

6547

2013-2014 Regular Sessions

I N   A S S E M B L Y

April 8, 2013

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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.