STATE OF NEW YORK

5921

2017-2018 Regular Sessions

IN ASSEMBLY

February 17, 2017

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the criminal procedure law, in relation to notification of rights of victims of domestic violence in criminal and family court proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 812 of the family court act, as amended by chapter 224 of the laws of 1994, is amended to read as follows:

5. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of **this act and** the criminal procedure law[~~, the family court act and the domestic relations law~~]. Such notice shall be available**, at minimum,** in **plain** English [~~and~~]**,** Spanish**, Chinese and Russian** and, if necessary, shall be delivered orally and shall include but not be limited to **the information contained in** the following statement:

[~~"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than~~

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

LBD06511-01-7

~~a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.~~

~~You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.~~

~~The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).~~

~~Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime."~~] "Are you the victim of domestic violence? If you need help now, you can call 911 for the police to come to you. You can also call a domestic violence hotline. You can have a confidential talk with an advocate at the hotline about help you can get in your community including: where you can get treatment for injuries, where you can get shelter, where you can get support, and what you can do to be safe. The New York State 24-hour Domestic & Sexual Violence Hotline number is (Insert the statewide multilingual 800 number). They can give you information in many languages. If you are deaf or hard of hearing, call 711. This is what the police can do:

They can help you and your children find a safe place such as a family or friend's house or a shelter in your community.

You can ask the officer to take you or help you and your children get to a safe place in your community.

They can help connect you to a local domestic violence program.

They can help you get to a hospital or clinic for medical care.

They can help you get your personal belongings.

They must complete a report discussing the incident. They will give you a copy of this police report before they leave the scene. It is free.

They may, and sometimes must, arrest the person who harmed you if you are the victim of a crime. The person arrested could be released at any time, so it is important to plan for your safety.

If you have been abused or threatened, this is what you can ask the police or district attorney to do:

File a criminal complaint against the person who harmed you.

Ask the criminal court to issue an order of protection for you and your child if the district attorney files a criminal case with the court.

Give you information about filing a family offense petition in your local family court.

You also have the right to ask the family court for an order of protection for you and your children.

This is what you can ask the family court to do:

To have your family offense petition filed the same day you go to court.

To have your request heard in court the same day you file or the next day court is open.

Only a judge can issue an order of protection. The judge does that as part of a criminal or family court case against the person who harmed you. An order of protection in family court or in criminal court can say:

That the other person have no contact or communication with you by mail, phone, computer or through other people.

That the other person stay away from you and your children, your home, job or school.

That the other person not assault, harass, threaten, strangle, or commit another family offense against you or your children.

That the other person turn in their firearms and firearms licenses, and not get any more firearms.

That you have temporary custody of your children.

That the other person pay temporary child support.

That the other person not harm your pets or service animals.

If the family court is closed because it is night, a weekend, or a holiday, you can go to a criminal court to ask for an order of protection.

If you do not speak English or cannot speak it well, you can ask the police, the district attorney, or the criminal or family court to get you an interpreter who speaks your language. The interpreter can help you explain what happened.

You can get the forms you need to ask for an order of protection at your local family court (Insert addresses and contact information for courts). You can also get them online: www.NYCourts.gov/forms.

You do not need a lawyer to ask for an order of protection. You have a right to get a lawyer in the family court. If the family court finds that you cannot afford to pay for a lawyer, it must get you one for free.

If you file a complaint or family court petition, you will be asked to swear to its truthfulness because it is a crime to file a legal document that you know is false."

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall

arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

§ 2. Subdivision 6 of section 530.11 of the criminal procedure law, as amended by chapter 224 of the laws of 1994, is amended to read as follows:

6. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of [~~the criminal procedure law,~~] **this chapter and** the family court act [~~and the domestic relations law~~]. Such notice shall be prepared**, at minimum,** in **plain English,** Spanish [~~and English~~]**, Chinese and Russian** and if necessary, shall be delivered orally, and shall include but not be limited to **the information contained in** the following statement:

[~~"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangements to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.~~

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That the other person turn in their firearms and firearms licenses, and not get any more firearms.

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Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the criminal court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

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