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

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2015-2016 Regular Sessions

I N A S S E M B L Y

January 30, 2015

Introduced by M. of A. KOLB, MALLIOTAKIS, RAIA, STEC, GIGLIO, LUPINACCI, McDONOUGH, HAWLEY, BROOK-KRASNY, MONTESANO, CROUCH, OAKS, FINCH, PALMESANO, TEDISCO, WALTER, RA, CERETTO, CURRAN, PALUMBO -- Multi-Sponsored by -- M. of A. BARCLAY, JOHNS, LOPEZ, MAGEE, McLAUGHLIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the judiciary law, in relation to establishing a pilot program for the filing of petitions for temporary orders of protection by electronic means and for issuance of such orders ex parte by audio-visual means; and to amend the executive law, in relation to review and reports by the chief administrator of the courts

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

Section 1. Section 153-c of the family court act, as added by chapter 416 of the laws of 1981, is amended to read as follows:

S 153-c. Temporary order of protection. (A) Any person appearing at family court when the court is open requesting a temporary order of protection under any article of this act shall be entitled to file a petition without delay on the same day such person first appears at the family court, and a hearing on that request shall be held on the same day or the next day that the family court is open following the filing of such petition.

(B) AS PROVIDED IN THIS SECTION, THE CHIEF ADMINISTRATOR OF THE COURTS, WITH THE APPROVAL OF THE ADMINISTRATIVE BOARD OF THE COURTS, MAY PROMULGATE RULES TO ESTABLISH AND IMPLEMENT A PILOT PROGRAM FOR THE FILING OF PETITIONS FOR TEMPORARY ORDERS OF PROTECTION BY ELECTRONIC MEANS AND FOR THE ISSUANCE OF SUCH ORDERS EX PARTE BY AUDIO-VISUAL MEANS IN ORDER TO ACCOMMODATE LITIGANTS FOR WHOM ATTENDANCE AT COURT TO FILE FOR, AND OBTAIN, EMERGENCY RELIEF WOULD CONSTITUTE AN UNDUE HARDSHIP OR TO ACCOMMODATE LITIGANTS, FOR WHOM TRAVELING TO AND APPEARING IN THE

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

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COURTHOUSE TO OBTAIN EMERGENCY RELIEF, CREATES A RISK OF HARM TO SUCH LITIGANT.

(1) DEFINITIONS. AS USED IN THIS SECTION:

(I) "ELECTRONIC MEANS" MEANS ANY METHOD OF TRANSMISSION OF INFORMATION BETWEEN COMPUTERS OR OTHER MACHINES DESIGNED FOR THE PURPOSE OF SENDING AND RECEIVING SUCH TRANSMISSIONS, AND WHICH ALLOWS THE RECIPIENT TO REPRODUCE THE INFORMATION TRANSMITTED IN A TANGIBLE MEDIUM OF EXPRESSION.

(II) "INDEPENDENT AUDIO-VISUAL SYSTEM" MEANS AN ELECTRONIC SYSTEM FOR THE TRANSMISSION AND RECEIVING OF AUDIO AND VISUAL SIGNALS, ENCOMPASSING ENCODED SIGNALS, FREQUENCY DOMAIN MULTIPLEXING OR OTHER SUITABLE MEANS TO PRECLUDE THE UNAUTHORIZED RECEPTION AND DECODING OF THE SIGNALS BY COMMERCIALLY AVAILABLE TELEVISION RECEIVERS, CHANNEL CONVERTERS, OR OTHER AVAILABLE RECEIVING DEVICES.

(III) "ELECTRONIC APPEARANCE" MEANS AN APPEARANCE IN WHICH ONE OR MORE OF THE PARTIES ARE NOT PRESENT IN THE COURT, BUT IN WHICH, BY MEANS OF AN INDEPENDENT AUDIO-VISUAL SYSTEM, ALL OF THE PARTICIPANTS ARE SIMULTANEOUSLY ABLE TO SEE AND HEAR REPRODUCTIONS OF THE VOICES AND IMAGES OF THE JUDGE, COUNSEL, PARTIES, WITNESSES, IF ANY AND OTHER PARTICIPANTS.

(2) DEVELOPMENT OF A PILOT PROGRAM. A PLAN FOR A PILOT PROGRAM PURSUANT TO THIS SECTION SHALL BE DEVELOPED BY THE CHIEF ADMINISTRATOR OF THE COURTS OR HIS OR HER DELEGATE IN CONSULTATION WITH ONE OR MORE LOCAL PROGRAMS PROVIDING ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, AND ATTORNEYS WHO REPRESENT FAMILY OFFENSE PETITIONS. THE PLAN SHALL INCLUDE, BUT IS NOT LIMITED TO:

(I) IDENTIFICATION OF ONE OR MORE FAMILY JUSTICE CENTERS OR ORGANIZATIONS OR AGENCIES OR OTHER SITES OUTSIDE OF THE LOCAL FAMILY COURT THAT ARE EQUIPPED WITH, OR HAVE ACCESS TO, AN INDEPENDENT AUDIO-VISUAL SYSTEM AND ELECTRONIC MEANS FOR FILING DOCUMENTS THAT ARE COMPATIBLE WITH THE EQUIPMENT IN THE LOCAL FAMILY COURT, WITH CONSIDERATION GIVEN TO THE LOCATION OF SUCH SITE OR SITES AND AVAILABLE RESOURCES; AND

(II) IDENTIFICATION OF ONE OR MORE LICENSED AND CERTIFIED ORGANIZATIONS, AGENCIES OR ENTITIES WITH ADVOCATES FOR VICTIMS OF DOMESTIC VIOLENCE WHO ARE TRAINED, AND AVAILABLE TO ASSIST PETITIONERS IN PREPARING AND FILING PETITIONS FOR TEMPORARY ORDERS OF PROTECTION AND IN THEIR ELECTRONIC APPEARANCES BEFORE THE FAMILY COURT TO OBTAIN SUCH ORDERS; AND

(III) IDENTIFICATION OF THE EXISTING RESOURCES AVAILABLE IN LOCAL FAMILY COURTS FOR THE IMPLEMENTATION AND OVERSIGHT OF THE PILOT PROGRAM; AND

(IV) DELINEATION OF PROCEDURES FOR FILING OF THE PETITIONS AND DOCUMENTS, IF ANY, BY ELECTRONIC MEANS, SWEARING IN THE PETITIONERS AND ANY WITNESSES, PREPARATION OF A VERBATIM TRANSCRIPTION OF TESTIMONY PRESENTED AND A RECORD OF EVIDENCE ADDUCED AND PROMPT TRANSMISSION OF ANY ORDERS ISSUED TO THE PETITIONERS; AND

(V) A TIMETABLE FOR IMPLEMENTATION OF THE PILOT PROGRAM AND PLAN FOR INFORMING THE PUBLIC OF ITS AVAILABILITY; AND

(VI) A DESCRIPTION OF DATA TO BE COLLECTED IN ORDER TO EVALUATE AND, IF NECESSARY, MAKE RECOMMENDATIONS FOR IMPROVEMENTS TO THE PILOT PROGRAM.

(3) FILING BY ELECTRONIC MEANS. IN CONJUNCTION WITH AN ELECTRONIC APPEARANCE UNDER THIS SECTION, PETITIONERS FOR EX PARTE TEMPORARY ORDERS OF PROTECTION MAY, WITH THE ASSISTANCE OF TRAINED ADVOCATES, COMMENCE THE PROCEEDINGS BY FILING PETITIONS BY ELECTRONIC MEANS.

(I) A PETITIONER WHO SEEKS A TEMPORARY ORDER OF PROTECTION EX PARTE BY USE OF AN ELECTRONIC APPEARANCE MUST FILE A PETITION IN ADVANCE OF SUCH APPEARANCE AND MAY DO SO BY ELECTRONIC MEANS. THE PETITIONER SHALL SET FORTH THE CIRCUMSTANCES IN WHICH TRAVELING TO OR APPEARING IN THE COURTHOUSE WOULD CONSTITUTE AN UNDUE HARDSHIP, OR CREATE A RISK OF HARM TO THE PETITIONER. IN GRANTING OR DENYING THE RELIEF SOUGHT BY THE PETITIONER, THE COURT SHALL STATE THE NAMES OF ALL PARTICIPANTS, AND WHETHER IT IS GRANTING OR DENYING AN APPEARANCE BY ELECTRONIC MEANS AND THE BASIS FOR SUCH DETERMINATION; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO COMPEL A PARTY TO FILE A PETITION OR OTHER DOCUMENT BY ELECTRONIC MEANS OR TO TESTIFY BY MEANS OF AN ELECTRONIC APPEARANCE.

(II) NOTHING IN THIS SECTION SHALL AFFECT OR CHANGE ANY EXISTING LAWS GOVERNING THE SERVICE OF PROCESS, INCLUDING REQUIREMENTS FOR PERSONAL SERVICE, OR THE SEALING AND CONFIDENTIALITY OF COURT RECORDS IN FAMILY COURT PROCEEDINGS, OR ACCESS TO COURT RECORDS BY THE PARTIES TO SUCH PROCEEDINGS.

(4) (I) ALL ELECTRONIC APPEARANCES BY PETITIONERS SEEKING TEMPORARY ORDERS OF PROTECTION EX PARTE UNDER THIS SECTION SHALL BE STRICTLY VOLUNTARY AND THE CONSENT OF SUCH PETITIONERS SHALL BE GIVEN ON THE RECORD AT THE COMMENCEMENT OF EACH APPEARANCE.

(II) APPEARANCES TAKEN THROUGH THE USE OF AN ELECTRONIC APPEARANCE UNDER THIS SECTION SHALL BE RECORDED AND PRESERVED FOR TRANSCRIPTION. DOCUMENTARY EVIDENCE, IF ANY, REFERRED TO BY A PARTY OR WITNESS OR THE COURT MAY BE TRANSMITTED AND SUBMITTED AND INTRODUCED BY ELECTRONIC MEANS.

S 2. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (t) to read as follows:

(T) HAVE THE POWER TO ESTABLISH PILOT PROGRAMS FOR THE FILING OF PETITIONS FOR TEMPORARY ORDERS OF PROTECTION BY ELECTRONIC MEANS AND FOR THE ISSUANCE OF SUCH ORDERS BY AUDIO-VISUAL MEANS PURSUANT TO SUBDIVISION (B) OF SECTION ONE HUNDRED FIFTY-THREE-C OF THE FAMILY COURT ACT. THE CHIEF ADMINISTRATOR SHALL MAINTAIN AN UP-TO-DATE AND PUBLICLY-AVAILABLE LISTING OF THE SITES, IF ANY, AT WHICH SUCH APPLICATIONS FOR EX PARTE TEMPORARY ORDERS OF PROTECTION MAY BE FILED, AND AT WHICH ELECTRONIC APPEARANCES IN SUPPORT OF SUCH APPLICATIONS MAY BE SOUGHT, IN ACCORDANCE WITH SUCH SECTION ONE HUNDRED FIFTY-THREE-C OF THE FAMILY COURT ACT. IN DEVELOPING SUCH PILOT PROGRAM, THE CHIEF ADMINISTRATOR SHALL STRIVE FOR A PROGRAM THAT IS REGIONALLY DIVERSE, AND TAKES INTO CONSIDERATION, AMONG OTHER THINGS, THE AVAILABILITY OF PUBLIC TRANSPORTATION, POPULATION DENSITY AND THE AVAILABILITY OF FACILITIES FOR CONDUCTING SUCH PROGRAM.

S 3. Section 648 of the executive law, as added by chapter 893 of the laws of 1986, is amended to read as follows:

S 648. Review; report and implementation. 1. The chief administrator of the unified court system shall review court practices, procedures, services, regulations and laws to determine the adequacy and appropriateness of its services with respect to crime victims, including victims with special needs, particularly the elderly, disabled or victims of child abuse, domestic violence, SEX TRAFFICKING or sex-related offenses. Such review shall include reasonable opportunity for public comment and consultation with crime victims or their representatives, and may include public hearings.

2. After the review, and not later than two hundred seventy days after the effective date of this section, AND NO LATER THAN TWO HUNDRED SEVENTY DAYS AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOU-

SAND FIFTEEN WHICH AMENDED THIS SECTION, AND EVERY FIVE YEARS THEREAFTER, the chief administrator of the unified court system shall submit a report to the governor and the legislature, setting forth the findings of the review, including a description of the services provided by the components of the unified court system and recommendations for changes in its procedures, services, regulations and laws to improve its services to crime victims and to establish and implement fair treatment standards for crime victims.

3. Subject to the direction of the chief administrator, the components of the unified court system shall expeditiously implement the recommendations of its report.

S 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 5. This act shall take effect March 1, 2016.