

6547

2013-2014 Regular Sessions

I N A S S E M B L Y

April 8, 2013

Introduced by M. of A. WEINSTEIN, PAULIN, SCARBOROUGH, WEPRIN -- Multi-Sponsored by -- M. of A. ABBATE, BARRETT, BRENNAN, COOK, GABRYSZAK, GALEF, GLICK, HIKIND, JAFFEE, V. LOPEZ, MAGNARELLI, MAISEL, MILLMAN, OTIS, PERRY, RIVERA, ROSA, ROSENTHAL, STECK, TITONE -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, the family court act and the criminal procedure law, in relation to the scope of orders of protection and temporary orders of protection

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

1 Section 1. Paragraph b of subdivision 3 of section 240 of the domestic
2 relations law, as amended by chapter 597 of the laws of 1998, is amended
3 and a new paragraph i is added to read as follows:
4 b. An order of protection entered pursuant to this subdivision shall
5 bear in a conspicuous manner, on the front page of said order, the
6 language "Order of protection issued pursuant to section two hundred
7 forty of the domestic relations law". The absence of such language shall
8 not affect the validity of such order. THE ORDER OF PROTECTION SHALL
9 ALSO CONTAIN THE FOLLOWING NOTICE: "THIS ORDER OF PROTECTION WILL REMAIN
10 IN EFFECT AND MUST BE ENFORCED EVEN WHERE THE PROTECTED PARTY IN WHOSE
11 FAVOR THE ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION IS ISSUED
12 HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY
13 AGAINST WHOM THE ORDER IS ISSUED. AN ORDER OF PROTECTION CAN ONLY BE
14 MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD
15 TO VIOLATE THIS ORDER.". The presentation of a copy of such an order to
16 any peace officer acting pursuant to his or her special duties, or
17 police officer, shall constitute authority, for that officer to arrest a
18 person when that person has violated the terms of such an order, and
19 bring such person before the court and, otherwise, so far as lies within
20 the officer's power, to aid in securing the protection such order was
21 intended to afford.

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

LBD10169-01-3

1 I. THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR
2 TEMPORARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE SUCH
3 AN ORDER NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR VIOLATING SUCH
4 ORDER.

5 S 2. Subdivision 2 of section 252 of the domestic relations law, as
6 added by chapter 349 of the laws of 1995, is amended and a new subdivi-
7 sion 9-a is added to read as follows:

8 2. An order of protection entered pursuant to this subdivision shall
9 bear in a conspicuous manner, on the front page of said order, the
10 language "Order of protection issued pursuant to section two hundred
11 fifty-two of the domestic relations law". The absence of such language
12 shall not affect the validity of such order. THE ORDER OF PROTECTION
13 SHALL ALSO CONTAIN THE FOLLOWING NOTICE: "THIS ORDER OF PROTECTION WILL
14 REMAIN IN EFFECT AND MUST BE ENFORCED EVEN WHERE THE PROTECTED PARTY IN
15 WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION IS
16 ISSUED HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY
17 AGAINST WHOM THE ORDER IS ISSUED. AN ORDER OF PROTECTION CAN ONLY BE
18 MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD
19 TO VIOLATE THIS ORDER.". The presentation of a copy of such an order to
20 any peace officer acting pursuant to his or her special duties, or
21 police officer, shall constitute authority, for that officer to arrest a
22 person when that person has violated the terms of such an order, and
23 bring such person before the court and, otherwise, so far as lies within
24 the officer's power, to aid in securing the protection such order was
25 intended to afford.

26 9-A. THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR
27 TEMPORARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN
28 ORDER ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE
29 ARRESTED FOR VIOLATING SUCH ORDER.

30 S 3. Section 155 of the family court act is amended by adding a new
31 subdivision 3 to read as follows:

32 3. THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR
33 TEMPORARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN
34 ORDER ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE
35 ARRESTED FOR VIOLATING SUCH ORDER.

36 S 4. Subdivision 3 of section 168 of the family court act, as added by
37 chapter 164 of the laws of 1989, is amended to read as follows:

38 3. Any order of protection or temporary order of protection issued by
39 the family court shall bear, in a conspicuous manner, the language, as
40 the case may be, "this order constitutes an order of protection" or
41 "this order constitutes a temporary order of protection", on the front
42 page of said order. The absence of such language shall not affect the
43 validity of such order. THE ORDER OF PROTECTION OR TEMPORARY ORDER OF
44 PROTECTION SHALL ALSO CONTAIN THE FOLLOWING NOTICE: "THIS ORDER OF
45 PROTECTION WILL REMAIN IN EFFECT AND MUST BE ENFORCED EVEN WHERE THE
46 PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPORARY
47 ORDER OF PROTECTION IS ISSUED HAS, OR CONSENTS TO HAVE, CONTACT OR
48 COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. AN ORDER
49 OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE
50 PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER.".

51 S 5. Section 446 of the family court act is amended by adding a new
52 closing paragraph to read as follows;

53 THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPO-
54 RARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN ORDER
55 ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR
56 VIOLATING SUCH ORDER.

1 S 6. Section 551 of the family court act is amended by adding a new
2 closing paragraph to read as follows:

3 THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPO-
4 RARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN ORDER
5 ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR
6 VIOLATING SUCH ORDER.

7 S 7. Section 656 of the family court act is amended by adding a new
8 closing paragraph to read as follows:

9 THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPO-
10 RARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN ORDER
11 ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR
12 VIOLATING SUCH ORDER.

13 S 8. Section 759 of the family court act is amended by adding a new
14 closing paragraph to read as follows:

15 THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPO-
16 RARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN ORDER
17 ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR
18 VIOLATING SUCH ORDER.

19 S 9. Section 842 of the family court act is amended by adding a new
20 closing paragraph to read as follows:

21 THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPO-
22 RARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN ORDER
23 ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR
24 VIOLATING SUCH ORDER.

25 S 10. Section 846 of the family court act is amended by adding a new
26 subdivision (a-1) to read as follows:

27 (A-1) THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR
28 TEMPORARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN
29 ORDER ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE
30 ARRESTED FOR VIOLATING SUCH ORDER.

31 S 11. Section 1056 of the family court act is amended by adding a new
32 subdivision 7 to read as follows:

33 7. THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR
34 TEMPORARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN
35 ORDER ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE
36 ARRESTED FOR VIOLATING SUCH ORDER.

37 S 12. Paragraphs (b) and (c) of subdivision 4 of section 140.10 of the
38 criminal procedure law, paragraph (b) as amended by chapter 107 of the
39 laws of 2004 and paragraph (c) as amended by chapter 4 of the laws of
40 1997, are amended to read as follows:

41 (b) a duly served order of protection or special order of conditions
42 issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivi-
43 sion one of section 330.20 of this chapter is in effect, or an order of
44 which the respondent or defendant has actual knowledge because he or she
45 was present in court when such order was issued, where the order appears
46 to have been issued by a court of competent jurisdiction of this or
47 another state, territorial or tribal jurisdiction; and

48 (i) Such order directs that the respondent or defendant stay away from
49 persons on whose behalf the order of protection or special order of
50 conditions has been issued and the respondent or defendant committed an
51 act or acts in violation of such "stay away" provision of such order; or

52 (ii) The respondent or defendant commits a family offense as defined
53 in subdivision one of section eight hundred twelve of the family court
54 act or subdivision one of section 530.11 of this chapter in violation of
55 such order of protection or special order of conditions.

1 The provisions of this subdivision shall apply only to orders of
2 protection issued pursuant to sections two hundred forty and two hundred
3 fifty-two of the domestic relations law, articles four, five, six [and]
4 , SEVEN, eight AND TEN of the family court act and section 530.12 of
5 this chapter, special orders of conditions issued pursuant to subpara-
6 graph (i) or (ii) of paragraph (o) of subdivision one of section 330.20
7 of this chapter insofar as they involve a victim or victims of domestic
8 violence as defined by subdivision one of section four hundred fifty-
9 nine-a of the social services law or a designated witness or witnesses
10 to such domestic violence, and to orders of protection issued by courts
11 of competent jurisdiction in another state, territorial or tribal juris-
12 diction. In determining whether reasonable cause exists to make an
13 arrest for a violation of an order issued by a court of another state,
14 territorial or tribal jurisdiction, the officer shall consider, among
15 other factors, whether the order, if available, appears to be valid on
16 its face or whether a record of the order exists on the statewide regis-
17 try of orders of protection and warrants established pursuant to section
18 two hundred twenty-one-a of the executive law or the protection order
19 file maintained by the national crime information center; provided,
20 however, that entry of the order of protection or special order of
21 conditions into the statewide registry or the national protection order
22 file shall not be required for enforcement of the order. When a special
23 order of conditions is in effect and a defendant or respondent has been
24 taken into custody pursuant to this paragraph, nothing contained in this
25 paragraph shall restrict or impair a police officer from acting pursuant
26 to section 9.41 of the mental hygiene law; or

27 (c) a misdemeanor constituting a family offense, as described in
28 subdivision one of section 530.11 of this chapter and section eight
29 hundred twelve of the family court act, has been committed by such
30 person against such family or household member, unless the victim
31 requests otherwise. The officer shall neither inquire as to whether the
32 victim seeks an arrest of such person nor threaten the arrest of any
33 person for the purpose of discouraging requests for police intervention.
34 Notwithstanding the foregoing, when an officer has reasonable cause to
35 believe that more than one family or household member has committed such
36 a misdemeanor, the officer is not required to arrest each such person.
37 In such circumstances, the officer shall attempt to identify and arrest
38 the primary physical aggressor after considering: (i) the comparative
39 extent of any injuries inflicted by and between the parties; (ii) wheth-
40 er any such person is threatening or has threatened future harm against
41 another party or another family or household member; (iii) whether any
42 such person has a prior history of domestic violence that the officer
43 can reasonably ascertain; and (iv) whether any such person acted defen-
44 sively to protect himself or herself from injury. The officer shall
45 evaluate each complaint separately to determine who is the primary phys-
46 ical aggressor and shall not base the decision to arrest or not to
47 arrest on the willingness of a person to testify or otherwise partic-
48 ipate in a judicial proceeding.

49 THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER OF PROTECTION OR TEMPO-
50 RARY ORDER OF PROTECTION IS ISSUED MAY NOT BE HELD TO VIOLATE AN ORDER
51 ISSUED IN HIS OR HER FAVOR NOR MAY SUCH PROTECTED PARTY BE ARRESTED FOR
52 VIOLATING SUCH ORDER.

53 S 13. Subdivisions 6 and 8 of section 530.12 of the criminal procedure
54 law, subdivision 6 as amended by chapter 164 of the laws of 1989, the
55 closing paragraph of subdivision 6 as added by chapter 222 of the laws

1 of 1994 and subdivision 8 as amended by section 81 of subpart B of part
2 C of chapter 62 of the laws of 2011, are amended to read as follows:

3 6. An order of protection or a temporary order of protection issued
4 pursuant to subdivision one, two, three, four or five of this section
5 shall bear in a conspicuous manner the term "order of protection" or
6 "temporary order of protection" as the case may be and a copy shall be
7 filed by the clerk of the court with the sheriff's office in the county
8 in which the complainant resides, or, if the complainant resides within
9 a city, with the police department of such city. The absence of such
10 language shall not affect the validity of such order. THE ORDER OF
11 PROTECTION OR TEMPORARY ORDER OF PROTECTION SHALL ALSO CONTAIN THE
12 FOLLOWING NOTICE: "THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT AND
13 MUST BE ENFORCED EVEN WHERE THE PROTECTED PARTY IN WHOSE FAVOR THE ORDER
14 OF PROTECTION OR TEMPORARY ORDER OF PROTECTION IS ISSUED HAS, OR
15 CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM
16 THE ORDER IS ISSUED. AN ORDER OF PROTECTION CAN ONLY BE MODIFIED OR
17 TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE
18 THIS ORDER.". A copy of such order of protection or temporary order of
19 protection may from time to time be filed by the clerk of the court with
20 any other police department or sheriff's office having jurisdiction of
21 the residence, work place, and school of anyone intended to be protected
22 by such order. A copy of the order may also be filed by the complainant
23 at the appropriate police department or sheriff's office having juris-
24 diction. Any subsequent amendment or revocation of such order shall be
25 filed in the same manner as herein provided.

26 Such order of protection shall plainly state the date that such order
27 expires.

28 8. In any proceeding in which an order of protection or temporary
29 order of protection or a warrant has been issued under this section, the
30 clerk of the court shall issue to the complainant and defendant and
31 defense counsel and to any other person affected by the order a copy of
32 the order of protection or temporary order of protection and ensure that
33 a copy of the order of protection or temporary order of protection be
34 transmitted to the local correctional facility where the individual is
35 or will be detained, the state or local correctional facility where the
36 individual is or will be imprisoned, and the supervising probation
37 department or department of corrections and community supervision where
38 the individual is under probation or parole supervision. The presenta-
39 tion of a copy of such order or a warrant to any peace officer acting
40 pursuant to his or her special duties or police officer shall constitute
41 authority for him or her to arrest a person who has violated the terms
42 of such order and bring such person before the court and, otherwise, so
43 far as lies within his or her power, to aid in securing the protection
44 such order was intended to afford. THE PROTECTED PARTY IN WHOSE FAVOR
45 THE ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION IS ISSUED MAY
46 NOT BE HELD TO VIOLATE AN ORDER ISSUED IN HIS OR HER FAVOR NOR MAY SUCH
47 PROTECTED PARTY BE ARRESTED FOR VIOLATING SUCH ORDER.

48 S 14. This act shall take effect immediately and shall apply to all
49 orders of protection, except that:

50 (a) the amendments to paragraph b of subdivision 3 of section 240 of
51 the domestic relations law made by section one of this act, the amend-
52 ments to subdivision 2 of section 252 of the domestic relations law made
53 by section two of this act, the amendments to subdivision 3 of section
54 168 of the family court act made by section four of this act, and the
55 amendments to subdivision 6 of section 530.12 of the criminal procedure

1 law made by section thirteen of this act shall take effect on the sixti-
2 eth day after this act shall have become a law; and
3 (b) the amendments to subdivision 4 of section 140.10 of the criminal
4 procedure law, made by section twelve of this act, shall not affect the
5 repeal of such subdivision, and shall be deemed repealed therewith.