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

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:

Section 1. Paragraph b of subdivision 3 of section 240 of the domestic relations law, as amended by chapter 597 of the laws of 1998, is amended and a new paragraph i is added to read as follows:

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

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

LBD10169-01-3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The provisions of this subdivision shall apply only to orders of protection issued pursuant to sections two hundred forty and two hundred fifty-two of the domestic relations law, articles four, five, six [and] , SEVEN, eight AND TEN of the family court act and section 530.12 of this chapter, special orders of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of this chapter 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 to orders of protection issued by courts of competent jurisdiction in another state, territorial or tribal jurisdiction. In determining whether reasonable cause exists to make an arrest for a violation of an order issued by a court of another state, territorial or tribal jurisdiction, the officer shall consider, among other factors, whether the order, if available, appears to be valid on its face or whether a record of the order exists on the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law or the protection order file maintained by the national crime information center; provided, however, that entry of the order of protection or special order of conditions into the statewide registry or the national protection order file shall not be required for enforcement of the order. When a special order of conditions is in effect and a defendant or respondent has been taken into custody pursuant to this paragraph, nothing contained in this paragraph shall restrict or impair a police officer from acting pursuant to section 9.41 of the mental hygiene law; or

(c) a misdemeanor constituting a family offense, as described in subdivision one of section 530.11 of this chapter and section eight hundred twelve of the family court act, has been committed by such person against such family or household member, unless the victim requests otherwise. The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention. Notwithstanding the foregoing, when an officer has reasonable cause to believe that more than one family or household member has committed such a misdemeanor, the officer is not required to arrest each such person. In such circumstances, the officer shall attempt to identify and arrest the primary physical aggressor after considering: (i) the comparative extent of any injuries inflicted by and between the parties; (ii) whether any such person is threatening or has threatened future harm against another party or another family or household member; (iii) whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and (iv) whether any such person acted defensively to protect himself or herself from injury. The officer shall evaluate each complaint separately to determine who is the primary physical aggressor and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.

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

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

of 1994 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:

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

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

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

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

(a) the amendments to paragraph b of subdivision 3 of section 240 of the domestic relations law made by section one of this act, the amendments to subdivision 2 of section 252 of the domestic relations law made by section two of this act, the amendments to subdivision 3 of section 168 of the family court act made by section four of this act, and the amendments to subdivision 6 of section 530.12 of the criminal procedure

law made by section thirteen of this act shall take effect on the sixtieth day after this act shall have become a law; and

(b) the amendments to subdivision 4 of section 140.10 of the criminal procedure law, made by section twelve of this act, shall not affect the repeal of such subdivision, and shall be deemed repealed therewith.