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

5696

2009-2010 Regular Sessions

I N S E N A T E

May 28, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to the issuance of orders of protection

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

Section 1. Section 446 of the family court act is amended by adding a new closing paragraph to read as follows:

IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

S 2. Section 551 of the family court act is amended by adding a new closing paragraph to read as follows:

IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

S 3. Section 656 of the family court act is amended by adding a new closing paragraph to read as follows:

IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

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

LBD11924-01-9

S 4. Section 759 of the family court act is amended by adding a new closing paragraph to read as follows:

IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

S 5. The opening paragraph of subdivision 1 of section 812 of the family court act, as amended by chapter 326 of the laws of 2008, is amended to read as follows:

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, assault in the second degree, assault in the third degree or an attempted assault between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS A PETITION, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE PETITION, THE CONCLUSION OF THE FACT-FINDING OR THE CONCLUSION OF ANY DISPOSITIONAL HEARING. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

S 6. 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. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

S 7. Section 1056 of the family court act is amended by adding a new subdivision 6 to read as follows:

6. IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

S 8. Paragraph e 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:

e. No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counter-claim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown. IN ANY PROCEEDING PURSUANT TO THIS ARTICLE, A COURT SHALL NOT DENY AN ORDER OF PROTECTION, OR DISMISS AN APPLICATION FOR SUCH AN ORDER, SOLELY ON THE BASIS THAT THE ACTS OR EVENTS ALLEGED ARE NOT RELATIVELY CONTEMPORANEOUS WITH THE DATE OF THE APPLICATION OR THE CONCLUSION OF THE ACTION. THE DURATION OF ANY TEMPORARY ORDER SHALL NOT BY ITSELF BE A FACTOR IN DETERMINING THE LENGTH OR ISSUANCE OF ANY FINAL ORDER.

S 9. This act shall take effect immediately and shall apply to all orders of protection pending or entered on or after such effective date.