STATE OF NEW YORK

9596

IN SENATE

May 16, 2024

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the penal law and the criminal procedure law, in relation to anti-stalking orders

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

Section 1. This act shall be known and may be cited as the "ceasing repeated and extremely egregious predatory (CREEP) behavior act".

§ 2. The civil practice law and rules is amended by adding a new article 63-B to read as follows:

ARTICLE 63-B
ANTI-STALKING ORDERS

Section 6349. Definitions.
6350. Application for an anti-stalking order.
6351. Issuance of a temporary anti-stalking order.
6352. Issuance of a final anti-stalking order.
6353. Service of an anti-stalking order.
6354. Modification or vacation of an anti-stalking order.
6355. Translation and interpretation of an anti-stalking order.
6356. Enforcement.
6357. Filing and enforcement of out-of-state orders.

§ 6349. Definitions. For the purposes of this article:

1. "Anti-stalking order" shall mean an order of protection, either temporary or final, that entitles the petitioner to certain protections prescribed in sections sixty-three hundred fifty-one or sixty-three hundred fifty-two of this article. An anti-stalking order shall be a form of an order of protection and the terms "anti-stalking order" and "order of protection" may be used interchangeably throughout this article.

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

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2. "Connected device" shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address.

3. "Course of conduct" shall mean two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person.

4. "Respondent" shall mean the person against whom an anti-stalking order may be sought under this article.

5. "Stalking" shall mean when the respondent purposely or knowingly engages in a course of conduct targeted at the petitioner which would constitute stalking in the first degree, as described in section 120.60 of the penal law, stalking in the second degree, as described in section 120.55 of the penal law, stalking in the third degree, as described in section 120.50 of the penal law, stalking in the fourth degree, as described in section 120.45 of the penal law, menacing in the first degree, as described in section 120.13 of the penal law, menacing in the second degree, as described in section 120.14 of the penal law, menacing in the third degree, as described in section 120.15 of the penal law, assault in the first degree, as described in section 120.10 of the penal law, assault in the second degree, as described in section 120.05 of the penal law, assault in the third degree, as described in section 120.00 of the penal law, an attempted assault, harassment in the first degree, as described in section 240.25 of the penal law, harassment in the second degree, as described in section 240.26 of the penal law, aggravated harassment in the first degree, as described in section 240.31 of the penal law, aggravated harassment in the second degree, as described in section 240.30 of the penal law, unlawful dissemination or publication of an intimate image, as described in section 245.15 of the penal law, reckless endangerment in the first degree, as described in section 120.25 of the penal law, reckless endangerment in the second degree, as described in section 120.20 of the penal law, identity theft in the first degree, as described in section 190.80 of the penal law, identity theft in the second degree, as described in section 190.79 of the penal law, identity theft in the third degree, as described in section 190.78 of the penal law, coercion in the first degree, as described in section 135.65 of the penal law, coercion in the second degree, as described in section 135.61 of the penal law, and/or coercion in the third degree, as described in section 135.60 of the penal law.

6. "Petitioner" shall mean the person seeking the anti-stalking order under this article.

§ 6350. Application for an anti-stalking order. In accordance with this article, a petitioner who believes they have been subject to stalking by another individual may file a sworn application setting forth the facts and circumstances justifying the issuance of an anti-stalking order. Such application shall be filed in the supreme court in a county of the petitioner's choosing.

§ 6351. Issuance of a temporary anti-stalking order. 1. Upon application of a petitioner pursuant to this article, the court may issue a temporary anti-stalking order, ex parte or otherwise, upon a finding on the record that the petitioner is entitled to issuance of such an order which may result from a judicial finding of fact, judicial acceptance of an admission by the respondent, or judicial finding that the respondent has given knowing, intelligent, and voluntary consent to its issuance. The provisions of this section shall not preclude the court from issuing

a temporary anti-stalking order upon the court's own motion or where a motion for such relief is made to the court, for good cause shown. The duration of any temporary anti-stalking order shall not by itself be a factor in determining the length or issuance of any final anti-stalking order.

2. Any person appearing at supreme court when the court is open requesting a temporary anti-stalking order under this article shall be entitled to file a petition without delay on the same day such person first appears at the court, and a hearing on that request shall be held on the same day or the next day that the court is open following the filing of such petition.

3. A temporary anti-stalking order issued pursuant to this section may require that the respondent:

(a) cease all contact, by electronic means, telephone, mail, or any other means, with the petitioner and/or another person;

(b) remove or delete any texts, images, videos, or other pieces of media relating to the petitioner;

(c) refrain from following, monitoring, or keeping the petitioner under physical or electronic surveillance, or using telephonic, audio-visual, or other electronic means to monitor the actions, location, or communication of the petitioner and/or another person;

(d) refrain from remotely controlling any connected devices affecting the home, vehicle, or property of the petitioner and/or another person; and/or

(e) stay away from the home, school, business, motor vehicle, or place of employment of the petitioner and/or any other person, or any other specified location as designated by the court;

until the date of the hearing on a final anti-stalking order. Such hearing shall be scheduled as soon as practicable after the issuance of a temporary anti-stalking order pursuant to this section. Provided, however, that any requirements in a temporary anti-stalking order imposed on the respondent which involve a person other than the petitioner may only be made if and to the extent that such requirements further the purpose of protecting the petitioner.

4. The court shall notify the petitioner and respondent of the date, time, and location of a hearing on a final anti-stalking order upon the issuance of a temporary anti-stalking order. In the event that the court fails to issue an anti-stalking order that has been sought by the petitioner, the court shall notify such petitioner that such order is not issued, a statement of the grounds for the failure to issue such order, and the date, time, and location of a hearing on a final anti-stalking order, which shall proceed unless the application for such order is voluntarily withdrawn by the petitioner.

§ 6352. Issuance of a final anti-stalking order. 1. In accordance with this article, after the issuance of a temporary anti-stalking order or after the issuance of a statement explaining the grounds for failure to issue such temporary order, as prescribed in subdivision four of section sixty-three hundred fifty-one of this article, the court shall hold a hearing to determine whether to issue a final anti-stalking order. If issued, such final anti-stalking order may require that the respondent:

(a) cease all contact, by electronic means, telephone, mail, or any other means, with the petitioner and/or another person;

(b) remove or delete any texts, images, videos, or other pieces of media relating to the petitioner;

(c) refrain from following, monitoring, or keeping the petitioner under physical or electronic surveillance, or using telephonic, audi-

ovisual, or other electronic means to monitor the actions, location, or communication of the petitioner and/or another person;

(d) refrain from remotely controlling any connected devices affecting the home, vehicle or property of the petitioner and/or another person;

(e) stay away from the home, school, business, motor vehicle, or place of employment of the petitioner and/or any other person, or any other specified location as designated by the court;

(f) pay the reasonable counsel fees and disbursement involved in obtaining or enforcing the anti-stalking order which the petitioner has sought;

(g) provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the anti-stalking order;

(h) provide monetary compensation for other losses suffered as a direct result of the stalking, which may include but not be limited to loss of earnings, out-of-pocket expenses for injuries sustained or property damaged, costs of lock replacement, or costs of obtaining an unlimited phone number;

(i) undergo a mental health evaluation and treatment; and/or

(j) engage or cease engaging in any other behavior which the court determines will meet the objective of protecting the petitioner;

for a specified period of time as declared by the court. Provided, however, that any requirements in a final anti-stalking order imposed on the respondent which involve a person other than the petitioner may only be made if and to the extent that such requirements further the purpose of protecting the petitioner.

§ 6353. Service of an anti-stalking order. 1. The court shall arrange for prompt service of a copy of an anti-stalking order issued under this article, the application therefor, any notice of hearing prepared by the court, along with any associated papers including the petition and any supporting documentation, provided that the court may redact identifying information of the petitioner from such application and papers where the court finds that disclosure of such information would pose an unreasonable risk to the health or safety of the petitioner.

2. The court shall provide copies of such documents to the appropriate law enforcement agency serving the jurisdiction of the respondent's residence with a direction that such documents be promptly served, at no cost to the petitioner, on the respondent; provided, however, that the petitioner may voluntarily arrange for service of copies of such order and associated papers through a third party, such as a licensed process server.

3. Notwithstanding any provisions of section three hundred eight of this chapter or any other law to the contrary, all anti-stalking orders filed and entered along with associated papers may be transmitted via electronic means for expedited service.

4. An anti-stalking order issued pursuant to this article shall bear in a conspicuous manner the term "order of protection" or "temporary order of protection" as the case may be and a copy shall be filed by the clerk of the court with the sheriff's office in the county in which the petitioner resides, or, if the petitioner resides within a city, with the police department of such city. The anti-stalking order shall also contain the following notice: "This order of protection will remain in effect even if the protected party has, or consents to have, contact or communication with the party against whom the order is issued. This order of protection can only be modified or terminated by the court.

The protected party cannot be held to violate this order nor be arrested for violating this order.". The absence of such language shall not affect the validity of such order. Such anti-stalking order shall plainly state the date that such order expires, if temporary, or, if the order is a final anti-stalking order issued pursuant to section sixty-three hundred fifty-two of this article, the length of such order.

5. The court shall notify the division of state police and any other law enforcement agency with jurisdiction of the issuance of an anti-stalking order and provide a copy of such order no later than the next business day after issuing the order to such division and agency. The court also shall promptly notify such division and agency and provide a copy of any order modifying or vacating such anti-stalking order no later than the next business day after issuing the order. Any notice or report submitted pursuant to this subdivision shall be in an electronic format.

§ 6354. Modification or vacation of an anti-stalking order. 1. Upon the request of the petitioner, a court may, on an ex parte basis or otherwise, modify or vacate an anti-stalking order which has been issued under this article, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of the criminal procedure law, is submitted, showing good cause, which may include in the case of a modification a showing that the existing order is insufficient for the purpose of protection of the petitioner. The court shall provide a copy of such modified order and affidavit to the petitioner. Any modified anti-stalking order issued pursuant to this section shall be issued to the respondent, and copies shall be filed as provided in subdivision five of section sixty-three hundred fifty-three and subdivision three of section sixty-three hundred fifty-six of this article for anti-stalking orders issued pursuant to this article.

§ 6355. Translation and interpretation of an anti-stalking order. 1. The office of court administration shall, in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law, ensure that any anti-stalking order is translated in writing into the appropriate language for a party to a proceeding where the court has appointed an interpreter. The office of court administration shall ensure that the standard language of the office of court administration anti-stalking order forms shall be translated in writing into the languages most frequently used in the courts of each judicial department in accordance with paragraph (t) of subdivision two of section two hundred twelve of the judiciary law. A copy of the written translation shall be given to each party in the proceeding, along with the original anti-stalking order issued in English. A copy of this written translation shall also be included as part of the record of the proceeding. The court shall read the essential terms and conditions of the order aloud on the record and direct the court appointed interpreter to interpret the same terms and conditions. Such written translation or interpretation shall not affect the validity or enforceability of the order. In every case a party to a proceeding shall be provided with an English copy of any anti-stalking order issued.

2. The chief administrator of the courts shall promulgate appropriate uniform temporary anti-stalking order forms, applicable to proceedings under this article, to be used throughout the state.

§ 6356. Enforcement. 1. Any violations of an anti-stalking order issued by a court under this article shall be subject to the penalties of sections 120.14, 215.50, 215.51, and 215.52 of the penal law, as prescribed by such sections.

2. Any anti-stalking order issued under this article is a mandate of the court for purposes of the offense of criminal contempt in subdivision three of section 215.50 of the penal law.

3. In any proceeding in which an anti-stalking order has been issued under this article, the clerk of the court shall issue to the petitioner and respondent and respondent's counsel and to any other person affected by the order a copy of the anti-stalking order and ensure that a copy of the anti-stalking order be transmitted, if applicable, to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or department of corrections and community supervision where the individual is under probation or parole supervision. The presentation of a copy of such order to any peace officer acting pursuant to their special duties or police officer shall constitute authority for them to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within their power, to aid in securing the protection such order was intended to afford. The protected party in whose favor the anti-stalking order is issued may not be held to violate an order issued in their favor, nor may such protected party be arrested for violating such order.

§ 6357. Filing and enforcement of out-of-state orders. 1. A valid order of protection or temporary order of protection that is substantially similar to the anti-stalking order described in this article which is issued by court of competent jurisdiction in another state, territorial, or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

2. An order issued by a court of competent jurisdiction in another state, territorial, or tribal jurisdiction shall be deemed valid if:

(a) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction; and

(b) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order.

3. Notwithstanding the provisions of article fifty-four of this chapter, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial, or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court.

§ 3. Section 120.14 of the penal law, as amended by chapter 222 of the laws of 1994, subdivision 3 as amended by chapter 597 of the laws of 1998, is amended to read as follows:

§ 120.14 Menacing in the second degree.

A person is guilty of menacing in the second degree when:

1. [~~He or she~~] They intentionally [~~places~~] place or [~~attempts~~] attempt to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous

instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. [~~He or she~~] They repeatedly [~~follows~~] follow a person or [~~engages~~] engage in a course of conduct or repeatedly [~~commits~~] commit acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or

3. [~~He or she~~] They [~~commits~~] commit the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because [~~he or she was~~] they were present in court when such order was issued, pursuant to article eight of the family court act, section 530.12 of the criminal procedure law, article sixty-three-B of the civil practice law and rules, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

Menacing in the second degree is a class A misdemeanor.

§ 4. Section 215.51 of the penal law, as amended by chapter 222 of the laws of 1994, subdivision (b) as amended by chapter 353 of the laws of 1996, the opening paragraph of subdivision (b) and subdivision (d) as amended by chapter 597 of the laws of 1998, subdivision (c) as amended by chapter 349 of the laws of 2006, is amended to read as follows:

§ 215.51 Criminal contempt in the first degree.

A person is guilty of criminal contempt in the first degree when:

(a) [~~he~~] they contumaciously and unlawfully [~~refuses~~] refuse to be sworn as a witness before a grand jury, or, when after having been sworn as a witness before a grand jury, [~~he refuses~~] they refuse to answer any legal and proper interrogatory; or

(b) in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because [~~he or she was~~] they were present in court when such order was issued, or an order of protection issued by a court of competent jurisdiction in this or another state, territorial or tribal jurisdiction, [~~he or she~~] they:

(i) intentionally [~~places~~] place or [~~attempts~~] attempt to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm or by means of a threat or threats; or

(ii) intentionally [~~places~~] place or [~~attempts~~] attempt to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury, or death by repeatedly following such person or engaging in a course of conduct or repeatedly committing acts over a period of time; or

(iii) intentionally [~~places~~] place or [~~attempts~~] attempt to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury, or death when [~~he or she communicates~~] they communicate or [~~causes~~] cause a communication to be initiated with such person by mechanical or electronic means or otherwise, anonymously or otherwise, by telephone, or by telegraph, mail, or any other form of written communication; or

(iv) with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, repeatedly [~~makes~~] make telephone calls to such person, whether or not a conversation ensues, with no purpose of legitimate communication; or

(v) with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, [~~strikes, shoves, kicks~~] strike, shove or kick or otherwise [~~subjects~~] subject such other person to physical contact or [~~attempts~~] attempt or [~~threatens~~] threaten to do the same; or

(vi) by physical menace, intentionally [~~places~~] place or [~~attempts~~] attempt to place a person for whose protection such order was issued in reasonable fear of death, imminent serious physical injury, or physical injury.

(c) [~~he or she commits~~] they commit the crime of criminal contempt in the second degree as defined in subdivision three of section 215.50 of this article by violating that part of a duly served order of protection, or such order of which the defendant has actual knowledge because [~~he or she was~~] they were present in court when such order was issued, under sections two hundred forty and two hundred fifty-two of the domestic relations law, articles four, five, six and eight of the family court act, [~~and~~] section 530.12 of the criminal procedure law, and article sixty-three-B of the civil practice law and rules, or an order of protection issued by a court of competent jurisdiction in another state, territorial, or tribal jurisdiction, which requires the respondent or defendant to stay away from the person or persons on whose behalf the order was issued, and where the defendant has been previously convicted of the crime of aggravated criminal contempt or criminal contempt in the first or second degree for violating an order of protection as described herein within the preceding five years; or

(d) in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because [~~he or she was~~] they were present in court when such order was issued, or an order issued by a court of competent jurisdiction in this or another state, territorial or tribal jurisdiction, [~~he or she~~] they intentionally or recklessly [~~damages~~] damage the property of a person for whose protection such order was issued in an amount exceeding two hundred fifty dollars.

Criminal contempt in the first degree is a class E felony.

§ 5. Subdivision 4 of section 140.10 of the criminal procedure law, as added by chapter 222 of the laws of 1994, paragraph (a) as amended by chapter 511 of the laws of 1996, paragraph (b) as amended by chapter 107 of the laws of 2004, paragraph (c) and the third undesignated paragraph as amended by chapter 4 of the laws of 1997, the second undesignated paragraph as added by chapter 480 of the laws of 2013, the closing paragraph as amended by chapter 224 of the laws of 1994, is amended to read as follows:

4. Notwithstanding any other provisions of this section, a police officer shall arrest a person, and shall not attempt to reconcile the parties or mediate, where such officer has reasonable cause to believe that:

(a) a felony, other than subdivision three, four, nine or ten of section 155.30 of the penal law, has been committed by such person against a member of the same family or household, as member of the same family or household is defined in subdivision one of section 530.11 of this chapter; or

(b) a duly served order of protection, anti-stalking order, or special order of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of this chapter is in effect, or an order of which the respondent or defendant has actual knowledge because [~~he or she was~~] they were present in court when such order was issued, where the order appears to have been issued by a court

of competent jurisdiction of this or another state, territorial or tribal jurisdiction; and

(i) Such order directs that the respondent or defendant stay away from persons on whose behalf the order of protection or special order of conditions has been issued and the respondent or defendant committed an act or acts in violation of such "stay away" provision of such order; or

(ii) The respondent or defendant commits a family offense as defined in subdivision one of section eight hundred twelve of the family court act or subdivision one of section 530.11 of this chapter in violation of such order of protection or special order of conditions.

The provisions of this subdivision shall apply only to orders of protection issued pursuant to sections two hundred forty and two hundred fifty-two of the domestic relations law, articles four, five, six and eight of the family court act and section 530.12 of this chapter, special orders of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of this chapter insofar as they involve a victim or victims of domestic violence as defined by subdivision one of section four hundred fifty-nine-a of the social services law or a designated witness or witnesses to such domestic violence, **anti-stalking orders issued pursuant to article sixty-three-B of the civil practice law and rules,** and to orders of protection issued by courts of competent jurisdiction in another state, territorial or tribal jurisdiction. In determining whether reasonable cause exists to make an arrest for a violation of an order issued by a court of another state, territorial or tribal jurisdiction, the officer shall consider, among other factors, whether the order, if available, appears to be valid on its face or whether a record of the order exists on the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law or the protection order file maintained by the national crime information center; provided, however, that entry of the order of protection or special order of conditions into the statewide registry or the national protection order file shall not be required for enforcement of the order. When a special order of conditions is in effect and a defendant or respondent has been taken into custody pursuant to this paragraph, nothing contained in this paragraph shall restrict or impair a police officer from acting pursuant to section 9.41 of the mental hygiene law; or

(c) a misdemeanor constituting a family offense, as described in subdivision one of section 530.11 of this chapter and section eight hundred twelve of the family court act, has been committed by such person against such family or household member, unless the victim requests otherwise. The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention. Notwithstanding the foregoing, when an officer has reasonable cause to believe that more than one family or household member has committed such a misdemeanor, the officer is not required to arrest each such person. In such circumstances, the officer shall attempt to identify and arrest the primary physical aggressor after considering: (i) the comparative extent of any injuries inflicted by and between the parties; (ii) whether any such person is threatening or has threatened future harm against another party or another family or household member; (iii) whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and (iv) whether any such person acted defensively to protect [~~himself or herself~~] **themselves** from injury. The offi-

cer shall evaluate each complaint separately to determine who is the primary physical aggressor and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.

The protected party in whose favor the order of protection [~~or~~], temporary order of protection**, or anti-stalking order** is issued may not be held to violate an order issued in [~~his or her~~] **their** favor nor may such protected party be arrested for violating such order.

Nothing contained in this subdivision shall be deemed to (a) require the arrest of any person when the officer reasonably believes the person's conduct is justifiable under article thirty-five of title C of the penal law; or (b) restrict or impair the authority of any municipality, political subdivision, or the division of state police from promulgating rules, regulations and policies requiring the arrest of persons in additional circumstances where domestic violence has allegedly occurred.

No cause of action for damages shall arise in favor of any person by reason of any arrest made by a police officer pursuant to this subdivision, except as provided in sections seventeen and eighteen of the public officers law and sections fifty-k, fifty-l, fifty-m and fifty-n of the general municipal law, as appropriate.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the amendments to subdivision 4 of section 140.10 of the criminal procedure law made by section five of this act shall not affect the expiration of such subdivision and shall expire and be deemed repealed therewith.