

STATE OF NEW YORK

3063--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, in relation to eliminating the ability of a court to commit a respondent to jail or place a respondent on probation 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

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

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1 respondent in complying with such order of support and access to such a
2 program is available. Such rehabilitative programs shall include, but
3 not be limited to, work preparation and skill programs, non-residential
4 alcohol and substance abuse programs and educational programs[~~;-or~~

5 ~~(c) place the respondent on probation under such conditions as the~~
6 ~~court may determine and in accordance with the provisions of the crimi-~~
7 ~~nal procedure law].~~

8 § 2. Sections 455 and 456 of the family court act are REPEALED.

9 § 3. Subdivision (a) of section 439 of the family court act, as
10 amended by section 21 of part L of chapter 56 of the laws of 2020, is
11 amended to read as follows:

12 (a) The chief administrator of the courts shall provide, in accordance
13 with subdivision (f) of this section, for the appointment of a suffi-
14 cient number of support magistrates to hear and determine support
15 proceedings. Except as hereinafter provided, support magistrates shall
16 be empowered to hear, determine and grant any relief within the powers
17 of the court in any proceeding under this article, articles five,
18 five-A, five-B and five-C and sections two hundred thirty-four and two
19 hundred thirty-five of this act, and objections raised pursuant to
20 section five thousand two hundred forty-one of the civil practice law
21 and rules. Support magistrates shall not be empowered to hear, determine
22 and grant any relief with respect to [~~issues specified in section four~~
23 ~~hundred fifty-five of this article,~~] issues of contested parentage
24 involving claims of equitable estoppel, custody, visitation including
25 visitation as a defense, determinations of parentage made pursuant to
26 section 581-407 of this act, and orders of protection or exclusive
27 possession of the home, which shall be referred to a judge as provided
28 in subdivision (b) or (c) of this section. Where an order of filiation
29 is issued by a judge in a paternity proceeding and child support is in
30 issue, the judge, or support magistrate upon referral from the judge,
31 shall be authorized to immediately make a temporary or final order of
32 support, as applicable. A support magistrate shall have the authority to
33 hear and decide motions and issue summonses and subpoenas to produce
34 persons pursuant to section one hundred fifty-three of this act, hear
35 and decide proceedings and issue any order authorized by subdivision (g)
36 of section five thousand two hundred forty-one of the civil practice law
37 and rules, issue subpoenas to produce prisoners pursuant to section two
38 thousand three hundred two of the civil practice law and rules and make
39 a determination that any person before the support magistrate is in
40 violation of an order of the court as authorized by section one hundred
41 fifty-six of this act subject to confirmation by a judge of the court
42 who shall impose any punishment for such violation as provided by law.

43 [~~A determination by a support magistrate that a person is in willful~~
44 ~~violation of an order under subdivision three of section four hundred~~
45 ~~fifty four of this article and that recommends commitment shall be tran-~~
46 ~~smitted to the parties, accompanied by findings of fact, but the deter-~~
47 ~~mination shall have no force and effect until confirmed by a judge of~~
48 ~~the court.~~]

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

52 (a) The chief administrator of the courts shall provide, in accordance
53 with subdivision (f) of this section, for the appointment of a suffi-
54 cient number of support magistrates to hear and determine support
55 proceedings. Except as hereinafter provided, support magistrates shall
56 be empowered to hear, determine and grant any relief within the powers

1 of the court in any proceeding under this article, articles five,
2 five-A, and five-B and sections two hundred thirty-four and two hundred
3 thirty-five of this act, and objections raised pursuant to section five
4 thousand two hundred forty-one of the civil practice law and rules.
5 Support magistrates shall not be empowered to hear, determine and grant
6 any relief with respect to ~~[issues specified in section four hundred~~
7 ~~fifty-five of this article,]~~ issues of contested paternity involving
8 claims of equitable estoppel, custody, visitation including visitation
9 as a defense, and orders of protection or exclusive possession of the
10 home, which shall be referred to a judge as provided in subdivision (b)
11 or (c) of this section. Where an order of filiation is issued by a judge
12 in a paternity proceeding and child support is in issue, the judge, or
13 support magistrate upon referral from the judge, shall be authorized to
14 immediately make a temporary or final order of support, as applicable. A
15 support magistrate shall have the authority to hear and decide motions
16 and issue summonses and subpoenas to produce persons pursuant to section
17 one hundred fifty-three of this act, hear and decide proceedings and
18 issue any order authorized by subdivision (g) of section five thousand
19 two hundred forty-one of the civil practice law and rules, issue subpoe-
20 nas to produce prisoners pursuant to section two thousand three hundred
21 two of the civil practice law and rules and make a determination that
22 any person before the support magistrate is in violation of an order of
23 the court as authorized by section one hundred fifty-six of this act
24 subject to confirmation by a judge of the court who shall impose any
25 punishment for such violation as provided by law. ~~[A determination by a~~
26 ~~support magistrate that a person is in willful violation of an order~~
27 ~~under subdivision three of section four hundred fifty four of this arti-~~
28 ~~cle and that recommends commitment shall be transmitted to the parties,~~
29 ~~accompanied by findings of fact, but the determination shall have no~~
30 ~~force and effect until confirmed by a judge of the court.]~~

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

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

44 § 6. This act shall take effect on the thirtieth day after it shall
45 have become a law, provided that the amendments to subdivision (a) of
46 section 439 of the family court act made by section three of this act
47 shall be subject to the expiration and reversion of such subdivision
48 pursuant to subdivision 19 of section 246 of chapter 81 of the laws of
49 1995 as amended, when upon such date the provisions of section four of
50 this act shall take effect.