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

2309

2013-2014 Regular Sessions

I N A S S E M B L Y

January 14, 2013

Introduced by M. of A. CRESPO, CASTRO, SCARBOROUGH, COOK, AUBRY, ARROYO, STEVENSON -- Multi-Sponsored by -- M. of A. BARRON, CLARK, CROUCH, GABRYSZAK, V. LOPEZ, McDONOUGH, MILLER, MOYA, PERRY, RAMOS, RIVERA, RODRIGUEZ, SALADINO, WEPRIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the criminal procedure law, in relation to requiring the service of temporary orders of protection and orders of protection upon the attorney representing the respondent or defendant

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

Section 1. Section 154-d of the family court act, as added by chapter 186 of the laws of 1997, is amended to read as follows:

S 154-d. Emergency powers; local criminal courts. 1. Issuance of temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis issue a temporary order of protection pending a hearing in family court, provided that a sworn affidavit, certified in accordance with subdivision one of section 100.30 of the criminal procedure law is submitted: (i) alleging that the family court is not in session; (ii) alleging that a family offense, as defined in subdivision one of section eight hundred twelve of this act or subdivision one of section 530.11 of the criminal procedure law, has been committed; (iii) alleging that a family offense petition has been filed or will be filed in family court on the next day the court is in session; and (iv) showing good cause. Upon appearance in a local criminal court, the petitioner shall be advised that he or she may continue with the proceeding either in family court or, upon the filing of a local criminal court accusatory instrument, in criminal court or both. Upon issuance of a temporary order of protection where petitioner requests that it be returnable in family court, the local criminal court shall transfer the matter forthwith to the family court and shall make

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

LBD02566-01-3

the matter returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the order. The local criminal court, upon issuing a temporary order of protection returnable in family court pursuant to this subdivision shall immediately forward in a manner designed to ensure arrival before the return date set in the order, a copy of the temporary order of protection and sworn affidavit to the family court and shall provide a copy of such temporary order of protection to the petitioner; provided, however, that if the temporary order of protection and affidavit are transmitted by facsimile or other electronic means, the original order and affidavit shall be forwarded to the family court immediately thereafter. Any temporary order of protection issued pursuant to this subdivision shall be issued to the respondent AND THE ATTORNEY REPRESENTING THE RESPONDENT, and copies shall be filed as required in subdivisions six and eight of section 530.12 of the criminal procedure law for orders of protection issued pursuant to such section. NO ATTORNEY SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER RESPONDENT CLIENT, AND SUCH ATTORNEY SHALL IMMEDIATELY PROVIDE NOTICE TO HIS OR HER CLIENT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER. Any temporary order of protection issued pursuant to this subdivision shall plainly state the date that such order expires which, in the case of an order returnable in family court, shall be not more than four calendar days after its issuance, unless sooner vacated or modified by the family court. A petitioner requesting a temporary order of protection returnable in family court pursuant to this subdivision in a case in which a family court petition has not been filed shall be informed that such temporary order of protection shall expire as provided for herein, unless the petitioner files a petition pursuant to subdivision one of section eight hundred twenty-one of this act on or before the return date in family court and the family court issues a temporary order of protection as authorized under article eight of this act. Nothing in this subdivision shall limit or restrict the petitioner's right to proceed directly and without court referral in either a criminal or family court, or both, as provided for in section one hundred fifteen of this act and section 100.07 of the criminal procedure law.

2. Modifications of orders of protection or temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis modify a temporary order of protection or order of protection which has been issued under article four, five, six or eight of this act pending a hearing in family court, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of the criminal procedure law, is submitted: (i) alleging that the family court is not in session and (ii) showing good cause, including a showing that the existing order is insufficient for the purposes of protection of the petitioner, the petitioner's child or children or other members of the petitioner's family or household. The local criminal court shall make the matter regarding the modification of the order returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the modified order. The local criminal court shall immediately forward, in a manner designed to ensure arrival before the return date set in the order, a copy of the modified order if any and sworn affidavit to the family court and shall provide a copy of such modified order, if any, and affidavit to the petitioner; provided, however, that if the modified order and affidavit are trans-

mitted to the family court by facsimile or other electronic means, the original copy of such modified order and affidavit shall be forwarded to the family court immediately thereafter. Any modified temporary order of protection or order of protection issued pursuant to this subdivision shall be issued to the respondent AND THE ATTORNEY REPRESENTING THE RESPONDENT, and copies shall be filed as provided in subdivisions six and eight of section 530.12 of the criminal procedure law for orders of protection issued pursuant to such section. NO ATTORNEY SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER RESPONDENT CLIENT, AND SUCH ATTORNEY SHALL IMMEDIATELY PROVIDE NOTICE TO HIS OR HER CLIENT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER.

S 2. Subdivision 1 of section 168 of the family court act, as amended by chapter 416 of the laws of 1981, is amended to read as follows:

1. In any case in which an order of protection or temporary order of protection has been made by the family court, the clerk of the court shall issue a copy of such order to the petitioner [and], THE respondent, THE ATTORNEY REPRESENTING THE RESPONDENT and to any other person affected by the order. NO ATTORNEY SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER RESPONDENT CLIENT, AND SUCH ATTORNEY SHALL IMMEDIATELY PROVIDE NOTICE TO HIS OR HER CLIENT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER. The presentation of a copy of an order of protection or temporary order of protection or a warrant or a certificate of warrant to any peace officer, acting pursuant to his OR HER special duties, or police officer shall constitute authority for him OR HER to arrest a person charged with violating the terms of such order of protection or temporary order of protection and bring such person before the court and, otherwise, so far as lies within his OR HER power, to aid in securing the protection such order was intended to afford, provided, however, that any outstanding, unexpired certificate of order of protection or temporary order of protection shall have the same force and effect as a copy of such order or temporary order.

S 3. Subdivisions 3-a, 3-b and 8 of section 530.12 of the criminal procedure law, subdivisions 3-a and 3-b as added by chapter 186 of the laws of 1997 and subdivision 8 as amended by section 81 of subpart B of part C of chapter 62 of the laws of 2011, are amended to read as follows:

3-a. Emergency powers when family court not in session; issuance of temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis issue a temporary order of protection pending a hearing in family court, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of this chapter, is submitted: (i) alleging that the family court is not in session; (ii) alleging that a family offense, as defined in subdivision one of section eight hundred twelve of the family court act and subdivision one of section 530.11 of this article, has been committed; (iii) alleging that a family offense petition has been filed or will be filed in family court on the next day the court is in session; and (iv) showing good cause. Upon appearance in a local criminal court, the petitioner shall be advised that he or she may continue with the proceeding either in family court or upon the filing of a local criminal court accusatory instrument in criminal court or both. Upon issuance of a temporary order of protection where petitioner requests that it be returnable in family court, the local criminal court shall transfer the matter forthwith to the family court and shall make the matter returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calen-

dar days after issuance of the order. The local criminal court, upon issuing a temporary order of protection returnable in family court pursuant to this subdivision, shall immediately forward, in a manner designed to insure arrival before the return date set in the order, a copy of the temporary order of protection and sworn affidavit to the family court and shall provide a copy of such temporary order of protection to the petitioner; provided, however, that where a copy of the temporary order of protection and affidavit are transmitted to the family court by facsimile or other electronic means, the original order and affidavit shall be forwarded to the family court immediately thereafter. Any temporary order of protection issued pursuant to this subdivision shall be issued to the respondent AND THE ATTORNEY REPRESENTING THE RESPONDENT, and copies shall be filed as required in subdivisions six and eight of this section for orders of protection issued pursuant to this section. NO ATTORNEY SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER RESPONDENT CLIENT, AND SUCH ATTORNEY SHALL IMMEDIATELY PROVIDE NOTICE TO HIS OR HER CLIENT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER. Any temporary order of protection issued pursuant to this subdivision shall plainly state the date that such order expires which, in the case of an order returnable in family court, shall be not more than four calendar days after its issuance, unless sooner vacated or modified by the family court. A petitioner requesting a temporary order of protection returnable in family court pursuant to this subdivision in a case in which a family court petition has not been filed shall be informed that such temporary order of protection shall expire as provided for herein, unless the petitioner files a petition pursuant to subdivision one of section eight hundred twenty-one of the family court act on or before the return date in family court and the family court issues a temporary order of protection or order of protection as authorized under article eight of the family court act. Nothing in this subdivision shall limit or restrict the petitioner's right to proceed directly and without court referral in either a criminal or family court, or both, as provided for in section one hundred fifteen of the family court act and section 100.07 of this chapter.

3-b. Emergency powers when family court not in session; modifications of orders of protection or temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis modify a temporary order of protection or order of protection which has been issued under article four, five, six or eight of the family court act pending a hearing in family court, provided that a sworn affidavit verified in accordance with subdivision one of section 100.30 of this chapter is submitted: (i) alleging that the family court is not in session and (ii) showing good cause, including a showing that the existing order is insufficient for the purposes of protection of the petitioner, the petitioner's child or children or other members of the petitioner's family or household. The local criminal court shall make the matter regarding the modification of the order returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the modified order. The court shall immediately forward a copy of the modified order, if any, and sworn affidavit to the family court and shall provide a copy of such modified order, if any, and affidavit to the petitioner; provided, however, that where copies of such modified order and affidavit are transmitted to the family court by facsimile or other electronic means, the original copies of such modified order and affidavit shall be forwarded to the family court imme-

diately thereafter. Any modified temporary order of protection or order of protection issued pursuant to this subdivision shall be issued to the respondent AND THE ATTORNEY REPRESENTING THE RESPONDENT and copies shall be filed as required in subdivisions six and eight of this section for orders of protection issued pursuant to this section. NO ATTORNEY SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER RESPONDENT CLIENT, AND SUCH ATTORNEY SHALL IMMEDIATELY PROVIDE NOTICE TO HIS OR HER CLIENT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER.

8. 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 complainant and defendant and defense 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 department of corrections and community supervision where the individual is under probation or parole supervision. NO DEFENSE COUNSEL SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER CLIENT, AND SUCH COUNSEL SHALL IMMEDIATELY PROVIDE NOTICE TO THE DEFENDANT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER. The presentation of a copy of such order or a warrant to any peace officer acting pursuant to his or her special duties or police officer shall constitute authority for him or her to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his or her power, to aid in securing the protection such order was intended to afford.

S 4. Subdivision 6 of section 530.13 of the criminal procedure law, as amended by section 82 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

6. 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 victim and the defendant and defense 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 department of corrections and community supervision where the individual is under probation or parole supervision. NO DEFENSE COUNSEL SHALL REFUSE TO ACCEPT ANY SUCH ORDER ADDRESSED TO HIS OR HER CLIENT, AND SUCH COUNSEL SHALL IMMEDIATELY PROVIDE NOTICE TO THE DEFENDANT OF THE ISSUANCE OF THE ORDER AND THE TERMS OF SUCH ORDER. The presentation of a copy of such order or a warrant to any police officer or peace officer acting pursuant to his or her special duties shall constitute authority for him or her to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his or her power, to aid in securing the protection such order was intended to afford.

S 5. This act shall take effect on the first of October next succeeding the date on which it shall have become a law.