

Memorandum in Support

NYSBA Memorandum #19

June 19, 2019

S. 6423
A. 7529-A

By: Senate Montgomery
By: M. of A. Wallace
Senate Committee: Rules
Assembly Committee: Codes
Effective Date: Immediately

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 NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association supports this bill, which would permit Family Courts to award temporary spousal support to victims when issuing temporary orders of protection.

BACKGROUND

An order of protection is one of the most valuable legal tools for reducing incidents of abuse. Studies indicate that the majority of victims who are granted orders of protection feel that they are protected from repeated incidents of physical and psychological abuse, in addition to helping them regain a sense of well-being. However, for many of the victims, economic dependency is a substantial factor preventing them from seeking reprieve from their abuser in court.

ANALYSIS

For thousands of domestic violence victims, the first step towards leaving their abuser is to file a petition for a temporary order of protection in Family Court. Often, once individuals take this step, their abuser retaliates by withdrawing financial support, discontinuing payments of rent or mortgage and utilities, and cutting off access to funds in marital bank accounts. As a result, many victims who seek assistance from the court find themselves facing hunger, lack of heat and electricity, and even homelessness. While these individuals can seek financial redress through spousal support petitions or divorce actions, it usually takes several months before the courts can hear those cases and grant any temporary relief. During the intervening period, victims feel forced to choose between a life of violence and a life of poverty, causing many to return to their abusers and discontinue their orders of protection. Domestic violence victims deserve the right to seek safety from their abusers without suffering financial devastation.

To help eliminate this economic barrier to seeking an order of protection, thirty-six (36) states currently permit domestic violence victims to obtain temporary spousal support at the time a temporary order of protection is issued. This bill, as recommended by the Family Court Advisory and Rules Committee and introduced at the request of the Chief Administrative Judge, would bring this remedy to New York's Family Courts, by directing the parties to appear in family court within seven business days of issuing the temporary order of protection for the court to consider issuing a temporary order of spousal support. The order may be issued notwithstanding the failure of the respondent to appear nor a lack of information regarding the income of the parties. The amount of temporary spousal support will be governed by Article 4 of the Family Court Act, which sets forth the formula for determining spousal support. This change in the law is critically important for victims who are elderly, pregnant, and those without minor children who do not qualify for temporary child support.

In addition, the bill would amend the Domestic Relations Law and Family Court Act to fix the date of the biennial adjustment of the spousal maintenance cap at March 1st, rather than the current adjustment date of January 31st, which is not an administratively feasible date for doing so. This amendment would conform the adjustment date to that which is already in effect for the child support income cap, self-support reserve and poverty level.

CONCLUSION

Domestic violence victims already face numerous obstacles when making the choice to leave their abusers. This bill would empower more domestic violence victims to seek the safety that an order of protection can provide by helping them to obtain an order of temporary spousal support within seven business days of filing a family offense petition.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of this legislation.