

5815--A

2015-2016 Regular Sessions

I N S E N A T E

June 4, 2015

Introduced by Sen. SAVINO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court

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

1 Section 1. The section heading of section 828 of the family court act,
2 as amended by chapter 222 of the laws of 1994, is amended and a new
3 subdivision 5 is added to read as follows:
4 Temporary order of protection; temporary [order] ORDERS for child
5 support AND SPOUSAL SUPPORT.
6 5. NOTWITHSTANDING THE PROVISIONS OF SECTION EIGHT HUNDRED SEVENTEEN OF
7 THIS ARTICLE, WHERE A TEMPORARY ORDER OF SPOUSAL SUPPORT HAS NOT ALREADY
8 BEEN ISSUED, THE COURT MAY, IN ADDITION TO THE ISSUANCE OF A TEMPORARY
9 ORDER OF PROTECTION PURSUANT TO THIS SECTION, ISSUE AN ORDER DIRECTING
10 THE PARTIES TO APPEAR WITHIN SEVEN BUSINESS DAYS OF THE ISSUANCE OF THE
11 ORDER IN THE FAMILY COURT, IN THE SAME ACTION, FOR CONSIDERATION OF AN
12 ORDER FOR TEMPORARY SPOUSAL SUPPORT IN ACCORDANCE WITH ARTICLE FOUR OF
13 THIS ACT. IF THE COURT DIRECTS THE PARTIES TO SO APPEAR, THE COURT
14 SHALL DIRECT THE PARTIES TO APPEAR WITH INFORMATION WITH RESPECT TO
15 INCOME AND ASSETS, BUT A TEMPORARY ORDER OF SPOUSAL SUPPORT MAY BE
16 ISSUED PURSUANT TO ARTICLE FOUR OF THIS ACT ON THE RETURN DATE NOTWITH-
17 STANDING THE RESPONDENT'S DEFAULT UPON NOTICE AND NOTWITHSTANDING THAT
18 INFORMATION WITH RESPECT TO INCOME AND ASSETS OF THE PETITIONER OR
19 RESPONDENT MAY BE UNAVAILABLE.

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

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1 S 2. Section 842 of the family court act, as amended by chapter 526 of
2 the laws of 2013 and the closing paragraph as added by chapter 480 of
3 the laws of 2013, is amended to read as follows:

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

25 (a) to stay away from the home, school, business or place of employ-
26 ment of any other party, the other spouse, the other parent, or the
27 child, and to stay away from any other specific location designated by
28 the court, provided that the court shall make a determination, and shall
29 state such determination in a written decision or on the record, whether
30 to impose a condition pursuant to this subdivision, provided further,
31 however, that failure to make such a determination shall not affect the
32 validity of such order of protection. In making such determination, the
33 court shall consider, but shall not be limited to consideration of,
34 whether the order of protection is likely to achieve its purpose in the
35 absence of such a condition, conduct subject to prior orders of
36 protection, prior incidents of abuse, extent of past or present injury,
37 threats, drug or alcohol abuse, and access to weapons;

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

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

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

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

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

54 (g) to require the respondent to participate in a batterer's education
55 program designed to help end violent behavior, which may include refer-
56 ral to drug and alcohol counselling, and to pay the costs thereof if the

1 person has the means to do so, provided however that nothing contained
2 herein shall be deemed to require payment of the costs of any such
3 program by the petitioner, the state or any political subdivision there-
4 of;

5 (h) to provide, either directly or by means of medical and health
6 insurance, for expenses incurred for medical care and treatment arising
7 from the incident or incidents forming the basis for the issuance of the
8 order;

9 (i) 1. to refrain from intentionally injuring or killing, without
10 justification, any companion animal the respondent knows to be owned,
11 possessed, leased, kept or held by the petitioner or a minor child
12 residing in the household.

13 2. "Companion animal", as used in this section, shall have the same
14 meaning as in subdivision five of section three hundred fifty of the
15 agriculture and markets law;

16 (j) 1. to promptly return specified identification documents to the
17 protected party, in whose favor the order of protection or temporary
18 order of protection is issued; provided, however, that such order may:
19 (A) include any appropriate provision designed to ensure that any such
20 document is available for use as evidence in this proceeding, and avail-
21 able if necessary for legitimate use by the party against whom such
22 order is issued; and (B) specify the manner in which such return shall
23 be accomplished.

24 2. For purposes of this subdivision, "identification document" shall
25 mean any of the following: (A) exclusively in the name of the protected
26 party: birth certificate, passport, social security card, health insur-
27 ance or other benefits card, a card or document used to access bank,
28 credit or other financial accounts or records, tax returns, any driver's
29 license, and immigration documents including but not limited to a United
30 States permanent resident card and employment authorization document;
31 and (B) upon motion and after notice and an opportunity to be heard, any
32 of the following, including those that may reflect joint use or owner-
33 ship, that the court determines are necessary and are appropriately
34 transferred to the protected party: any card or document used to access
35 bank, credit or other financial accounts or records, tax returns, and
36 any other identifying cards and documents; and

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

39 The court may also award custody of the child, during the term of the
40 order of protection to either parent, or to an appropriate relative
41 within the second degree. Nothing in this section gives the court power
42 to place or board out any child or to commit a child to an institution
43 or agency.

44 Notwithstanding the provisions of section eight hundred seventeen of
45 this article, where a temporary order of child support has not already
46 been issued, the court may in addition to the issuance of an order of
47 protection pursuant to this section, issue an order for temporary child
48 support in an amount sufficient to meet the needs of the child, without
49 a showing of immediate or emergency need. The court shall make an order
50 for temporary child support notwithstanding that information with
51 respect to income and assets of the respondent may be unavailable. Where
52 such information is available, the court may make an award for temporary
53 child support pursuant to the formula set forth in subdivision one of
54 section four hundred thirteen of this act. Temporary orders of support
55 issued pursuant to this article shall be deemed to have been issued
56 pursuant to section four hundred thirteen of this act.

1 Upon making an order for temporary child support pursuant to this
2 subdivision, the court shall advise the petitioner of the availability
3 of child support enforcement services by the support collection unit of
4 the local department of social services, to enforce the temporary order
5 and to assist in securing continued child support, and shall set the
6 support matter down for further proceedings in accordance with article
7 four of this act.

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

14 NOTWITHSTANDING THE PROVISIONS OF SECTION EIGHT HUNDRED SEVENTEEN OF
15 THIS ARTICLE, WHERE A TEMPORARY ORDER OF SPOUSAL SUPPORT HAS NOT ALREADY
16 BEEN ISSUED, THE COURT MAY, IN ADDITION TO THE ISSUANCE OF AN ORDER OF
17 PROTECTION PURSUANT TO THIS SECTION, ISSUE AN ORDER DIRECTING THE
18 PARTIES TO APPEAR WITHIN SEVEN BUSINESS DAYS OF THE ISSUANCE OF THE
19 ORDER IN THE FAMILY COURT, IN THE SAME ACTION, FOR CONSIDERATION OF AN
20 ORDER FOR TEMPORARY SPOUSAL SUPPORT IN ACCORDANCE WITH ARTICLE FOUR OF
21 THIS ACT. IF THE COURT DIRECTS THE PARTIES TO SO APPEAR, THE COURT
22 SHALL DIRECT THE PARTIES TO APPEAR WITH INFORMATION WITH RESPECT TO
23 INCOME AND ASSETS, BUT A TEMPORARY ORDER OF SPOUSAL SUPPORT MAY BE
24 ISSUED PURSUANT TO ARTICLE FOUR OF THIS ACT ON THE RETURN DATE NOTWITH-
25 STANDING THE RESPONDENT'S DEFAULT UPON NOTICE AND NOTWITHSTANDING THAT
26 INFORMATION WITH RESPECT TO INCOME AND ASSETS OF THE PETITIONER OR
27 RESPONDENT MAY BE UNAVAILABLE.

28 In any proceeding in which an order of protection or temporary order
29 of protection or a warrant has been issued under this section, the clerk
30 of the court shall issue to the petitioner and respondent and his OR HER
31 counsel and to any other person affected by the order a copy of the
32 order of protection or temporary order of protection and ensure that a
33 copy of the order of protection or temporary order of protection [be] IS
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 the department of corrections and community supervision
38 where the individual is under probation or parole supervision.

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

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

50 The protected party in whose favor the order of protection or tempo-
51 rary order of protection is issued may not be held to violate an order
52 issued in his or her favor nor may such protected party be arrested for
53 violating such order.

54 S 3. This act shall take effect on the ninetieth day after it shall
55 have become a law.