

5202

2013-2014 Regular Sessions

I N S E N A T E

May 14, 2013

Introduced by Sen. FELDER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, the social services law and the executive law, in relation to orders of protection in termination of parental rights proceedings, child protective proceedings and permanency hearings regarding children freed for adoption

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

1 Section 1. Section 634 of the family court act, as amended by chapter
2 666 of the laws of 1976, is amended to read as follows:
3 S 634. Commitment of guardianship and custody; further orders. The
4 court may enter an order under section six hundred thirty-one OF THIS
5 ARTICLE committing the guardianship and custody of the child to the
6 petitioner on such conditions, if any, as it deems proper. FOR GOOD
7 CAUSE SHOWN, THE COURT MAY ISSUE A TEMPORARY ORDER OF PROTECTION OR,
8 UPON DISPOSITION, AN ORDER OF PROTECTION TO PROTECT THE CHILD AND THE
9 CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS AND OTHER DESIGNATED
10 MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE ORDER MAY
11 DIRECT THE RESPONDENT TO OBSERVE REASONABLE CONDITIONS THAT MAY INCLUDE,
12 AMONG OTHERS, THAT THE RESPONDENT STAY AWAY FROM THE CHILD AND FROM THE
13 HOME, SCHOOL, BUSINESS OR PLACE OF EMPLOYMENT OF THE CHILD OR THE
14 CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS OR OTHER DESIGNATED
15 MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. PRIOR TO ISSUING
16 THE ORDER, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER
17 ORDERS OF PROTECTION INVOLVING THE PARTIES AND SHALL GIVE THE RESPONDENT
18 NOTICE AND AN OPPORTUNITY TO BE HEARD. THE COURT SHALL STATE ITS REASONS
19 ON THE RECORD FOR ISSUING THE ORDER. AN ORDER OF PROTECTION ISSUED UNDER
20 THIS SECTION MAY REMAIN IN EFFECT FOR A PERIOD OF UP TO FIVE YEARS OR
21 UNTIL THE YOUNGEST CHILD IN THE HOUSEHOLD IN WHICH THE CHILD RESIDES
22 REACHES THE AGE OF EIGHTEEN YEARS OF AGE, WHICHEVER IS EARLIER. A

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

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1 VIOLATION OF AN ORDER ISSUED UNDER THIS SECTION MAY BE ADDRESSED IN
2 ACCORDANCE WITH SUBDIVISION TWO OF SECTION ONE THOUSAND SEVENTY-TWO OF
3 THIS CHAPTER.

4 S 2. Subdivision (a) of section 1029 of the family court act, as
5 amended by chapter 41 of the laws of 2010, is amended to read as
6 follows:

7 (a) The family court, upon the application of any person who may orig-
8 inate a proceeding under this article, for good cause shown, may issue a
9 temporary order of protection, before or after the filing of such peti-
10 tion, which may contain any of the provisions authorized on the making
11 of an order of protection under section one thousand fifty-six OF THIS
12 ARTICLE AND MUST CONFORM TO ALL OF THE REQUIREMENTS OF THAT SECTION.
13 PRIOR TO ISSUING A TEMPORARY ORDER OF PROTECTION UNDER THIS SECTION, THE
14 COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF
15 PROTECTION INVOLVING THE PARTIES. If such order is granted before the
16 filing of a petition and a petition is not filed under this article
17 within ten days from the granting of such order, the order shall be
18 vacated. In any case where a petition has been filed and an attorney for
19 the child has been appointed, such attorney may make application for a
20 temporary order of protection pursuant to the provisions of this
21 section.

22 S 3. The opening paragraph and paragraph (a) of subdivision 1, and
23 subdivisions 2 and 4 of section 1056 of the family court act, the open-
24 ing paragraph of subdivision 1 as amended by and subdivision 4 as added
25 by chapter 622 of the laws of 1990, paragraph (a) of subdivision 1 as
26 amended by chapter 483 of the laws of 1995, and subdivision 2 as amended
27 by chapter 220 of the laws of 1989, are amended to read as follows:

28 The court may [make] ISSUE an order of protection in assistance or as
29 a condition of any other order made under this part. [Such] PRIOR TO
30 ISSUING AN ORDER OF PROTECTION UNDER THIS SECTION, THE COURT SHALL
31 INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS OF PROTECTION INVOLVING
32 THE PARTIES. EXCEPT AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION, AN
33 order of protection [shall] ISSUED UNDER THIS SECTION MAY remain in
34 effect [concurrently with, shall expire no later than the expiration
35 date of, and] FOR A PERIOD OF UP TO TWO YEARS OR, IF THE COURT FINDS
36 AGGRAVATING CIRCUMSTANCES AS DEFINED IN PARAGRAPH (VII) OF SUBDIVISION
37 (A) OF SECTION EIGHT HUNDRED TWENTY-SEVEN OF THIS ACT OR IF THE COURT
38 FINDS THAT THE RESPONDENT HAS VIOLATED AN ORDER OF PROTECTION, A PERIOD
39 OF UP TO FIVE YEARS. THE ORDER OF PROTECTION may be extended concurrent-
40 ly with, [such other] ANOTHER order [made] ISSUED under this [part]
41 ARTICLE OR ARTICLE TEN-A OF THIS ACT[, except as provided in subdivision
42 four of this section]. The order of protection may set forth reasonable
43 conditions of behavior to be observed for a specified time by a person
44 who is before the court and is a parent or a person legally responsible
45 for the child's care or the spouse of the parent or other person legally
46 responsible for the child's care, or both. Such an order may require any
47 such person:

48 (a) to stay away from the home, school, business or place of employ-
49 ment of the other spouse, parent or person legally responsible for the
50 child's care, PERSON WITH WHOM THE CHILD HAS BEEN REMANDED, PLACED OR
51 RELEASED BY THE COURT or the child, and to stay away from any other
52 specific location designated by the court;

53 2. [The] WHERE THE court [may also] HAS DETERMINED, IN ACCORDANCE WITH
54 THE REQUIREMENTS OF SECTION ONE THOUSAND SEVENTEEN OR PART TWO OF THIS
55 ARTICLE OR, AS APPLICABLE, SECTIONS ONE THOUSAND FIFTY-TWO AND ONE THOU-
56 SAND FIFTY-FIVE OF THIS ARTICLE, TO award custody of the child, during

1 the term of the TEMPORARY order of protection OR ORDER OF PROTECTION, AS
2 APPLICABLE, to [either] A NON-RESPONDENT parent, or to an appropriate
3 relative [within the second degree] OR SUITABLE PERSON, THE AWARD OF
4 CUSTODY MAY BE INCLUDED IN THE ORDER OF PROTECTION OR TEMPORARY ORDER OF
5 PROTECTION, AS APPLICABLE. Nothing in this section gives the court
6 power to place or board out any child or to commit a child to an insti-
7 tution or agency. In making orders of protection, the court shall so act
8 as to insure that in the care, protection, discipline and guardianship
9 of the child his OR HER religious faith shall be preserved and
10 protected.

11 4. The court may enter an order of protection independently of any
12 other order made under this part, against a [person] RESPONDENT who IS
13 OR was [a member of the child's household or] a person legally responsi-
14 ble FOR THE CHILD'S CARE as defined in section one thousand twelve of
15 this [chapter] ARTICLE, and who is [no longer a member of such household
16 at the time of the disposition and who is] not [related by blood or
17 marriage to] A PARENT OF the child [or a member of the child's house-
18 hold]. An order of protection entered pursuant to this subdivision may
19 be for any period of time up to the [child's] eighteenth birthday OF THE
20 YOUNGEST CHILD IN THE CHILD'S HOUSEHOLD and upon such conditions as [the
21 court deems necessary and proper to protect the health and safety of the
22 child and the child's caretaker] ARE AUTHORIZED BY SUBDIVISION ONE OF
23 THIS SECTION. THE PERSON RESTRAINED BY THE ORDER OF PROTECTION MAY, UPON
24 A SHOWING OF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES, MOVE FOR MODIFICA-
25 TION OR VACATUR OF THE ORDER.

26 S 4. Section 1072 of the family court act, as amended by chapter 1039
27 of the laws of 1973 and the opening paragraph as amended by chapter 437
28 of the laws of 2006, is amended to read as follows:

29 S 1072. Failure to comply with terms and conditions of supervision OR
30 ORDER OF PROTECTION.

31 1. If, prior to the expiration of the period of an order of super-
32 vision pursuant to section one thousand fifty-four or one thousand
33 fifty-seven of this article, a motion or order to show cause is filed
34 that alleges that a parent or other person legally responsible for a
35 child's care violated the terms and conditions of an order of super-
36 vision issued under section one thousand fifty-four or one thousand
37 fifty-seven of this article, the period of the order of supervision
38 shall be tolled pending disposition of the motion or order to show
39 cause. If, after hearing, the court is satisfied by competent proof that
40 the parent or other person violated the order of supervision willfully
41 and without just cause, the court may:

42 (a) revoke the order of supervision [or of protection] and enter any
43 order that might have been made at the time the order of supervision or
44 of protection was made, or

45 (b) commit the parent or other person who willfully and without just
46 cause violated the order to jail for a term not to exceed six months.

47 2. PRIOR TO THE EXPIRATION OF THE PERIOD OF AN ORDER OF PROTECTION OR
48 TEMPORARY ORDER OF PROTECTION ISSUED PURSUANT TO SECTION SIX HUNDRED
49 THIRTY-FOUR, ONE THOUSAND TWENTY-NINE, ONE THOUSAND FIFTY-SIX OR ONE
50 THOUSAND EIGHTY-NINE OF THIS ARTICLE OR SUBDIVISION THIRTEEN OF SECTION
51 THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, A MOTION OR
52 ORDER TO SHOW CAUSE MAY BE FILED THAT ALLEGES THAT A RESPONDENT PARENT
53 OR OTHER PERSON LEGALLY RESPONSIBLE FOR A CHILD'S CARE VIOLATED THE
54 TERMS AND CONDITIONS OF SUCH ORDER WILLFULLY AND WITHOUT JUST CAUSE. IF,
55 AFTER HEARING, THE COURT IS SATISFIED BY COMPETENT PROOF THAT THE PARENT

1 OR OTHER PERSON VIOLATED THE ORDER OF PROTECTION OR TEMPORARY ORDER OF
2 PROTECTION WILLFULLY AND WITHOUT JUST CAUSE, THE COURT MAY:

3 (A) REVOKE OR MODIFY THE ORDER OF PROTECTION OR TEMPORARY ORDER OF
4 PROTECTION AND ENTER ANY ORDER THAT MIGHT HAVE BEEN MADE AT THE TIME
5 SUCH ORDER HAD BEEN ISSUED, OR

6 (B) ISSUE AN ORDER IN ACCORDANCE WITH SECTION EIGHT HUNDRED
7 FORTY-TWO-A OR EIGHT HUNDRED FORTY-SIX-A OF THIS ACT.

8 S 5. Clause (D) of subparagraph (viii) of paragraph 2 of subdivision
9 (d) of section 1089 of the family court act, as added by section 27 of
10 part A of chapter 3 of the laws of 2005, is amended to read as follows:

11 (D) [The] IN THE CASE OF A CHILD WHO HAS NOT BEEN FREED FOR ADOPTION,
12 THE court may make an order of protection in the manner specified by
13 section one thousand fifty-six of this [act] CHAPTER in assistance or as
14 a condition of any other order made under this section. The order of
15 protection may set forth reasonable conditions of behavior to be
16 observed for a specified period of time by a person before the court FOR
17 THE PROTECTION OF THE CHILD AND THE CHILD'S FOSTER OR PRE-ADOPTIVE
18 PARENT OR PARENTS AND OTHER DESIGNATED MEMBERS OF THE HOUSEHOLD IN WHICH
19 THE CHILD RESIDES. PRIOR TO ISSUING AN ORDER OF PROTECTION UNDER THIS
20 SECTION, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY OTHER ORDERS
21 OF PROTECTION INVOLVING THE PARTIES AND THE CHILD. IN THE CASE OF A
22 CHILD FREED FOR ADOPTION, THE COURT, FOR GOOD CAUSE SHOWN, MAY ISSUE AN
23 ORDER OF PROTECTION DIRECTING A PERSON WHOSE PARENTAL RIGHTS HAD BEEN
24 TERMINATED OR SURRENDERED TO OBSERVE REASONABLE CONDITIONS ENUMERATED
25 THEREIN IN ORDER TO PROTECT THE CHILD AND THE CHILD'S FOSTER OR PRE-A-
26 DOPTIVE PARENT OR PARENTS AND OTHER DESIGNATED MEMBERS OF THE HOUSEHOLD
27 IN WHICH THE CHILD RESIDES. THE CONDITIONS MAY INCLUDE, AMONG OTHERS,
28 THAT SUCH PERSON SHALL STAY AWAY FROM THE CHILD AND FROM THE HOME,
29 SCHOOL, BUSINESS OR PLACE OF EMPLOYMENT OF THE CHILD OR THE CHILD'S
30 FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS OR OTHER DESIGNATED MEMBERS OF
31 THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE ORDER MAY ONLY BE ISSUED
32 AFTER THE PERSON OR PERSONS RESTRAINED BY THE ORDER HAVE BEEN GIVEN
33 NOTICE AND AN OPPORTUNITY TO BE HEARD. THE COURT SHALL STATE ITS REASONS
34 ON THE RECORD FOR ISSUING THE ORDER. IN THE CASE OF A CHILD FREED FOR
35 ADOPTION OR FOR WHOM A TERMINATION OF PARENTAL RIGHTS PROCEEDING IS
36 PENDING, THE COURT MAY ISSUE AN ORDER OF PROTECTION OR TEMPORARY ORDER
37 OF PROTECTION, AS APPLICABLE, IN ACCORDANCE WITH SUBDIVISION THIRTEEN OF
38 SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW. A
39 VIOLATION OF AN ORDER ISSUED UNDER THIS SECTION MAY BE ADDRESSED IN
40 ACCORDANCE WITH SUBDIVISION TWO OF SECTION ONE THOUSAND SEVENTY-TWO OF
41 THIS CHAPTER.

42 S 6. Section 384-b of the social services law is amended by adding a
43 new subdivision 14 to read as follows:

44 14. FOR GOOD CAUSE SHOWN, THE COURT MAY ISSUE A TEMPORARY ORDER OF
45 PROTECTION OR, UPON DISPOSITION, AN ORDER OF PROTECTION TO PROTECT THE
46 CHILD AND THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS AND OTHER
47 DESIGNATED MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. THE
48 ORDER MAY DIRECT THE RESPONDENT TO OBSERVE REASONABLE CONDITIONS THAT
49 MAY INCLUDE, AMONG OTHERS, THAT THE RESPONDENT STAY AWAY FROM THE CHILD
50 AND FROM THE HOME, SCHOOL, BUSINESS OR PLACE OF EMPLOYMENT OF THE CHILD
51 OR THE CHILD'S FOSTER OR PRE-ADOPTIVE PARENT OR PARENTS OR OTHER DESIG-
52 NATED MEMBERS OF THE HOUSEHOLD IN WHICH THE CHILD RESIDES. PRIOR TO
53 ISSUING THE ORDER, THE COURT SHALL INQUIRE AS TO THE EXISTENCE OF ANY
54 OTHER ORDERS OF PROTECTION INVOLVING THE PARTIES AND SHALL GIVE THE
55 RESPONDENT NOTICE AND AN OPPORTUNITY TO BE HEARD. THE COURT SHALL STATE
56 ITS REASONS ON THE RECORD FOR ISSUING THE ORDER. AN ORDER OF PROTECTION

1 ISSUED UNDER THIS SECTION MAY REMAIN IN EFFECT FOR A PERIOD OF UP TO
2 FIVE YEARS OR UNTIL THE YOUNGEST CHILD IN THE HOUSEHOLD IN WHICH THE
3 CHILD RESIDES REACHES THE AGE OF EIGHTEEN YEARS OF AGE, WHICHEVER IS
4 EARLIER. A VIOLATION OF AN ORDER ISSUED UNDER THIS SECTION MAY BE
5 ADDRESSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION ONE THOUSAND
6 SEVENTY-TWO OF THE FAMILY COURT ACT.

7 S 7. Subdivision 1 of section 221-a of the executive law, as separate-
8 ly amended by sections 14 and 67 of part A of chapter 56 of the laws of
9 2010, is amended to read as follows:

10 1. The superintendent, in consultation with the division of criminal
11 justice services, THE office of court administration, and the office for
12 the prevention of domestic violence, shall develop a comprehensive plan
13 for the establishment and maintenance of a statewide computerized regis-
14 try of all orders of protection issued pursuant to articles four, five,
15 six [and], eight, TEN AND TEN-A of the family court act, SECTION THREE
16 HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, section 530.12 of the
17 criminal procedure law and, insofar as they involve victims of domestic
18 violence as defined by section four hundred fifty-nine-a of the social
19 services law, section 530.13 of the criminal procedure law and sections
20 two hundred forty and two hundred fifty-two of the domestic relations
21 law, and orders of protection issued by courts of competent jurisdiction
22 in another state, territorial or tribal jurisdiction, special orders of
23 conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o)
24 of subdivision one of section 330.20 of the criminal procedure law inso-
25 far as they involve a victim or victims of domestic violence as defined
26 by subdivision one of section four hundred fifty-nine-a of the social
27 services law or a designated witness or witnesses to such domestic
28 violence, and all warrants issued pursuant to sections one hundred
29 fifty-three and eight hundred twenty-seven of the family court act, and
30 arrest and bench warrants as defined in subdivisions twenty-eight, twen-
31 ty-nine and thirty of section 1.20 of the criminal procedure law, inso-
32 far as such warrants pertain to orders of protection or temporary orders
33 of protection; provided, however, that warrants issued pursuant to
34 section one hundred fifty-three of the family court act pertaining to
35 articles three[,] AND seven [and ten] of such act and section 530.13 of
36 the criminal procedure law shall not be included in the registry. The
37 superintendent shall establish and maintain such registry for the
38 purposes of ascertaining the existence of orders of protection, tempo-
39 rary orders of protection, warrants and special orders of conditions,
40 and for enforcing the provisions of paragraph (b) of subdivision four of
41 section 140.10 of the criminal procedure law.

42 S 8. This act shall take effect on the ninetieth day after it shall
43 have become a law.