

4846

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

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

AN ACT to amend the family court act, in relation to orders of
protection in family offense proceedings; counseling for children

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

1 Section 1. Section 842 of the family court act, as amended by chapter
2 222 of the laws of 1994, the opening paragraph as separately amended by
3 chapters 325 and 341 of the laws of 2010, subdivisions (a), (b), (c),
4 (d) and (e) as amended and subdivision (j) as added by chapter 483 of
5 the laws of 1995, subdivision (i) as added and subdivision (j) as relet-
6 tered by chapter 253 of the laws of 2006, the second undesignated para-
7 graph as amended by chapter 325 of the laws of 2010, the third undesign-
8 ated paragraph as amended by chapter 224 of the laws of 1994, the sixth
9 undesignated paragraph as added by section 8 of part D of chapter 56 of
10 the laws of 2008, the seventh undesignated paragraph as amended by chap-
11 ter 326 of the laws of 2008 and the closing paragraph as added by chap-
12 ter 73 of the laws of 2007, is amended to read as follows:

13 S 842. Order of protection. An order of protection under section
14 eight hundred forty-one of this part shall set forth reasonable condi-
15 tions of behavior to be observed for a period not in excess of two years
16 by the petitioner or respondent or for a period not in excess of five
17 years upon (i) a finding by the court on the record of the existence of
18 aggravating circumstances as defined in paragraph (vii) of subdivision
19 (a) of section eight hundred twenty-seven of this article; or (ii) a
20 finding by the court on the record that the conduct alleged in the peti-
21 tion is in violation of a valid order of protection. Any finding of
22 aggravating circumstances pursuant to this section shall be stated on
23 the record and upon the order of protection. The court may also, upon
24 motion, extend the order of protection for a reasonable period of time
25 upon a showing of good cause or consent of the parties. The fact that

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

LBD03177-01-1

1 abuse has not occurred during the pendency of an order shall not, in
2 itself, constitute sufficient ground for denying or failing to extend
3 the order. The court must articulate a basis for its decision on the
4 record. The duration of any temporary order shall not by itself be a
5 factor in determining the length or issuance of any final order. Any
6 order of protection issued pursuant to this section shall specify if an
7 order of probation is in effect. Any order of protection issued pursuant
8 to this section may require the petitioner or the respondent:

9 (a) to stay away from the home, school, business or place of employ-
10 ment of any other party, the other spouse, the other parent, or the
11 child, and to stay away from any other specific location designated by
12 the court, provided that the court shall make a determination, and shall
13 state such determination in a written decision or on the record, whether
14 to impose a condition pursuant to this subdivision, provided further,
15 however, that failure to make such a determination shall not affect the
16 validity of such order of protection. In making such determination, the
17 court shall consider, but shall not be limited to consideration of,
18 whether the order of protection is likely to achieve its purpose in the
19 absence of such a condition, conduct subject to prior orders of
20 protection, prior incidents of abuse, extent of past or present injury,
21 threats, drug or alcohol abuse, and access to weapons;

22 (b) to permit a parent, or a person entitled to visitation by a court
23 order or a separation agreement, to visit the child at stated periods;

24 (c) to refrain from committing a family offense, as defined in subdi-
25 vision one of section eight hundred twelve of this [act] ARTICLE, or any
26 criminal offense against the child or against the other parent or
27 against any person to whom custody of the child is awarded, or from
28 harassing, intimidating or threatening such persons;

29 (d) to permit a designated party to enter the residence during a spec-
30 ified period of time in order to remove personal belongings not in issue
31 in this proceeding or in any other proceeding or action under this act
32 or the domestic relations law;

33 (e) to refrain from acts of commission or omission that create an
34 unreasonable risk to the health, safety or welfare of a child;

35 (f) to pay the reasonable counsel fees and disbursements involved in
36 obtaining or enforcing the order of the person who is protected by such
37 order if such order is issued or enforced;

38 (g) to require the respondent to participate in a batterer's education
39 program designed to help end violent behavior, which may include refer-
40 ral to drug and alcohol counselling, and to pay the costs thereof if the
41 person has the means to do so, provided however that nothing contained
42 herein shall be deemed to require payment of the costs of any such
43 program by the petitioner, the state or any political subdivision there-
44 of; [and]

45 (h) to provide, either directly or by means of medical and health
46 insurance, for expenses incurred for medical care and treatment arising
47 from the incident or incidents forming the basis for the issuance of the
48 order[.];

49 (i) 1. to refrain from intentionally injuring or killing, without
50 justification, any companion animal the respondent knows to be owned,
51 possessed, leased, kept or held by the petitioner or a minor child
52 residing in the household.

53 2. "Companion animal", as used in this section, shall have the same
54 meaning as in subdivision five of section three hundred fifty of the
55 agriculture and markets law.

(j) to observe such other conditions as are necessary to further the purposes of protection.

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 SHALL ORDER COUNSELING FOR CHILDREN WHEN ONE MEMBER OF THE FAMILY OR HOUSEHOLD HAS BEEN CHARGED WITH OR FOUND TO HAVE COMMITTED A FAMILY OFFENSE AGAINST ANOTHER MEMBER OF THE FAMILY OR HOUSEHOLD, WHERE THERE IS A DEMONSTRATED NEED FOR PSYCHOLOGICAL INTERVENTION, EVEN IF THE CHILDREN WERE NOT THE DIRECT VICTIMS.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or division of parole where the individual is under probation or parole supervision.

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.

1 In addition to the foregoing provisions, the court may issue an order,
2 pursuant to section two hundred twenty-seven-c of the real property law,
3 authorizing the party for whose benefit any order of protection has been
4 issued to terminate a lease or rental agreement pursuant to section two
5 hundred twenty-seven-c of the real property law.
6 S 2. This act shall take effect immediately.