

STATE OF NEW YORK

6202

2019-2020 Regular Sessions

IN ASSEMBLY

March 4, 2019

Introduced by M. of A. CRESPO -- Multi-Sponsored by -- M. of A. ARROYO, AUBRY, BARRON, COOK, CROUCH, McDONOUGH, PERRY, RAMOS, RIVERA, RODRIGUEZ, WEPRIN -- 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 requiring the service of temporary orders of protection and orders of protection upon the attorney representing the respondent or defendant

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

1 Section 1. Section 154-d of the family court act, as added by chapter
2 186 of the laws of 1997, is amended to read as follows:
3 § 154-d. Emergency powers; local criminal courts. 1. Issuance of
4 temporary orders of protection. Upon the request of the petitioner, a
5 local criminal court may on an ex parte basis issue a temporary order of
6 protection pending a hearing in family court, provided that a sworn
7 affidavit, certified in accordance with subdivision one of section
8 100.30 of the criminal procedure law is submitted: (i) alleging that the
9 family court is not in session; (ii) alleging that a family offense, as
10 defined in subdivision one of section eight hundred twelve of this act
11 or subdivision one of section 530.11 of the criminal procedure law, has
12 been committed; (iii) alleging that a family offense petition has been
13 filed or will be filed in family court on the next day the court is in
14 session; and (iv) showing good cause. Upon appearance in a local criminal
15 court, the petitioner shall be advised that he or she may continue
16 with the proceeding either in family court or, upon the filing of a
17 local criminal court accusatory instrument, in criminal court or both.
18 Upon issuance of a temporary order of protection where petitioner
19 requests that it be returnable in family court, the local criminal court
20 shall transfer the matter forthwith to the family court and shall make
21 the matter returnable in family court on the next day the family court
22 is in session, or as soon thereafter as practicable, but in no event

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

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1 more than four calendar days after issuance of the order. The local
2 criminal court, upon issuing a temporary order of protection returnable
3 in family court pursuant to this subdivision shall immediately forward
4 in a manner designed to ensure arrival before the return date set in the
5 order, a copy of the temporary order of protection and sworn affidavit
6 to the family court and shall provide a copy of such temporary order of
7 protection to the petitioner; provided, however, that if the temporary
8 order of protection and affidavit are transmitted by facsimile or other
9 electronic means, the original order and affidavit shall be forwarded to
10 the family court immediately thereafter. Any temporary order of
11 protection issued pursuant to this subdivision shall be issued to the
12 respondent and the attorney representing the respondent, and copies
13 shall be filed as required in subdivisions six and eight of section
14 530.12 of the criminal procedure law for orders of protection issued
15 pursuant to such section. No attorney shall refuse to accept any such
16 order addressed to his or her respondent client, and such attorney shall
17 immediately provide notice to his or her client of the issuance of the
18 order and the terms of such order. Any temporary order of protection
19 issued pursuant to this subdivision shall plainly state the date that
20 such order expires which, in the case of an order returnable in family
21 court, shall be not more than four calendar days after its issuance,
22 unless sooner vacated or modified by the family court. A petitioner
23 requesting a temporary order of protection returnable in family court
24 pursuant to this subdivision in a case in which a family court petition
25 has not been filed shall be informed that such temporary order of
26 protection shall expire as provided for herein, unless the petitioner
27 files a petition pursuant to subdivision one of section eight hundred
28 twenty-one of this act on or before the return date in family court and
29 the family court issues a temporary order of protection as authorized
30 under article eight of this act. Nothing in this subdivision shall limit
31 or restrict the petitioner's right to proceed directly and without court
32 referral in either a criminal or family court, or both, as provided for
33 in section one hundred fifteen of this act and section 100.07 of the
34 criminal procedure law.

35 2. Modifications of orders of protection or temporary orders of
36 protection. Upon the request of the petitioner, a local criminal court
37 may on an ex parte basis modify a temporary order of protection or order
38 of protection which has been issued under article four, five, six or
39 eight of this act pending a hearing in family court, provided that a
40 sworn affidavit, verified in accordance with subdivision one of section
41 100.30 of the criminal procedure law, is submitted: (i) alleging that
42 the family court is not in session and (ii) showing good cause, includ-
43 ing a showing that the existing order is insufficient for the purposes
44 of protection of the petitioner, the petitioner's child or children or
45 other members of the petitioner's family or household. The local crimi-
46 nal court shall make the matter regarding the modification of the order
47 returnable in family court on the next day the family court is in
48 session, or as soon thereafter as practicable, but in no event more than
49 four calendar days after issuance of the modified order. The local crim-
50 inal court shall immediately forward, in a manner designed to ensure
51 arrival before the return date set in the order, a copy of the modified
52 order if any and sworn affidavit to the family court and shall provide a
53 copy of such modified order, if any, and affidavit to the petitioner;
54 provided, however, that if the modified order and affidavit are trans-
55 mitted to the family court by facsimile or other electronic means, the
56 original copy of such modified order and affidavit shall be forwarded to

1 the family court immediately thereafter. Any modified temporary order of
2 protection or order of protection issued pursuant to this subdivision
3 shall be issued to the respondent and the attorney representing the
4 respondent, and copies shall be filed as provided in subdivisions six
5 and eight of section 530.12 of the criminal procedure law for orders of
6 protection issued pursuant to such section. No attorney shall refuse to
7 accept any such order addressed to his or her respondent client, and
8 such attorney shall immediately provide notice to his or her client of
9 the issuance of the order and the terms of such order.

10 § 2. Subdivision 1 of section 168 of the family court act, as amended
11 by chapter 416 of the laws of 1981, is amended to read as follows:

12 1. In any case in which an order of protection or temporary order of
13 protection has been made by the family court, the clerk of the court
14 shall issue a copy of such order to the petitioner [~~and~~], the
15 respondent, the attorney representing the respondent and to any other
16 person affected by the order. No attorney shall refuse to accept any
17 such order addressed to his or her respondent client, and such attorney
18 shall immediately provide notice to his or her client of the issuance of
19 the order and the terms of such order. The presentation of a copy of an
20 order of protection or temporary order of protection or a warrant or a
21 certificate of warrant to any peace officer, acting pursuant to his or
22 her special duties, or police officer shall constitute authority for him
23 or her to arrest a person charged with violating the terms of such order
24 of protection or temporary order of protection and bring such person
25 before the court and, otherwise, so far as lies within his or her power,
26 to aid in securing the protection such order was intended to afford,
27 provided, however, that any outstanding, unexpired certificate of order
28 of protection or temporary order of protection shall have the same force
29 and effect as a copy of such order or temporary order.

30 § 3. Subdivisions 3-a, 3-b and 8 of section 530.12 of the criminal
31 procedure law, subdivisions 3-a and 3-b as added by chapter 186 of the
32 laws of 1997 and subdivision 8 as amended by chapter 480 of the laws of
33 2013, are amended to read as follows:

34 3-a. Emergency powers when family court not in session; issuance of
35 temporary orders of protection. Upon the request of the petitioner, a
36 local criminal court may on an ex parte basis issue a temporary order of
37 protection pending a hearing in family court, provided that a sworn
38 affidavit, verified in accordance with subdivision one of section 100.30
39 of this chapter, is submitted: (i) alleging that the family court is not
40 in session; (ii) alleging that a family offense, as defined in subdivi-
41 sion one of section eight hundred twelve of the family court act and
42 subdivision one of section 530.11 of this article, has been committed;
43 (iii) alleging that a family offense petition has been filed or will be
44 filed in family court on the next day the court is in session; and (iv)
45 showing good cause. Upon appearance in a local criminal court, the peti-
46 tioner shall be advised that he or she may continue with the proceeding
47 either in family court or upon the filing of a local criminal court
48 accusatory instrument in criminal court or both. Upon issuance of a
49 temporary order of protection where petitioner requests that it be
50 returnable in family court, the local criminal court shall transfer the
51 matter forthwith to the family court and shall make the matter return-
52 able in family court on the next day the family court is in session, or
53 as soon thereafter as practicable, but in no event more than four calen-
54 dar days after issuance of the order. The local criminal court, upon
55 issuing a temporary order of protection returnable in family court
56 pursuant to this subdivision, shall immediately forward, in a manner

1 designed to insure arrival before the return date set in the order, a
2 copy of the temporary order of protection and sworn affidavit to the
3 family court and shall provide a copy of such temporary order of
4 protection to the petitioner; provided, however, that where a copy of
5 the temporary order of protection and affidavit are transmitted to the
6 family court by facsimile or other electronic means, the original order
7 and affidavit shall be forwarded to the family court immediately there-
8 after. Any temporary order of protection issued pursuant to this subdivi-
9 sion shall be issued to the respondent and the attorney representing
10 the respondent, and copies shall be filed as required in subdivisions
11 six and eight of this section for orders of protection issued pursuant
12 to this section. No attorney shall refuse to accept any such order
13 addressed to his or her respondent client, and such attorney shall imme-
14 diately provide notice to his or her client of the issuance of the order
15 and the terms of such order. Any temporary order of protection issued
16 pursuant to this subdivision shall plainly state the date that such
17 order expires which, in the case of an order returnable in family court,
18 shall be not more than four calendar days after its issuance, unless
19 sooner vacated or modified by the family court. A petitioner requesting
20 a temporary order of protection returnable in family court pursuant to
21 this subdivision in a case in which a family court petition has not been
22 filed shall be informed that such temporary order of protection shall
23 expire as provided for herein, unless the petitioner files a petition
24 pursuant to subdivision one of section eight hundred twenty-one of the
25 family court act on or before the return date in family court and the
26 family court issues a temporary order of protection or order of
27 protection as authorized under article eight of the family court act.
28 Nothing in this subdivision shall limit or restrict the petitioner's
29 right to proceed directly and without court referral in either a crimi-
30 nal or family court, or both, as provided for in section one hundred
31 fifteen of the family court act and section 100.07 of this chapter.

32 3-b. Emergency powers when family court not in session; modifications
33 of orders of protection or temporary orders of protection. Upon the
34 request of the petitioner, a local criminal court may on an ex parte
35 basis modify a temporary order of protection or order of protection
36 which has been issued under article four, five, six or eight of the
37 family court act pending a hearing in family court, provided that a
38 sworn affidavit verified in accordance with subdivision one of section
39 100.30 of this chapter is submitted: (i) alleging that the family court
40 is not in session and (ii) showing good cause, including a showing that
41 the existing order is insufficient for the purposes of protection of the
42 petitioner, the petitioner's child or children or other members of the
43 petitioner's family or household. The local criminal court shall make
44 the matter regarding the modification of the order returnable in family
45 court on the next day the family court is in session, or as soon there-
46 after as practicable, but in no event more than four calendar days after
47 issuance of the modified order. The court shall immediately forward a
48 copy of the modified order, if any, and sworn affidavit to the family
49 court and shall provide a copy of such modified order, if any, and affi-
50 davit to the petitioner; provided, however, that where copies of such
51 modified order and affidavit are transmitted to the family court by
52 facsimile or other electronic means, the original copies of such modi-
53 fied order and affidavit shall be forwarded to the family court imme-
54 diately thereafter. Any modified temporary order of protection or order
55 of protection issued pursuant to this subdivision shall be issued to the
56 respondent and the attorney representing the respondent and copies shall

1 be filed as required in subdivisions six and eight of this section for
2 orders of protection issued pursuant to this section. No attorney shall
3 refuse to accept any such order addressed to his or her respondent
4 client, and such attorney shall immediately provide notice to his or her
5 client of the issuance of the order and the terms of such order.

6 8. In any proceeding in which an order of protection or temporary
7 order of protection or a warrant has been issued under this section, the
8 clerk of the court shall issue to the complainant and defendant and
9 defense counsel and to any other person affected by the order a copy of
10 the order of protection or temporary order of protection and ensure that
11 a copy of the order of protection or temporary order of protection be
12 transmitted to the local correctional facility where the individual is
13 or will be detained, the state or local correctional facility where the
14 individual is or will be imprisoned, and the supervising probation
15 department or department of corrections and community supervision where
16 the individual is under probation or parole supervision. No defense
17 counsel shall refuse to accept any such order addressed to his or her
18 client, and such counsel shall immediately provide notice to the defend-
19 ant of the issuance of the order and the terms of such order. The pres-
20 entation of a copy of such order or a warrant to any peace officer
21 acting pursuant to his or her special duties or police officer shall
22 constitute authority for him or her to arrest a person who has violated
23 the terms of such order and bring such person before the court and,
24 otherwise, so far as lies within his or her power, to aid in securing
25 the protection such order was intended to afford. The protected party in
26 whose favor the order of protection or temporary order of protection is
27 issued may not be held to violate an order issued in his or her favor
28 nor may such protected party be arrested for violating such order.

29 § 4. Subdivision 6 of section 530.13 of the criminal procedure law, as
30 amended by section 82 of subpart B of part C of chapter 62 of the laws
31 of 2011, is amended to read as follows:

32 6. In any proceeding in which an order of protection or temporary
33 order of protection or a warrant has been issued under this section, the
34 clerk of the court shall issue to the victim and the defendant and
35 defense counsel and to any other person affected by the order, a copy of
36 the order of protection or temporary order of protection and ensure that
37 a copy of the order of protection or temporary order of protection be
38 transmitted to the local correctional facility where the individual is
39 or will be detained, the state or local correctional facility where the
40 individual is or will be imprisoned, and the supervising probation
41 department or department of corrections and community supervision where
42 the individual is under probation or parole supervision. No defense
43 counsel shall refuse to accept any such order addressed to his or her
44 client, and such counsel shall immediately provide notice to the defend-
45 ant of the issuance of the order and the terms of such order. The pres-
46 entation of a copy of such order or a warrant to any police officer or
47 peace officer acting pursuant to his or her special duties shall consti-
48 tute authority for him or her to arrest a person who has violated the
49 terms of such order and bring such person before the court and, other-
50 wise, so far as lies within his or her power, to aid in securing the
51 protection such order was intended to afford.

52 § 5. This act shall take effect on the first of October next succeed-
53 ing the date on which it shall have become a law.