

7032--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

April 20, 2015

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Introduced by M. of A. MAYER, WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- 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  
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21 THIS ACT. IF THE COURT DIRECTS THE PARTIES TO SO APPEAR, THE COURT  
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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.