STATE OF NEW YORK

11038

IN ASSEMBLY

October 7, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Epstein) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to eliminating the ability of a court to commit a respondent to jail as a penalty for violation of a support order; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 3 of section 454 of the family court act, as amended by chapter 892 of the laws of 1986, paragraph (b) as added and paragraph (c) as relettered by chapter 699 of the laws of 1996, is amended to read as follows:

3. Upon a finding by the court that a respondent has willfully failed to obey any lawful order of support, the court shall order respondent to pay counsel fees to the attorney representing petitioner pursuant to section four hundred thirty-eight of this act and may in addition to or in lieu of any or all of the powers conferred in subdivision two of this section or any other section of law:

(a) [~~commit the respondent to jail for a term not to exceed six months. For purposes of this subdivision, failure to pay support, as ordered, shall constitute prima facie evidence of a willful violation. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. Such commitment does not prevent the court from subsequently committing the respondent for failure thereafter to comply with any such order; or~~

~~(b)~~] require the respondent to participate in a rehabilitative program if the court determines that such participation would assist the respondent in complying with such order of support and access to such a program is available. Such rehabilitative programs shall include, but not be limited to, work preparation and skill programs, non-residential alcohol and substance abuse programs and educational programs; or

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

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[~~(c)~~] **(b)** place the respondent on probation under such conditions as the court may determine and in accordance with the provisions of the criminal procedure law.

§ 2. Section 455 of the family court act is REPEALED.

§ 3. Subdivision (a) of section 439 of the family court act, as amended by section 1 of chapter 468 of the laws of 2012, is amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to [~~issues specified in section four hundred fifty-five of this article,~~] issues of contested paternity involving claims of equitable estoppel, custody, visitation including visitation as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

§ 4. Subdivision (a) of section 439 of the family court act, as amended by section 2 of chapter 468 of the laws of 2012, is amended to read as follows:

(a) The chief administrator of the courts shall provide, in accordance with subdivision (f) of this section, for the appointment of a sufficient number of support magistrates to hear and determine support proceedings. Except as hereinafter provided, support magistrates shall be empowered to hear, determine and grant any relief within the powers of the court in any proceeding under this article, articles five, five-A, and five-B and sections two hundred thirty-four and two hundred thirty-five of this act, and objections raised pursuant to section five thousand two hundred forty-one of the civil practice law and rules. Support magistrates shall not be empowered to hear, determine and grant any relief with respect to [~~issues specified in section four hundred~~

~~fifty-five of this article,~~] issues of contested paternity involving claims of equitable estoppel, custody, visitation including visitation as a defense, and orders of protection or exclusive possession of the home, which shall be referred to a judge as provided in subdivision (b) or (c) of this section. Where an order of filiation is issued by a judge in a paternity proceeding and child support is in issue, the judge, or support magistrate upon referral from the judge, shall be authorized to immediately make a temporary or final order of support, as applicable. A support magistrate shall have the authority to hear and decide motions and issue summonses and subpoenas to produce persons pursuant to section one hundred fifty-three of this act, hear and decide proceedings and issue any order authorized by subdivision (g) of section five thousand two hundred forty-one of the civil practice law and rules, issue subpoenas to produce prisoners pursuant to section two thousand three hundred two of the civil practice law and rules and make a determination that any person before the support magistrate is in violation of an order of the court as authorized by section one hundred fifty-six of this act subject to confirmation by a judge of the court who shall impose any punishment for such violation as provided by law. A determination by a support magistrate that a person is in willful violation of an order under subdivision three of section four hundred fifty-four of this article and that recommends commitment shall be transmitted to the parties, accompanied by findings of fact, but the determination shall have no force and effect until confirmed by a judge of the court.

§ 5. Subdivision (c) of section 439 of the family court act, as amended by chapter 576 of the laws of 2005, is amended to read as follows:

(c) The support magistrate, in any proceeding in which [~~issues specified in section four hundred fifty-five of this act, or~~] issues of custody, visitation, including visitation as a defense, orders of protection or exclusive possession of the home are present or in which paternity is contested on the grounds of equitable estoppel, shall make a temporary order of support and refer the proceeding to a judge. Upon determination of such issue by a judge, the judge may make a final determination of the issue of support, or immediately refer the proceeding to a support magistrate for further proceedings regarding child support or other matters within the authority of the support magistrate.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law, provided that the amendments to subdivision (a) of section 439 of the family court act made by section three of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision 19 of section 246 of chapter 81 of the laws of 1995 as amended, when upon such date the provisions of section four of this act shall take effect.