

# STATE OF NEW YORK

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6202

2019-2020 Regular Sessions

## IN ASSEMBLY

March 4, 2019

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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.