

4020

2015-2016 Regular Sessions

I N A S S E M B L Y

January 28, 2015

Introduced by M. of A. WRIGHT -- read once and referred to the Committee
on Judiciary

AN ACT to amend the family court act, in relation to orders of
protection in family offense proceedings; counseling for children

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

1 Section 1. Section 842 of the family court act, as amended by chapter
2 526 of the laws of 2013, and the closing paragraph as added by chapter
3 480 of the laws of 2013, is amended to read as follows:
4 S 842. Order of protection. An order of protection under section
5 eight hundred forty-one of this part shall set forth reasonable condi-
6 tions of behavior to be observed for a period not in excess of two years
7 by the petitioner or respondent or for a period not in excess of five
8 years upon (i) a finding by the court on the record of the existence of
9 aggravating circumstances as defined in paragraph (vii) of subdivision
10 (a) of section eight hundred twenty-seven of this article; or (ii) a
11 finding by the court on the record that the conduct alleged in the peti-
12 tion is in violation of a valid order of protection. Any finding of
13 aggravating circumstances pursuant to this section shall be stated on
14 the record and upon the order of protection. The court may also, upon
15 motion, extend the order of protection for a reasonable period of time
16 upon a showing of good cause or consent of the parties. The fact that
17 abuse has not occurred during the pendency of an order shall not, in
18 itself, constitute sufficient ground for denying or failing to extend
19 the order. The court must articulate a basis for its decision on the
20 record. The duration of any temporary order shall not by itself be a
21 factor in determining the length or issuance of any final order. Any
22 order of protection issued pursuant to this section shall specify if an
23 order of probation is in effect. Any order of protection issued pursuant
24 to this section may require the petitioner or the respondent:

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

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1 (a) to stay away from the home, school, business or place of employ-
2 ment of any other party, the other spouse, the other parent, or the
3 child, and to stay away from any other specific location designated by
4 the court, provided that the court shall make a determination, and shall
5 state such determination in a written decision or on the record, whether
6 to impose a condition pursuant to this subdivision, provided further,
7 however, that failure to make such a determination shall not affect the
8 validity of such order of protection. In making such determination, the
9 court shall consider, but shall not be limited to consideration of,
10 whether the order of protection is likely to achieve its purpose in the
11 absence of such a condition, conduct subject to prior orders of
12 protection, prior incidents of abuse, extent of past or present injury,
13 threats, drug or alcohol abuse, and access to weapons;

14 (b) to permit a parent, or a person entitled to visitation by a court
15 order or a separation agreement, to visit the child at stated periods;

16 (c) to refrain from committing a family offense, as defined in subdi-
17 vision one of section eight hundred twelve of this [act] ARTICLE, or any
18 criminal offense against the child or against the other parent or
19 against any person to whom custody of the child is awarded, or from
20 harassing, intimidating or threatening such persons;

21 (d) to permit a designated party to enter the residence during a spec-
22 ified period of time in order to remove personal belongings not in issue
23 in this proceeding or in any other proceeding or action under this act
24 or the domestic relations law;

25 (e) to refrain from acts of commission or omission that create an
26 unreasonable risk to the health, safety or welfare of a child;

27 (f) to pay the reasonable counsel fees and disbursements involved in
28 obtaining or enforcing the order of the person who is protected by such
29 order if such order is issued or enforced;

30 (g) to require the respondent to participate in a batterer's education
31 program designed to help end violent behavior, which may include refer-
32 ral to drug and alcohol counselling, and to pay the costs thereof if the
33 person has the means to do so, provided however that nothing contained
34 herein shall be deemed to require payment of the costs of any such
35 program by the petitioner, the state or any political subdivision there-
36 of;

37 (h) to provide, either directly or by means of medical and health
38 insurance, for expenses incurred for medical care and treatment arising
39 from the incident or incidents forming the basis for the issuance of the
40 order;

41 (i) to refrain from intentionally injuring or killing, without justi-
42 fication, any companion animal the respondent knows to be owned,
43 possessed, leased, kept or held by the petitioner or a minor child
44 residing in the household. "Companion animal", as used in this section,
45 shall have the same meaning as in subdivision five of section three
46 hundred fifty of the agriculture and markets law;

47 (j) to promptly return specified identification documents to the
48 protected party, in whose favor the order of protection or temporary
49 order of protection is issued; provided, however, that such order may:
50 (A) include any appropriate provision designed to ensure that any such
51 document is available for use as evidence in this proceeding, and avail-
52 able if necessary for legitimate use by the party against whom such
53 order is issued; and (B) specify the manner in which such return shall
54 be accomplished. For purposes of this subdivision, "identification docu-
55 ment" shall mean any of the following: (i) exclusively in the name of
56 the protected party: birth certificate, passport, social security card,

1 health insurance or other benefits card, a card or document used to
2 access bank, credit or other financial accounts or records, tax returns,
3 any driver's license, and immigration documents including but not limit-
4 ed to a United States permanent resident card and employment authori-
5 zation document; and (ii) upon motion and after notice and an opportu-
6 nity to be heard, any of the following, including those that may reflect
7 joint use or ownership, that the court determines are necessary and are
8 appropriately transferred to the protected party: any card or document
9 used to access bank, credit or other financial accounts or records, tax
10 returns, and any other identifying cards and documents; and

11 (k) to observe such other conditions as are necessary to further the
12 purposes of protection.

13 The court may also award custody of the child, during the term of the
14 order of protection to either parent, or to an appropriate relative
15 within the second degree. Nothing in this section gives the court power
16 to place or board out any child or to commit a child to an institution
17 or agency.

18 THE COURT SHALL ORDER COUNSELING FOR CHILDREN WHEN ONE MEMBER OF THE
19 FAMILY OR HOUSEHOLD HAS BEEN CHARGED WITH OR FOUND TO HAVE COMMITTED A
20 FAMILY OFFENSE AGAINST ANOTHER MEMBER OF THE FAMILY OR HOUSEHOLD, WHERE
21 THERE IS A DEMONSTRATED NEED FOR PSYCHOLOGICAL INTERVENTION, EVEN IF THE
22 CHILDREN WERE NOT THE DIRECT VICTIMS.

23 Notwithstanding the provisions of section eight hundred seventeen of
24 this article, where a temporary order of child support has not already
25 been issued, the court may in addition to the issuance of an order of
26 protection pursuant to this section, issue an order for temporary child
27 support in an amount sufficient to meet the needs of the child, without
28 a showing of immediate or emergency need. The court shall make an order
29 for temporary child support notwithstanding that information with
30 respect to income and assets of the respondent may be unavailable. Where
31 such information is available, the court may make an award for temporary
32 child support pursuant to the formula set forth in subdivision one of
33 section four hundred thirteen of this act. Temporary orders of support
34 issued pursuant to this article shall be deemed to have been issued
35 pursuant to section four hundred thirteen of this act.

36 Upon making an order for temporary child support pursuant to this
37 subdivision, the court shall advise the petitioner of the availability
38 of child support enforcement services by the support collection unit of
39 the local department of social services, to enforce the temporary order
40 and to assist in securing continued child support, and shall set the
41 support matter down for further proceedings in accordance with article
42 four of this act.

43 Where the court determines that the respondent has employer-provided
44 medical insurance, the court may further direct, as part of an order of
45 temporary support under this subdivision, that a medical support
46 execution be issued and served upon the respondent's employer as
47 provided for in section fifty-two hundred forty-one of the civil prac-
48 tice law and rules.

49 In any proceeding in which an order of protection or temporary order
50 of protection or a warrant has been issued under this section, the clerk
51 of the court shall issue to the petitioner and respondent and his coun-
52 sel and to any other person affected by the order a copy of the order of
53 protection or temporary order of protection and ensure that a copy of
54 the order of protection or temporary order of protection be transmitted
55 to the local correctional facility where the individual is or will be
56 detained, the state or local correctional facility where the individual

1 is or will be imprisoned, and the supervising probation department or
2 the department of corrections and community supervision where the indi-
3 vidual is under probation or parole supervision.

4 Notwithstanding the foregoing provisions, an order of protection, or
5 temporary order of protection where applicable, may be entered against a
6 former spouse and persons who have a child in common, regardless of
7 whether such persons have been married or have lived together at any
8 time, or against a member of the same family or household as defined in
9 subdivision one of section eight hundred twelve of this article.

10 In addition to the foregoing provisions, the court may issue an order,
11 pursuant to section two hundred twenty-seven-c of the real property law,
12 authorizing the party for whose benefit any order of protection has been
13 issued to terminate a lease or rental agreement pursuant to section two
14 hundred twenty-seven-c of the real property law.

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 2. This act shall take effect immediately.