

888

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. KRUEGER -- 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[,] OR FORMER SPOUSES, BETWEEN A parent and child, or  
6     between members of the same family or household as defined in subdivi-  
7     sion one of section 530.11 of this article, the court may in addition to  
8     any other disposition, including a conditional discharge or youthful  
9     offender adjudication, enter an order of protection. Where a temporary  
10    order of protection was issued, the court shall state on the record the  
11    reasons for issuing or not issuing an order of protection. The duration  
12    of such an order shall be fixed by the court and: (A) in the case of a  
13    felony conviction, shall not exceed the greater of: (i) eight years from  
14    the date of such [conviction] SENTENCING, EXCEPT WHERE THE SENTENCE IS  
15    OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL  
16    ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL  
17    LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii)  
18    eight years from the date of the expiration of the maximum term of an  
19    indeterminate or the term of a determinate sentence of imprisonment  
20    actually imposed; or (B) in the case of a conviction for a class A  
21    misdemeanor, shall not exceed the greater of: (i) five years from the  
22    date of such [conviction] SENTENCING, EXCEPT WHERE THE SENTENCE IS OR  
23    INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEA-  
24    NOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF

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

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1 THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE DATE OF SUCH  
2 SENTENCING, or (ii) five years from the date of the expiration of the  
3 maximum term of a definite or intermittent term actually imposed; or (C)  
4 in the case of a conviction for any other offense, shall not exceed the  
5 greater of: (i) two years from the date of [conviction] SENTENCING, or  
6 (ii) two years from the date of the expiration of the maximum term of a  
7 definite or intermittent term actually imposed. FOR PURPOSES OF THIS  
8 SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM  
9 OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISON-  
10 MENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT  
11 THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDI-  
12 VISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION,  
13 WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF  
14 THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT  
15 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF  
16 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF  
17 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration  
18 of an order of protection entered pursuant to this subdivision, a  
19 conviction shall be deemed to include a conviction that has been  
20 replaced by a youthful offender adjudication. In addition to any other  
21 conditions, such an order may require the defendant:

22 S 2. The opening paragraph of subdivision 4 of section 530.13 of the  
23 criminal procedure law, as amended by chapter 476 of the laws of 2009,  
24 is amended to read as follows:

25 Upon SENTENCING ON A conviction [of] FOR any offense, where the court  
26 has not issued an order of protection pursuant to section 530.12 of this  
27 article, the court may, in addition to any other disposition, including  
28 a conditional discharge or youthful offender adjudication, enter an  
29 order of protection. Where a temporary order of protection was issued,  
30 the court shall state on the record the reasons for issuing or not issu-  
31 ing an order of protection. The duration of such an order shall be fixed  
32 by the court and; (A) in the case of a felony conviction, shall not  
33 exceed the greater of: (i) eight years from the date of such  
34 [conviction] SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A  
35 SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS  
36 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH  
37 CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) eight years  
38 from the date of the expiration of the maximum term of an indeterminate  
39 or the term of a determinate sentence of imprisonment actually imposed;  
40 or (B) in the case of a conviction for a class A misdemeanor, shall not  
41 exceed the greater of: (i) five years from the date of such [conviction]  
42 SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF  
43 PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS  
44 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH  
45 CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) five years  
46 from the date of the expiration of the maximum term of a definite or  
47 intermittent term actually imposed; or (C) in the case of a conviction  
48 for any other offense, shall not exceed the greater of: (i) two years  
49 from the date of [conviction] SENTENCING, or (ii) two years from the  
50 date of the expiration of the maximum term of a definite or intermittent  
51 term actually imposed. FOR PURPOSES OF THIS SUBDIVISION ONLY, IN CALCU-  
52 LATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR  
53 THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE  
54 COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST  
55 THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION THREE OF SECTION 70.30  
56 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE

1 SENTENCE, CALCULATE THE EXPIRATION DATE OF THE TERM OF SUCH SENTENCE BY  
2 ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS  
3 IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RELEASE SUPERVISION  
4 IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL  
5 LAW. For purposes of determining the duration of an order of protection  
6 entered pursuant to this subdivision, a conviction shall be deemed to  
7 include a conviction that has been replaced by a youthful offender adju-  
8 dication. In addition to any other conditions such an order may require  
9 that the defendant:

10 S 3. This act shall take effect on the thirtieth day after it shall  
11 have become a law and shall apply to all criminal actions whenever  
12 commenced provided sentence therein has not been imposed prior to such  
13 effective date; provided, further, that the amendments to the opening  
14 paragraph of subdivision 5 of section 530.12 and the opening paragraph  
15 of subdivision 4 of section 530.13 of the criminal procedure law made by  
16 sections one and two of this act shall not affect the expiration of such  
17 paragraphs and shall be deemed to expire therewith.