

6262

2015-2016 Regular Sessions

I N A S S E M B L Y

March 18, 2015

Introduced by M. of A. JOYNER, WEINSTEIN, ROSENTHAL, TITUS, SIMOTAS,
SEAWRIGHT, SIMON, PERSAUD, BICHOTTE, PAULIN -- Multi-Sponsored by --
M. of A. CLARK, JAFFEE, JEAN-PIERRE, LAVINE, LUPARDO, MAYER, RUSSELL
-- 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 tempo-
rary 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 153-c of the family court act, as added by chapter
2 416 of the laws of 1981, is amended to read as follows:
3 S 153-c. Temporary order of protection. (A) Any person appearing at
4 family court when the court is open requesting a temporary order of
5 protection under any article of this act shall be entitled to file a
6 petition without delay on the same day such person first appears at the
7 family court, and a hearing on that request shall be held on the same
8 day or the next day that the family court is open following the filing
9 of such petition.
10 (B) AS PROVIDED IN THIS SECTION, THE CHIEF ADMINISTRATOR OF THE
11 COURTS, WITH THE APPROVAL OF THE ADMINISTRATIVE BOARD OF THE COURTS, MAY
12 PROMULGATE RULES TO ESTABLISH AND IMPLEMENT A PILOT PROGRAM FOR THE
13 FILING OF PETITIONS FOR TEMPORARY ORDERS OF PROTECTION BY ELECTRONIC
14 MEANS AND FOR THE ISSUANCE OF SUCH ORDERS EX PARTE BY AUDIO-VISUAL MEANS
15 IN ORDER TO ACCOMMODATE LITIGANTS FOR WHOM ATTENDANCE AT COURT TO FILE
16 FOR, AND OBTAIN, EMERGENCY RELIEF WOULD CONSTITUTE AN UNDUE HARDSHIP OR
17 TO ACCOMMODATE LITIGANTS, FOR WHOM TRAVELING TO AND APPEARING IN THE
18 COURTHOUSE TO OBTAIN EMERGENCY RELIEF, CREATES A RISK OF HARM TO SUCH
19 LITIGANT.

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

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(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 COMMERCIALY 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

1 FORTH THE CIRCUMSTANCES IN WHICH TRAVELING TO OR APPEARING IN THE COURT-
2 HOUSE WOULD CONSTITUTE AN UNDUE HARDSHIP, OR CREATE A RISK OF HARM TO
3 THE PETITIONER. IN GRANTING OR DENYING THE RELIEF SOUGHT BY THE PETI-
4 TIONER, THE COURT SHALL STATE THE NAMES OF ALL PARTICIPANTS, AND WHETHER
5 IT IS GRANTING OR DENYING AN APPEARANCE BY ELECTRONIC MEANS AND THE
6 BASIS FOR SUCH DETERMINATION; PROVIDED, HOWEVER, THAT NOTHING IN THIS
7 SECTION SHALL BE CONSTRUED TO COMPEL A PARTY TO FILE A PETITION OR OTHER
8 DOCUMENT BY ELECTRONIC MEANS OR TO TESTIFY BY MEANS OF AN ELECTRONIC
9 APPEARANCE.

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

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

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

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

26 (T) HAVE THE POWER TO ESTABLISH PILOT PROGRAMS FOR THE FILING OF
27 PETITIONS FOR TEMPORARY ORDERS OF PROTECTION BY ELECTRONIC MEANS AND FOR
28 THE ISSUANCE OF SUCH ORDERS BY AUDIO-VISUAL MEANS PURSUANT TO SUBDIVI-
29 SION (B) OF SECTION ONE HUNDRED FIFTY-THREE-C OF THE FAMILY COURT ACT.
30 THE CHIEF ADMINISTRATOR SHALL MAINTAIN AN UP-TO-DATE AND PUBLICLY-AVAIL-
31 ABLE LISTING OF THE SITES, IF ANY, AT WHICH SUCH APPLICATIONS FOR EX
32 PARTE TEMPORARY ORDERS OF PROTECTION MAY BE FILED, AND AT WHICH ELEC-
33 TRONIC APPEARANCES IN SUPPORT OF SUCH APPLICATIONS MAY BE SOUGHT, IN
34 ACCORDANCE WITH SUCH SECTION ONE HUNDRED FIFTY-THREE-C OF THE FAMILY
35 COURT ACT. IN DEVELOPING SUCH PILOT PROGRAM, THE CHIEF ADMINISTRATOR
36 SHALL STRIVE FOR A PROGRAM THAT IS REGIONALLY DIVERSE, AND TAKES INTO
37 CONSIDERATION, AMONG OTHER THINGS, THE AVAILABILITY OF PUBLIC TRANSPOR-
38 TATION, POPULATION DENSITY AND THE AVAILABILITY OF FACILITIES FOR
39 CONDUCTING SUCH PROGRAM.

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

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

51 2. After the review, and not later than two hundred seventy days after
52 the effective date of this section, AND NO LATER THAN TWO HUNDRED SEVEN-
53 TY DAYS AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOU-
54 SAND FIFTEEN WHICH AMENDED THIS SECTION, AND EVERY FIVE YEARS THEREAFT-
55 ER, the chief administrator of the unified court system shall submit a
56 report to the governor and the legislature, setting forth the findings

1 of the review, including a description of the services provided by the
2 components of the unified court system and recommendations for changes
3 in its procedures, services, regulations and laws to improve its
4 services to crime victims and to establish and implement fair treatment
5 standards for crime victims.

6 3. Subject to the direction of the chief administrator, the components
7 of the unified court system shall expeditiously implement the recommen-
8 dations of its report.

9 S 4. Severability clause. If any clause, sentence, paragraph, subdivi-
10 sion, section or part of this act shall be adjudged by a court of compe-
11 tent jurisdiction to be invalid, such judgment shall not affect, impair
12 or invalidate the remainder thereof, but shall be confined in its opera-
13 tion to the clause, sentence, paragraph, subdivision, section or part
14 thereof directly involved in the controversy in which such judgment
15 shall have been rendered. It is hereby declared to be the intent of the
16 legislature that this act would have been enacted even if such invalid
17 provisions had not been included herein.

18 S 5. This act shall take effect April 1, 2016.