

1428

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. SALAND, DeFRANCISCO, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the criminal procedure law, in relation to determining the expiration date of an order of protection

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of subdivision 5 of section 530.12 of
2 the criminal procedure law, as amended by chapter 476 of the laws of
3 2009, is amended to read as follows:
4 Upon SENTENCING ON A conviction [of] FOR any crime or violation
5 between spouses, BETWEEN A parent and child, or between members of the
6 same family or household as defined in subdivision one of section 530.11
7 of this article, the court may in addition to any other disposition,
8 including a conditional discharge or youthful offender adjudication,
9 enter an order of protection. Where a temporary order of protection was
10 issued, the court shall state on the record the reasons for issuing or
11 not issuing an order of protection. The duration of such an order shall
12 be fixed by the court and: (A) in the case of a felony conviction, shall
13 not exceed the greater of: (i) eight years from the date of such
14 [conviction] SENTENCING, or (ii) eight years from the date of the expi-
15 ration of the maximum term of an indeterminate or the term of a determi-
16 nate sentence of imprisonment actually imposed; or (B) in the case of a
17 conviction for a class A misdemeanor, shall not exceed the greater of:
18 (i) five years from the date of such [conviction] SENTENCING, or (ii)
19 five years from the date of the expiration of the maximum term of a
20 definite or intermittent term actually imposed; or (C) in the case of a
21 conviction for any other offense, shall not exceed the greater of: (i)
22 two years from the date of [conviction] SENTENCING, or (ii) two years
23 from the date of the expiration of the maximum term of a definite or
24 intermittent term actually imposed. For purposes of determining the

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

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1 duration of an order of protection entered pursuant to this subdivision,
2 a conviction shall be deemed to include a conviction that has been
3 replaced by a youthful offender adjudication. In addition to any other
4 conditions, such an order may require the defendant:

5 S 2. The opening paragraph of subdivision 5 of section 530.12 of the
6 criminal procedure law, as amended by chapter 384 of the laws of 2001,
7 is amended to read as follows:

8 Upon SENTENCING ON A conviction [of] FOR any crime or violation
9 between spouses, BETWEEN A parent and child, or between members of the
10 same family or household AS DEFINED IN SUBDIVISION ONE OF SECTION 530.11
11 OF THIS ARTICLE, the court may in addition to any other disposition,
12 including a conditional discharge or youthful offender adjudication,
13 enter an order of protection. Where a temporary order of protection was
14 issued, the court shall state on the record the reasons for issuing or
15 not issuing an order of protection. The duration of such an order shall
16 be fixed by the court and, in the case of a felony conviction, shall not
17 exceed the greater of: (i) five years from the date of such [conviction]
18 SENTENCING, or (ii) three years from the date of the expiration of the
19 maximum term of an indeterminate sentence of imprisonment actually
20 imposed; or in the case of a conviction for a class A misdemeanor, shall
21 not exceed three years from the date of such [conviction] SENTENCING; or
22 in the case of a conviction for any other offense, shall not exceed one
23 year from the date of [conviction] SENTENCING. For purposes of deter-
24 mining the duration of an order of protection entered pursuant to this
25 subdivision, a conviction shall be deemed to include a conviction that
26 has been replaced by a youthful offender adjudication. In addition to
27 any other conditions, such an order may require the defendant:

28 S 3. The opening paragraph of subdivision 4 of section 530.13 of the
29 criminal procedure law, as amended by chapter 476 of the laws of 2009,
30 is amended to read as follows:

31 Upon SENTENCING ON A conviction [of] FOR any offense, where the court
32 has not issued an order of protection pursuant to section 530.12 of this
33 article, the court may, in addition to any other disposition, including
34 a conditional discharge or youthful offender adjudication, enter an
35 order of protection. Where a temporary order of protection was issued,
36 the court shall state on the record the reasons for issuing or not issu-
37 ing an order of protection. The duration of such an order shall be fixed
38 by the court and; (A) in the case of a felony conviction, shall not
39 exceed the greater of: (i) eight years from the date of such
40 [conviction] SENTENCING, or (ii) eight years from the date of the expi-
41 ration of the maximum term of an indeterminate or the term of a determi-
42 nate sentence of imprisonment actually imposed; or (B) in the case of a
43 conviction for a class A misdemeanor, shall not exceed the greater of:
44 (i) five years from the date of such [conviction] SENTENCING, or (ii)
45 five years from the date of the expiration of the maximum term of a
46 definite or intermittent term actually imposed; or (C) in the case of a
47 conviction for any other offense, shall not exceed the greater of: (i)
48 two years from the date of [conviction] SENTENCING, or (ii) two years
49 from the date of the expiration of the maximum term of a definite or
50 intermittent term actually imposed. For purposes of determining the
51 duration of an order of protection entered pursuant to this subdivision,
52 a conviction shall be deemed to include a conviction that has been
53 replaced by a youthful offender adjudication. In addition to any other
54 conditions such an order may require that the defendant:

1 S 4. The opening paragraph of subdivision 4 of section 530.13 of the
2 criminal procedure law, as amended by chapter 384 of the laws of 2001,
3 is amended to read as follows:

4 Upon SENTENCING ON A conviction [of] FOR any offense, where the court
5 has not issued an order of protection pursuant to section 530.12 of this
6 article, the court may, in addition to any other disposition, including
7 a conditional discharge or youthful offender adjudication, enter an
8 order of protection. Where a temporary order of protection was issued,
9 the court shall state on the record the reasons for issuing or not issu-
10 ing an order of protection. The duration of such an order shall be fixed
11 by the court and, in the case of a felony conviction, shall not exceed
12 the greater of: (i) five years from the date of such [conviction]
13 SENTENCING, or (ii) three years from the date of the expiration of the
14 maximum term of an indeterminate sentence of imprisonment actually
15 imposed; or in the case of a conviction for a class A misdemeanor, shall
16 not exceed three years from the date of such [conviction] SENTENCING; or
17 in the case of a conviction for any other offense, shall not exceed one
18 year from the date of [conviction] SENTENCING. For purposes of deter-
19 mining the duration of an order of protection entered pursuant to this
20 subdivision, a conviction shall be deemed to include a conviction that
21 has been replaced by a youthful offender adjudication. In addition to
22 any other conditions such an order may require that the defendant:

23 S 5. This act shall take effect on the thirtieth day after it shall
24 have become a law and shall apply to all criminal actions whenever
25 commenced provided sentence therein has not been imposed prior to such
26 effective date; provided, however, that the amendments to the opening
27 paragraph of subdivision 5 of section 530.12 and the opening paragraph
28 of subdivision 4 of section 530.13 of the criminal procedure law made by
29 sections one and three of this act shall be subject to the expiration
30 and reversion of such paragraphs pursuant to chapter 3 of the laws of
31 1995, as amended, when upon such date the provisions of sections two and
32 four of this act shall take effect.