUMSTANCES AS DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED TWENTY-SEVEN OF THIS CHAPTER OR IF THE COURT FINDS THAT THE RESPONDENT HAS VIOLATED AN ORDER OF PROTECTION, A PERIOD OF UP TO FIVE YEARS. THE ORDER OF PROTECTION may be extended concurrently with, [such other] ANOTHER order [made] ISSUED under this [part] ARTICLE OR ARTICLE TEN-A OF THIS CHAPTER, 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 an order may require any such person

(a) to stay away from the home, school, business or place of employment of the other spouse, parent or person legally responsible for the child's care, PERSON WITH WHOM THE CHILD HAS BEEN PAROLED, REMANDED, PLACED OR RELEASED BY THE COURT or the child, and to stay away from any other specific location designated by the court;

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] ARTICLE, 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] ARE AUTHORIZED BY SUBDIVISION ONE OF THIS SECTION. THE PERSON RESTRAINED BY THE ORDER OF PROTECTION MAY, UPON A SHOWING OF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES, MOVE FOR MODIFICATION OR VACATUR OF THE ORDER.

S 4. 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] CHAPTER 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 FOR THE PROTECTION OF THE CHILD AND THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS AND OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. PRIOR TO ISSUING AN ORDER OF PROTECTION UNDER THIS SECTION, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF PROTECTION INVOLVING THE PARTIES AND THE CHILD. IN THE CASE OF A CHILD FREED FOR ADOPTION, THE COURT, FOR GOOD CAUSE SHOWN, MAY ISSUE AN ORDER OF PROTECTION DIRECTING A PERSON WHOSE PARENTAL RIGHTS HAD BEEN TERMINATED OR SURRENDERED TO OBSERVE REASONABLE CONDITIONS ENUMERATED THEREIN IN ORDER TO PROTECT THE CHILD AND THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS AND OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE CONDITIONS MAY INCLUDE, AMONG OTHERS, THAT SUCH PERSON SHALL STAY AWAY FROM THE CHILD AND FROM THE HOME, SCHOOL, BUSINESS OR PLACE OF EMPLOYMENT OF THE CHILD OR THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS OR OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE ORDER MAY ONLY BE ISSUED AFTER THE PERSON OR PERSONS RESTRAINED BY THE ORDER HAVE BEEN GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD. THE COURT SHALL STATE ITS REASONS ON THE RECORD FOR ISSUING THE ORDER.

S 5. Section 384-b of the social services law is amended by adding a new subdivision 13 to read as follows:

13. FOR GOOD CAUSE SHOWN, THE COURT MAY ISSUE AN ORDER OF PROTECTION TO PROTECT THE CHILD AND THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS AND OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE ORDER MAY DIRECT THE RESPONDENT TO OBSERVE REASONABLE CONDITIONS THAT MAY INCLUDE, AMONG OTHERS, THAT THE RESPONDENT STAY AWAY FROM THE CHILD AND FROM THE HOME, SCHOOL, BUSINESS OR PLACE OF EMPLOYMENT OF THE CHILD OR THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS OR OTHER MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. PRIOR TO ISSUING THE ORDER, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF PROTECTION INVOLVING THE PARTIES AND SHALL GIVE THE RESPONDENT NOTICE AND AN OPPORTUNITY TO BE HEARD. THE COURT SHALL STATE ITS REASONS ON THE RECORD FOR ISSUING THE ORDER. AN ORDER OF PROTECTION ISSUED UNDER THIS SECTION MAY REMAIN IN EFFECT FOR A PERIOD OF UP TO TWO YEARS OR, IF THE COURT FINDS AGGRAVATING CIRCUMSTANCES AS DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED TWENTY-SEVEN OF THE FAMILY COURT ACT OR IF THE COURT FINDS THAT THE RESPONDENT HAS VIOLATED AN ORDER OF PROTECTION, A PERIOD OF UP TO FIVE YEARS. THE ORDER OF

PROTECTION MAY BE EXTENDED CONCURRENTLY WITH ANOTHER ORDER ISSUED UNDER ARTICLE TEN-A OF THE FAMILY COURT ACT.

S 6. Subdivision 1 of section 221-a of the executive law, as amended by chapter 107 of the laws of 2004, is amended to read as follows:

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 orders of protection issued pursuant to articles four, five, six [and], eight, TEN AND TEN-A of the family court act, SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, section 530.12 of the criminal procedure law and, insofar as they involve victims of domestic violence as defined by section four hundred fifty-nine-a of the social services law, section 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, special orders of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of the criminal procedure law insofar as they involve a victim or victims of domestic violence as defined by subdivision one of section four hundred fifty-nine-a of the social services law or a designated witness or witnesses to such domestic violence, and all warrants issued pursuant to sections one hundred fifty-three and eight hundred twenty-seven of the family court act, and arrest and bench warrants as defined in subdivisions twenty-eight, twenty-nine and thirty of section 1.20 of the criminal procedure law, insofar as such warrants pertain to orders of protection or temporary orders of protection; provided, however, that warrants issued pursuant to section one hundred fifty-three of the family court act pertaining to articles three[,] AND seven [and ten] of such act and section 530.13 of the criminal procedure law shall not be included in the registry. The superintendent shall establish and maintain such registry for the purposes of ascertaining the existence of orders of protection, temporary orders of protection, warrants and special orders of conditions, and for enforcing the provisions of paragraph (b) of subdivision four of section 140.10 of the criminal procedure law.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.