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

4785

2013-2014 Regular Sessions

I N S E N A T E

April 24, 2013

Introduced by Sen. GIPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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 EVEN IF 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 NOR SHALL SUCH PARTY BE ARRESTED FOR VIOLATING 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.

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

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

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AN ORDER NOR MAY 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 EVEN IF 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 NOR SHALL SUCH PARTY BE ARRESTED FOR VIOLATING 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 EVEN IF 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 NOR SHALL SUCH PARTY BE ARRESTED FOR VIOLATING 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. Subdivision 4 of section 140.10 of the criminal procedure law is amended by adding a new second undesignated 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 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 EVEN IF 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 NOR SHALL SUCH PARTY BE ARRESTED FOR VIOLATING 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 regardless of when such orders were issued, 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 shall apply to orders of protection issued on or after such effective date; 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.