

STATE OF NEW YORK

6755

2017-2018 Regular Sessions

IN ASSEMBLY

March 17, 2017

Introduced by M. of A. GJONAJ, SKOUFIS, LAVINE, RAIA, JOHNS, M. G. MILLER, FINCH, CROUCH, HOOPER, CRESPO, HEVESI, COOK, MOSLEY, ZEBROWSKI, PICHARDO, ARROYO, JOYNER, PALUMBO -- Multi-Sponsored by -- M. of A. ABBATE, GALEF, GIGLIO, GUNTHER, HIKIND, McKEVITT, PERRY, RA, RIVERA, SIMANOWITZ, WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the family court act, in relation to the allowing for lifetime orders of protection for aggravating circumstances

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 240 of the laws of
3 2015, is amended to read as follows:
4 Upon sentencing on a conviction for any crime or violation between
5 spouses, between a parent and child, or between members of the same
6 family or household as defined in subdivision one of section 530.11 of
7 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 sentencing, except where the sentence is or includes a sentence of
15 probation on a conviction for a felony sexual assault, as provided in
16 subparagraph (iii) of paragraph (a) of subdivision three of section
17 65.00 of the penal law, in which case, ten years from the date of such
18 sentencing, or (ii) eight years from the date of the expiration of the
19 maximum term of an indeterminate or the term of a determinate sentence
20 of imprisonment actually imposed; or (B) in the case of a conviction for
21 a class A misdemeanor, shall not exceed the greater of: (i) five years

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

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1 from the date of such sentencing, except where the sentence is or
2 includes a sentence of probation on a conviction for a misdemeanor sexu-
3 al assault, as provided in subparagraph (ii) of paragraph (b) of subdi-
4 vision three of section 65.00 of the penal law, in which case, six years
5 from the date of such sentencing, or (ii) five years from the date of
6 the expiration of the maximum term of a definite or intermittent term
7 actually imposed; or (C) in the case of a conviction for any other
8 offense, shall not exceed the greater of: (i) two years from the date of
9 sentencing, or (ii) two years from the date of the expiration of the
10 maximum term of a definite or intermittent term actually imposed. For
11 purposes of determining the duration of an order of protection entered
12 pursuant to this subdivision, a conviction shall be deemed to include a
13 conviction that has been replaced by a youthful offender adjudication.
14 If the court finds that aggravating circumstances as defined in subdivi-
15 sion five-a of this section exist, the court may enter an order of
16 protection for a fixed period of time in excess of the relevant terms
17 set forth above, or may enter up to a lifetime order of protection. The
18 court's finding of aggravating circumstances shall be stated upon the
19 order of protection. In addition to any other conditions, such an order
20 may require the defendant:

21 § 2. The opening paragraph of subdivision 5 of section 530.12 of the
22 criminal procedure law, as amended by chapter 9 of the laws of 2011, is
23 amended to read as follows:

24 Upon sentencing on a conviction for any crime or violation between
25 spouses, between a parent and child, or between members of the same
26 family or household as defined in subdivision one of section 530.11 of
27 this article, the court may in addition to any other disposition,
28 including a conditional discharge or youthful offender adjudication,
29 enter an order of protection. Where a temporary order of protection was
30 issued, the court shall state on the record the reasons for issuing or
31 not issuing an order of protection. The duration of such an order shall
32 be fixed by the court and, in the case of a felony conviction, shall not
33 exceed the greater of: (i) five years from the date of such sentencing,
34 or (ii) three years from the date of the expiration of the maximum term
35 of an indeterminate sentence of imprisonment actually imposed; or in the
36 case of a conviction for a class A misdemeanor, shall not exceed three
37 years from the date of such sentencing; or in the case of a conviction
38 for any other offense, shall not exceed one year from the date of
39 sentencing. For purposes of determining the duration of an order of
40 protection entered pursuant to this subdivision, a conviction shall be
41 deemed to include a conviction that has been replaced by a youthful
42 offender adjudication. If the court finds that aggravating circumstances
43 as defined in subdivision five-a of this section exist, the court may
44 enter an order of protection for a fixed period of time in excess of the
45 relevant terms set forth above, or may enter up to a lifetime order of
46 protection. The court's finding of aggravating circumstances shall be
47 stated upon the order of protection. In addition to any other condi-
48 tions, such an order may require the defendant:

49 § 3. Section 530.12 of the criminal procedure law is amended by adding
50 a new subdivision 5-a to read as follows:

51 5-a. For the purposes of subdivision five of this section, "aggravat-
52 ing circumstances" shall mean physical injury or serious physical inju-
53 ry to the complainant caused by the defendant, the use of a dangerous
54 instrument against the complainant by the defendant, a history of
55 repeated violations of prior orders of protection by the defendant,
56 prior convictions for crimes against the complainant by the defendant or

1 the exposure of any family or household member to physical injury by the
2 defendant, and like incidents, behaviors, and occurrences which the
3 court determines, after a hearing, constitute an immediate and ongoing
4 danger to the complainant or any member of the complainant's family or
5 household. After a dispositional hearing is held and the court finds by
6 a fair preponderance of the evidence that aggravating circumstances
7 exist, the court may issue an order of protection for up to the lifetime
8 of the victim, the victim's family, or members of the victim's house-
9 hold.

10 § 4. The closing paragraph of subdivision 6 of section 530.12 of the
11 criminal procedure law, as amended by chapter 480 of the laws of 2013,
12 is amended to read as follows:

13 [~~Such~~] When an order of protection is of fixed duration, the order of
14 protection shall plainly state the date that such order expires, and
15 where the order is of lifetime duration, the order shall clearly so
16 state.

17 § 5. The opening paragraph of subdivision 4 of section 530.13 of the
18 criminal procedure law, as amended by chapter 240 of the laws of 2015,
19 is amended to read as follows:

20 Upon sentencing on a conviction for any offense, where the court has
21 not issued an order of protection pursuant to section 530.12 of this
22 article, the court may, in addition to any other disposition, including
23 a conditional discharge or youthful offender adjudication, enter an
24 order of protection. Where a temporary order of protection was issued,
25 the court shall state on the record the reasons for issuing or not issu-
26 ing an order of protection. The duration of such an order shall be fixed
27 by the court and; (A) in the case of a felony conviction, shall not
28 exceed the greater of: (i) eight years from the date of such sentencing,
29 except where the sentence is or includes a sentence of probation on a
30 conviction for a felony sexual assault, as provided in subparagraph
31 (iii) of paragraph (a) of subdivision three of section 65.00 of the
32 penal law, in which case, ten years from the date of such sentencing, or
33 (ii) eight years from the date of the expiration of the maximum term of
34 an indeterminate or the term of a determinate sentence of imprisonment
35 actually imposed; or (B) in the case of a conviction for a class A
36 misdemeanor, shall not exceed the greater of: (i) five years from the
37 date of such sentencing, except where the sentence is or includes a
38 sentence of probation on a conviction for a misdemeanor sexual assault,
39 as provided in subparagraph (ii) of paragraph (b) of subdivision three
40 of section 65.00 of the penal law, in which case, six years from the
41 date of such sentencing or (ii) five years from the date of the expira-
42 tion of the maximum term of a definite or intermittent term actually
43 imposed; or (C) in the case of a conviction for any other offense, shall
44 not exceed the greater of: (i) two years from the date of sentencing, or
45 (ii) two years from the date of the expiration of the maximum term of a
46 definite or intermittent term actually imposed. For purposes of deter-
47 mining the duration of an order of protection entered pursuant to this
48 subdivision, a conviction shall be deemed to include a conviction that
49 has been replaced by a youthful offender adjudication. If the court
50 finds that aggravating circumstances as defined in subdivision four-a of
51 this section exist, the court may enter an order of protection for a
52 fixed period of time in excess of the relevant terms set forth above, or
53 may enter up to a lifetime order of protection. The court's finding of
54 aggravating circumstances shall be stated upon the order of protection.

55 In addition to any other conditions such an order may require that the
56 defendant:

1 § 6. The opening paragraph of subdivision 4 of section 530.13 of the
2 criminal procedure law, as amended by chapter 9 of the laws of 2011, is
3 amended to read as follows:

4 Upon sentencing on a conviction for any offense, where the court has
5 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 sentencing, or (ii)
13 three years from the date of the expiration of the maximum term of an
14 indeterminate sentence of imprisonment actually imposed; or in the case
15 of a conviction for a class A misdemeanor, shall not exceed three years
16 from the date of such sentencing; or in the case of a conviction for any
17 other offense, shall not exceed one year from the date of sentencing.
18 For purposes of determining the duration of an order of protection
19 entered pursuant to this subdivision, a conviction shall be deemed to
20 include a conviction that has been replaced by a youthful offender adju-
21 dication. If the court finds that aggravating circumstances as defined
22 in subdivision four-a of this section exist, the court may enter an
23 order of protection for a fixed period of time in excess of the relevant
24 terms set forth above, or may enter up to a lifetime order of
25 protection. The court's finding of aggravating circumstances shall be
26 stated upon the order of protection. In addition to any other conditions
27 such an order may require that the defendant:

28 § 7. Section 530.13 of the criminal procedure law is amended by adding
29 a new subdivision 4-a to read as follows:

30 4-a. For the purposes of subdivision four of this section, "aggravat-
31 ing circumstances" shall mean physical injury or serious physical injury
32 to the victim caused by the defendant, the use of a dangerous instrument
33 against the victim by the defendant, a history of repeated violations of
34 prior orders of protection by the defendant, prior convictions for
35 crimes against the victim by the defendant or the exposure of any family
36 or household member to physical injury by the defendant, and like inci-
37 dents, behaviors, and occurrences which the court determines, after a
38 hearing, constitute an immediate and ongoing danger to the victim, or
39 any member of the victim's family or household. After a dispositional
40 hearing is held and the court finds by a fair preponderance of the
41 evidence that aggravating circumstances exist, the court may issue an
42 order of protection for up to the lifetime of the victim, the victim's
43 family, or members of the victim's household.

44 § 8. The opening paragraph of section 842 of the family court act, as
45 amended by chapter 526 of the laws of 2013, is amended to read as
46 follows:

47 An order of protection under section eight hundred forty-one of this
48 part shall set forth reasonable conditions of behavior to be observed
49 for a period not in excess of two years by the petitioner or respondent
50 or [~~for a period not in excess of five years~~] up to a lifetime order of
51 protection upon (i) a finding by the court on the record of the exist-
52 ence of aggravating circumstances as defined in paragraph (vii) of
53 subdivision (a) of section eight hundred twenty-seven of this article or
54 (ii) a finding by the court on the record that the conduct alleged in
55 the petition is in violation of a valid order of protection. Any finding
56 of aggravating circumstances pursuant to this section shall be stated on

1 the record and upon the order of protection. The court may also, upon
2 motion, extend the order of protection for a reasonable period of time
3 upon a showing of good cause or consent of the parties. The fact that
4 abuse has not occurred during the pendency of an order shall not, in
5 itself, constitute sufficient ground for denying or failing to extend
6 the order. The court must articulate a basis for its decision on the
7 record. The duration of any temporary order shall not by itself be a
8 factor in determining the length or issuance of any final order. Any
9 order of protection issued pursuant to this section shall specify if an
10 order of probation is in effect. Any order of protection issued pursuant
11 to this section may require the petitioner or the respondent:

12 § 9. This act shall take effect immediately provided that the amend-
13 ments to the opening paragraph of subdivision 5 of section 530.12 and
14 the opening paragraph of subdivision 4 of section 530.13 of the criminal
15 procedure law made by sections one and five of this act respectively,
16 shall be subject to the expiration and reversion of such paragraphs,
17 when upon such date the provisions of sections two and six of this act
18 shall take effect.