

STATE OF NEW YORK

7395

2019-2020 Regular Sessions

IN ASSEMBLY

May 1, 2019

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.

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~~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:

1 File a criminal complaint against the person who harmed you.

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

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

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

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

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

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

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

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

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

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

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

26 That you have temporary custody of your children.

27 That the other person pay temporary child support.

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

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

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

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

39 You do not need a lawyer to ask for an order of protection.

40 You have a right to get a lawyer in the family court. If the family
41 court finds that you cannot afford to pay for a lawyer, it must get you
42 one for free.

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

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

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

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

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

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

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

49 ~~The forms you need to obtain an order of protection are available from~~
50 ~~the family court and the local criminal court (the addresses and tele-~~
51 ~~phone numbers shall be listed). The resources available in this communi-~~
52 ~~ty for information relating to domestic violence, treatment of injuries,~~
53 ~~and places of safety and shelters can be accessed by calling the follow-~~
54 ~~ing 800 numbers (the statewide English and Spanish language 800 numbers~~
55 ~~shall be listed and space shall be provided for local domestic violence~~
56 ~~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.

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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.

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2 holiday, you can go to a criminal court to ask for an order of
3 protection.

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5 police, the district attorney, or the criminal or family court to get
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13 court finds that you cannot afford to pay for a lawyer, it must get you
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20 form of such written notice consistent with provisions of this section
21 and distribute copies thereof to the appropriate law enforcement offi-
22 cials pursuant to subdivision nine of section eight hundred forty-one of
23 the executive law.

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

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