

# STATE OF NEW YORK

7529--A

2019-2020 Regular Sessions

## IN ASSEMBLY

May 8, 2019

Introduced by M. of A. WALLACE, DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- 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 and the domestic relations law, in relation to orders for temporary spousal support in conjunction with temporary and final orders of protection in family court and calculation of the spousal maintenance "cap"

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

Section 1. Paragraph (d) of subdivision 2 of section 412 of the family court act, as added by chapter 269 of the laws of 2015, is amended to read as follows:

(d) "income cap" shall mean up to and including one hundred [~~seventy-five~~] eighty-four thousand dollars of the payor's annual income; provided, however, beginning [~~January thirty-first~~] March first, two thousand [~~sixteen~~] twenty and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

§ 2. The section heading of section 828 of the family court act, as amended by chapter 222 of the laws of 1994, is amended and a new subdivision 5 is added to read as follows:

Temporary order of protection; temporary [~~order~~] orders for child support and spousal maintenance.

5. Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of spousal support has not

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

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1 already been issued, the court may, in addition to the issuance of a  
2 temporary order of protection pursuant to this section, issue an order  
3 directing the parties to appear within seven business days of the issu-  
4 ance of the order in the family court, in the same action, for consider-  
5 ation of an order for temporary spousal support in accordance with arti-  
6 cle four of this act. If the court directs the parties to so appear, the  
7 court shall direct the parties to appear with information with respect  
8 to income and assets, but a temporary order for spousal support may be  
9 issued pursuant to article four of this act on the return date notwith-  
10 standing the respondent's default upon notice and notwithstanding that  
11 information with respect to income and assets of the petitioner or  
12 respondent may be unavailable.

13 § 3. Section 842 of the family court act, as amended by chapter 526  
14 and the closing paragraph as added by chapter 480 of the laws of 2013,  
15 is amended to read as follows:

16 § 842. Order of protection. An order of protection under section eight  
17 hundred forty-one of this part shall set forth reasonable conditions of  
18 behavior to be observed for a period not in excess of two years by the  
19 petitioner or respondent or for a period not in excess of five years  
20 upon (i) a finding by the court on the record of the existence of aggra-  
21 vating circumstances as defined in paragraph (vii) of subdivision (a) of  
22 section eight hundred twenty-seven of this article; or (ii) a finding by  
23 the court on the record that the conduct alleged in the petition is in  
24 violation of a valid order of protection. Any finding of aggravating  
25 circumstances pursuant to this section shall be stated on the record and  
26 upon the order of protection. The court may also, upon motion, extend  
27 the order of protection for a reasonable period of time upon a showing  
28 of good cause or consent of the parties. The fact that abuse has not  
29 occurred during the pendency of an order shall not, in itself, consti-  
30 tute sufficient ground for denying or failing to extend the order. The  
31 court must articulate a basis for its decision on the record. The dura-  
32 tion of any temporary order shall not by itself be a factor in determin-  
33 ing the length or issuance of any final order. Any order of protection  
34 issued pursuant to this section shall specify if an order of probation  
35 is in effect. Any order of protection issued pursuant to this section  
36 may require the petitioner or the respondent:

37 (a) to stay away from the home, school, business or place of employ-  
38 ment of any other party, the other spouse, the other parent, or the  
39 child, and to stay away from any other specific location designated by  
40 the court, provided that the court shall make a determination, and shall  
41 state such determination in a written decision or on the record, whether  
42 to impose a condition pursuant to this subdivision, provided further,  
43 however, that failure to make such a determination shall not affect the  
44 validity of such order of protection. In making such determination, the  
45 court shall consider, but shall not be limited to consideration of,  
46 whether the order of protection is likely to achieve its purpose in the  
47 absence of such a condition, conduct subject to prior orders of  
48 protection, prior incidents of abuse, extent of past or present injury,  
49 threats, drug or alcohol abuse, and access to weapons;

50 (b) to permit a parent, or a person entitled to visitation by a court  
51 order or a separation agreement, to visit the child at stated periods;

52 (c) to refrain from committing a family offense, as defined in subdi-  
53 vision one of section eight hundred twelve of this ~~act~~ article, or any  
54 criminal offense against the child or against the other parent or  
55 against any person to whom custody of the child is awarded, or from  
56 harassing, intimidating or threatening such persons;

1 (d) to permit a designated party to enter the residence during a spec-  
2 ified period of time in order to remove personal belongings not in issue  
3 in this proceeding or in any other proceeding or action under this act  
4 or the domestic relations law;

5 (e) to refrain from acts of commission or omission that create an  
6 unreasonable risk to the health, safety or welfare of a child;

7 (f) to pay the reasonable counsel fees and disbursements involved in  
8 obtaining or enforcing the order of the person who is protected by such  
9 order if such order is issued or enforced;

10 (g) to require the respondent to participate in a batterer's education  
11 program designed to help end violent behavior, which may include refer-  
12 ral to drug and alcohol counselling, and to pay the costs thereof if the  
13 person has the means to do so, provided however that nothing contained  
14 herein shall be deemed to require payment of the costs of any such  
15 program by the petitioner, the state or any political subdivision there-  
16 of;

17 (h) to provide, either directly or by means of medical and health  
18 insurance, for expenses incurred for medical care and treatment arising  
19 from the incident or incidents forming the basis for the issuance of the  
20 order;

21 (i) 1. to refrain from intentionally injuring or killing, without  
22 justification, any companion animal the respondent knows to be owned,  
23 possessed, leased, kept or held by the petitioner or a minor child  
24 residing in the household.

25 2. "Companion animal", as used in this section, shall have the same  
26 meaning as in subdivision five of section three hundred fifty of the  
27 agriculture and markets law;

28 (j) 1. to promptly return specified identification documents to the  
29 protected party, in whose favor the order of protection or temporary  
30 order of protection is issued; provided, however, that such order may:  
31 (A) include any appropriate provision designed to ensure that any such  
32 document is available for use as evidence in this proceeding, and avail-  
33 able if necessary for legitimate use by the party against whom such  
34 order is issued; and (B) specify the manner in which such return shall  
35 be accomplished.

36 2. For purposes of this subdivision, "identification document" shall  
37 mean any of the following: (A) exclusively in the name of the protected  
38 party: birth certificate, passport, social security card, health insur-  
39 ance or other benefits card, a card or document used to access bank,  
40 credit or other financial accounts or records, tax returns, any driver's  
41 license, and immigration documents including but not limited to a United  
42 States permanent resident card and employment authorization document;  
43 and (B) upon motion and after notice and an opportunity to be heard, any  
44 of the following, including those that may reflect joint use or owner-  
45 ship, that the court determines are necessary and are appropriately  
46 transferred to the protected party: any card or document used to access  
47 bank, credit or other financial accounts or records, tax returns, and  
48 any other identifying cards and documents; and

49 (k) to observe such other conditions as are necessary to further the  
50 purposes of protection.

51 The court may also award custody of the child, during the term of the  
52 order of protection to either parent, or to an appropriate relative  
53 within the second degree. Nothing in this section gives the court power  
54 to place or board out any child or to commit a child to an institution  
55 or agency.

1 Notwithstanding the provisions of section eight hundred seventeen of  
2 this article, where a temporary order of child support has not already  
3 been issued, the court may in addition to the issuance of an order of  
4 protection pursuant to this section, issue an order for temporary child  
5 support in an amount sufficient to meet the needs of the child, without  
6 a showing of immediate or emergency need. The court shall make an order  
7 for temporary child support notwithstanding that information with  
8 respect to income and assets of the respondent may be unavailable. Where  
9 such information is available, the court may make an award for temporary  
10 child support pursuant to the formula set forth in subdivision one of  
11 section four hundred thirteen of this act. Temporary orders of support  
12 issued pursuant to this article shall be deemed to have been issued  
13 pursuant to section four hundred thirteen of this act.

14 Upon making an order for temporary child support pursuant to this  
15 subdivision, the court shall advise the petitioner of the availability  
16 of child support enforcement services by the support collection unit of  
17 the local department of social services, to enforce the temporary order  
18 and to assist in securing continued child support, and shall set the  
19 support matter down for further proceedings in accordance with article  
20 four of this act.

21 Where the court determines that the respondent has employer-provided  
22 medical insurance, the court may further direct, as part of an order of  
23 temporary support under this subdivision, that a medical support  
24 execution be issued and served upon the respondent's employer as  
25 provided for in section fifty-two hundred forty-one of the civil prac-  
26 tice law and rules.

27 Notwithstanding the provisions of section eight hundred seventeen of  
28 this article, where a temporary order of spousal support has not already  
29 been issued, the court may, in addition to the issuance of an order of  
30 protection pursuant to this section, issue an order directing the  
31 parties to appear within seven business days of the issuance of the  
32 order in the family court, in the same action, for consideration of an  
33 order for temporary spousal support in accordance with article four of  
34 this act. If the court directs the parties to so appear, the court shall  
35 direct the parties to appear with information with respect to income and  
36 assets, but a temporary order for spousal support may be issued pursuant  
37 to article four of this act on the return date notwithstanding the  
38 respondent's default upon notice and notwithstanding that information  
39 with respect to income and assets of the petitioner or respondent may be  
40 unavailable.

41 In any proceeding in which an order of protection or temporary order  
42 of protection or a warrant has been issued under this section, the clerk  
43 of the court shall issue to the petitioner and respondent and his or her  
44 counsel and to any other person affected by the order a copy of the  
45 order of protection or temporary order of protection and ensure that a  
46 copy of the order of protection or temporary order of protection [~~be~~] is  
47 transmitted to the local correctional facility where the individual is  
48 or will be detained, the state or local correctional facility where the  
49 individual is or will be imprisoned, and the supervising probation  
50 department or the department of corrections and community supervision  
51 where the individual is under probation or parole supervision.

52 Notwithstanding the foregoing provisions, an order of protection, or  
53 temporary order of protection where applicable, may be entered against a  
54 former spouse and persons who have a child in common, regardless of  
55 whether such persons have been married or have lived together at any

1 time, or against a member of the same family or household as defined in  
2 subdivision one of section eight hundred twelve of this article.

3 In addition to the foregoing provisions, the court may issue an order,  
4 pursuant to section two hundred twenty-seven-c of the real property law,  
5 authorizing the party for whose benefit any order of protection has been  
6 issued to terminate a lease or rental agreement pursuant to section two  
7 hundred twenty-seven-c of the real property law.

8 The protected party in whose favor the order of protection or tempo-  
9 rary order of protection is issued may not be held to violate an order  
10 issued in his or her favor nor may such protected party be arrested for  
11 violating such order.

12 § 4. Subparagraph 5 of paragraph (b) of subdivision 5-a of part B of  
13 section 236 of the domestic relations law, as amended by chapter 269 of  
14 the laws of 2015, is amended to read as follows:

15 (5) "Income cap" shall mean up to and including one hundred [~~seventy-~~  
16 ~~five~~] eighty-four thousand dollars of the payor's annual income;  
17 provided, however, beginning [~~January thirty-first~~] March first, two  
18 thousand [~~sixteen~~] twenty and every two years thereafter, the income cap  
19 amount shall increase by the sum of the average annual percentage chang-  
20 es in the consumer price index for all urban consumers (CPI-U) as  
21 published by the United States department of labor bureau of labor  
22 statistics for the prior two years multiplied by the then income cap and  
23 then rounded to the nearest one thousand dollars. The office of court  
24 administration shall determine and publish the income cap.

25 § 5. Subparagraph 4 of paragraph (b) of subdivision 6 of part B of  
26 section 236 of the domestic relations law, as amended by chapter 269 of  
27 the laws of 2015, is amended to read as follows:

28 (4) "Income cap" shall mean up to and including one hundred [~~seventy-~~  
29 ~~five~~] eighty-four thousand dollars of the payor's annual income;  
30 provided, however, beginning [~~January thirty-first~~] March first, two  
31 thousand [~~sixteen~~] twenty and every two years thereafter, the income cap  
32 amount shall increase by the sum of the average annual percentage chang-  
33 es in the consumer price index for all urban consumers (CPI-U) as  
34 published by the United States department of labor bureau of labor  
35 statistics for the prior two years multiplied by the then income cap and  
36 then rounded to the nearest one thousand dollars. The office of court  
37 administration shall determine and publish the income cap.

38 § 6. This act shall take effect immediately.