

STATE OF NEW YORK

2385

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. GANTT -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to issuing restraining orders for certain offenders

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

Section 1. The criminal procedure law is amended by adding a new title V to read as follows:

TITLE V

RESTRAINING ORDERS WITH RESPECT TO DEFENDANTS IN CRIMINAL ACTIONS AND PROCEEDINGS

ARTICLE 735

RESTRAINING ORDER FROM LOCATION; DRUG RELATED OFFENSES

Section 735.00 Restraining order - use of a child to commit a controlled substance offense.

735.10 Restraining order - criminal sale of a controlled substance in the fourth degree.

735.15 Restraining order - criminal sale of a controlled substance to a child.

735.20 Restraining order - unlawful manufacture of methamphetamine in the third degree.

735.25 Restraining order - unlawful manufacture of methamphetamine in the second degree.

735.30 Restraining order - unlawful manufacture of methamphetamine in the first degree.

735.35 Restraining order - operating as a major trafficker.

735.40 Restraining order - exceptions, content, distribution, modifications.

735.45 Certification of offense location.

735.50 Discretion to not seek restraining order.

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

LBD00976-01-9

§ 735.00 Restraining order - use of a child to commit a controlled substance offense.

1. When a person is charged with a criminal offense as defined in section 220.28 of the penal law and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall as a condition of release issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

2. When a person is charged with a criminal offense as defined in section 220.28 of the penal law on a summons, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

3. When a person is charged with a criminal offense as defined in section 220.28 of the penal law on a juvenile delinquency complaint and is released from custody at a detention hearing, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

4. When a person is charged with a criminal offense as defined in section 220.28 of the penal law on a juvenile delinquency complaint and is released without being detained, the law enforcement officer or prosecuting attorney shall prepare an application for filing on the next day. The law enforcement officer releasing the juvenile shall serve the juvenile and his or her parent or guardian with written notice that an order shall be issued by the family court on the next court day prohibiting the juvenile from entering any place where the crime occurred including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article. The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subdivision one of section 735.40 of this article.

§ 735.10 Restraining order - criminal sale of a controlled substance in the fourth degree.

1. When a person is charged with a criminal offense as defined in section 220.34 of the penal law and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting district attorney and except as provided in subdivision one of section 735.40 of this article, shall as a condition of release issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

1 2. When a person is charged with a criminal offense as defined in
2 section 220.34 of the penal law on a summons, the court, upon applica-
3 tion of a law enforcement officer or prosecuting attorney and except as
4 provided in subdivision one of section 735.40 of this article, shall, at
5 the time of the defendant's first appearance, issue an order prohibiting
6 the person from entering any place where the crime occurred, including a
7 buffer zone surrounding the place or modifications as provided by subdivi-
8 vision two of section 735.40 of this article.

9 3. When a person is charged with a criminal offense as defined in
10 section 220.34 of the penal law on a juvenile delinquency complaint and
11 is released from custody at a detention hearing, the court, upon appli-
12 cation of a law enforcement officer or prosecuting attorney and except
13 as provided in subdivision one of section 735.40 of this article, shall
14 issue an order prohibiting the person from entering any place where the
15 crime occurred, including a buffer zone surrounding the place or modifi-
16 cations as provided by subdivision two of section 735.40 of this arti-
17 cle.

18 4. When a person is charged with a criminal offense as defined in
19 section 220.34 of the penal law on a juvenile delinquency complaint and
20 is released without being detained, the law enforcement officer or pros-
21 ecuting attorney shall prepare an application for filing on the next
22 day. The law enforcement officer releasing the juvenile shall serve the
23 juvenile and his parent or guardian with written notice that an order
24 shall be issued by the family court on the next court day prohibiting
25 the juvenile from entering any place where the crime occurred including
26 a buffer zone surrounding the place or modifications as provided by
27 subdivision two of section 735.40 of this article. The court shall issue
28 such order on the first court day following the release of the juvenile.
29 If the restraints contained in the court order differ from the
30 restraints contained in the notice, the order shall not be effective
31 until the third court day following the issuance of the order. The juve-
32 nile may apply to the court to stay or modify the order on the grounds
33 set forth in subdivision one of section 735.40 of this article.

34 § 735.15 Restraining order - criminal sale of a controlled substance to
35 a child.

36 1. When a person is charged with a criminal offense as defined in
37 section 220.48 of the penal law and the person is released from custody
38 before trial on bail or personal recognizance, the court, upon applica-
39 tion of a law enforcement officer or prosecuting attorney and except as
40 provided in subdivision one of section 735.40 of this article, shall as
41 a condition of release issue an order prohibiting the person from enter-
42 ing any place where the crime occurred, including a buffer zone
43 surrounding the place or modifications as provided by subdivision two of
44 section 735.40 of this article.

45 2. When a person is charged with a criminal offense as defined in
46 section 220.48 of the penal law on a summons, the court, upon applica-
47 tion of a law enforcement officer or prosecuting attorney and except as
48 provided in subdivision one of section 735.40 of this article, shall, at
49 the time of the defendant's first appearance, issue an order prohibiting
50 the person from entering any place where the crime occurred, including a
51 buffer zone surrounding the place or modifications as provided by subdivi-
52 vision two of section 735.40 of this article.

53 3. When a person is charged with a criminal offense as defined in
54 section 220.48 of the penal law on a juvenile delinquency complaint and
55 is released from custody at a detention hearing, the court, upon appli-
56 cation of a law enforcement officer or prosecuting attorney and except

1 as provided in subdivision one of section 735.40 of this article, shall
2 issue an order prohibiting the person from entering any place where the
3 crime occurred, including a buffer zone surrounding the place or modifi-
4 cations as provided by subdivision two of section 735.40 of this arti-
5 cle.

6 4. When a person is charged with a criminal offense as defined in
7 section 220.48 of the penal law on a juvenile delinquency complaint and
8 is released without being detained, the law enforcement officer or pros-
9 ecuting attorney shall prepare an application for filing on the next
10 day. The law enforcement officer releasing the juvenile shall serve the
11 juvenile and his or her parent or guardian with written notice that an
12 order shall be issued by the family court on the next court day prohib-
13 iting the juvenile from entering any place where the crime occurred
14 including a buffer zone surrounding the place or modifications as
15 provided by subdivision two of section 735.40 of this article. The court
16 shall issue such order on the first court day following the release of
17 the juvenile. If the restraints contained in the court order differ from
18 the restraints contained in the notice, the order shall not be effective
19 until the third court day following the issuance of the order. The juve-
20 nile may apply to the court to stay or modify the order on the grounds
21 set forth in subdivision one of section 735.40 of this article.

22 § 735.20 Restraining order - unlawful manufacture of methamphetamine in
23 the third degree.

24 1. When a person is charged with a criminal offense as defined in
25 section 220.73 of the penal law and the person is released from custody
26 before trial on bail or personal recognizance, the court, upon applica-
27 tion of a law enforcement officer or prosecuting attorney and except as
28 provided in subdivision one of section 735.40 of this article, shall as
29 a condition of release issue an order prohibiting the person from enter-
30 ing any place where the crime occurred, including a buffer zone
31 surrounding the place or modifications as provided by subdivision two of
32 section 735.40 of this article.

33 2. When a person is charged with a criminal offense as defined in
34 section 220.73 of the penal law on a summons, the court, upon applica-
35 tion of a law enforcement officer or prosecuting attorney and except as
36 provided in subdivision one of section 735.40 of this article, shall, at
37 the time of the defendant's first appearance, issue an order prohibiting
38 the person from entering any place where the crime occurred, including a
39 buffer zone surrounding the place or modifications as provided by subdivi-
40 sion two of section 735.40 of this article.

41 3. When a person is charged with a criminal offense as defined in
42 section 220.73 of the penal law on a juvenile delinquency complaint and
43 is released from custody at a detention hearing, the court, upon appli-
44 cation of a law enforcement officer or prosecuting attorney and except
45 as provided in subdivision one of section 735.40 of this article, shall
46 issue an order prohibiting the person from entering any place where the
47 crime occurred, including a buffer zone surrounding the place or modifi-
48 cations as provided by subdivision two of section 735.40 of this arti-
49 cle.

50 4. When a person is charged with a criminal offense as defined in
51 section 220.73 of the penal law on a juvenile delinquency complaint and
52 is released without being detained, the law enforcement officer or pros-
53 ecuting attorney shall prepare an application for filing on the next
54 day. The law enforcement officer releasing the juvenile shall serve the
55 juvenile and his or her parent or guardian with written notice that an
56 order shall be issued by the family court on the next court day prohib-

1 iting the juvenile from entering any place where the crime occurred
2 including a buffer zone surrounding the place or modifications as
3 provided by subdivision two of section 735.40 of this article. The court
4 shall issue such order on the first court day following the release of
5 the juvenile. If the restraints contained in the court order differ from
6 the restraints contained in the notice, the order shall not be effective
7 until the third court day following the issuance of the order. The juve-
8 nile may apply to the court to stay or modify the order on the grounds
9 set forth in subdivision one of section 735.40 of this article.

10 § 735.25 Restraining order - unlawful manufacture of methamphetamine in
11 the second degree.

12 1. When a person is charged with a criminal offense as defined in
13 section 220.74 of the penal law and the person is released from custody
14 before trial on bail or personal recognizance, the court, upon applica-
15 tion of a law enforcement officer or prosecuting attorney and except as
16 provided in subdivision one of section 735.40 of this article, shall as
17 a condition of release issue an order prohibiting the person from enter-
18 ing any place where the crime occurred, including a buffer zone
19 surrounding the place or modifications as provided by subdivision two of
20 section 735.40 of this article.

21 2. When a person is charged with a criminal offense as defined in
22 section 220.74 of the penal law on a summons, the court, upon applica-
23 tion of a law enforcement officer or prosecuting attorney and except as
24 provided in subdivision one of section 735.40 of this article, shall, at
25 the time of the defendant's first appearance, issue an order prohibiting
26 the person from entering any place where the crime occurred, including a
27 buffer zone surrounding the place or modifications as provided by subdivi-
28 sion two of section 735.40 of this article.

29 3. When a person is charged with a criminal offense as defined in
30 section 220.74 of the penal law on a juvenile delinquency complaint and
31 is released from custody at a detention hearing, the court, upon appli-
32 cation of a law enforcement officer or prosecuting attorney and except
33 as provided in subdivision one of section 735.40 of this article, shall
34 issue an order prohibiting the person from entering any place where the
35 crime occurred, including a buffer zone surrounding the place or modifi-
36 cations as provided by subdivision two of section 735.40 of this arti-
37 cle.

38 4. When a person is charged with a criminal offense as defined in
39 section 220.74 of the penal law on a juvenile delinquency complaint and
40 is released without being detained, the law enforcement officer or pros-
41 ecuting attorney shall prepare an application for filing on the next
42 day. The law enforcement officer releasing the juvenile shall serve the
43 juvenile and his or her parent or guardian with written notice that an
44 order shall be issued by the family court on the next court day prohib-
45 iting the juvenile from entering any place where the crime occurred
46 including a buffer zone surrounding the place or modifications as
47 provided by subdivision two of section 735.40 of this article. The court
48 shall issue such order on the first court day following the release of
49 the juvenile. If the restraints contained in the court order differ from
50 the restraints contained in the notice, the order shall not be effective
51 until the third court day following the issuance of the order. The juve-
52 nile may apply to the court to stay or modify the order on the grounds
53 set forth in subdivision one of section 735.40 of this article.

54 § 735.30 Restraining order - unlawful manufacture of methamphetamine in
55 the first degree.

1 1. When a person is charged with a criminal offense as defined in
2 section 220.75 of the penal law and the person is released from custody
3 before trial on bail or personal recognizance, the court, upon applica-
4 tion of a law enforcement officer or prosecuting attorney and except as
5 provided in subdivision one of section 735.40 of this article, shall as
6 a condition of release issue an order prohibiting the person from enter-
7 ing any place where the crime occurred, including a buffer zone
8 surrounding the place or modifications as provided by subdivision two of
9 section 735.40 of this article.

10 2. When a person is charged with a criminal offense as defined in
11 section 220.75 of the penal law on a summons, the court, upon applica-
12 tion of a law enforcement officer or prosecuting attorney and except as
13 provided in subdivision one of section 735.40 of this article, shall, at
14 the time of the defendant's first appearance, issue an order prohibiting
15 the person from entering any place where the crime occurred, including a
16 buffer zone surrounding the place or modifications as provided by subdivi-
17 vision two of section 735.40 of this article.

18 3. When a person is charged with a criminal offense as defined in
19 section 220.75 of the penal law on a juvenile delinquency complaint and
20 is released from custody at a detention hearing, the court, upon appli-
21 cation of a law enforcement officer or prosecuting attorney and except
22 as provided in subdivision one of section 735.40 of this article, shall
23 issue an order prohibiting the person from entering any place where the
24 crime occurred, including a buffer zone surrounding the place or modifi-
25 cations as provided by subdivision two of section 735.40 of this arti-
26 cle.

27 4. When a person is charged with a criminal offense as defined in
28 section 220.75 of the penal law on a juvenile delinquency complaint and
29 is released without being detained, the law enforcement officer or pros-
30 ecuting attorney shall prepare an application for filing on the next
31 day. The law enforcement officer releasing the juvenile shall serve the
32 juvenile and his or her parent or guardian with written notice that an
33 order shall be issued by the family court on the next court day prohib-
34 iting the juvenile from entering any place where the crime occurred
35 including a buffer zone surrounding the place or modifications as
36 provided by subdivision two of section 735.40 of this article. The court
37 shall issue such order on the first court day following the release of
38 the juvenile. If the restraints contained in the court order differ from
39 the restraints contained in the notice, the order shall not be effective
40 until the third court day following the issuance of the order. The juve-
41 nile may apply to the court to stay or modify the order on the grounds
42 set forth in subdivision one of section 735.40 of this article.

43 § 735.35 Restraining order - operating as a major trafficker.

44 1. When a person is charged with a criminal offense as defined in
45 section 220.77 of the penal law and the person is released from custody
46 before trial on bail or personal recognizance, the court, upon applica-
47 tion of a law enforcement officer or prosecuting attorney and except as
48 provided in subdivision one of section 735.40 of this article, shall as
49 a condition of release issue an order prohibiting the person from enter-
50 ing any place where the crime occurred, including a buffer zone
51 surrounding the place or modifications as provided by subdivision two of
52 section 735.40 of this article.

53 2. When a person is charged with a criminal offense as defined in
54 section 220.77 of the penal law on a summons, the court, upon applica-
55 tion of a law enforcement officer or prosecuting attorney and except as
56 provided in subdivision one of section 735.40, shall, at the time of the

1 defendant's first appearance, issue an order prohibiting the person from
2 entering any place where the crime occurred, including a buffer zone
3 surrounding the place or modifications as provided by subdivision two of
4 section 735.40 of this article.

5 3. When a person is charged with a criminal offense as defined in
6 section 220.77 of the penal law on a juvenile delinquency complaint and
7 is released from custody at a detention hearing, the court, upon appli-
8 cation of a law enforcement officer or prosecuting attorney and except
9 as provided in subdivision one of section 735.40, shall issue an order
10 prohibiting the person from entering any place where the crime occurred,
11 including a buffer zone surrounding the place or modifications as
12 provided by subdivision two of section 735.40 of this article.

13 4. When a person is charged with a criminal offense as defined in
14 section 220.77 of the penal law on a juvenile delinquency complaint and
15 is released without being detained, the law enforcement officer or pros-
16 ecuting attorney shall prepare an application for filing on the next
17 day. The law enforcement officer releasing the juvenile shall serve the
18 juvenile and his or her parent or guardian with written notice that an
19 order shall be issued by the family court on the next court day prohib-
20 iting the juvenile from entering any place where the crime occurred
21 including a buffer zone surrounding the place or modifications as
22 provided by subdivision two of section 735.40 of this article. The court
23 shall issue such order on the first court day following the release of
24 the juvenile. If the restraints contained in the court order differ from
25 the restraints contained in the notice, the order shall not be effective
26 until the third court day following the issuance of the order. The juve-
27 nile may apply to the court to stay or modify the order on the grounds
28 set forth in subdivision one of section 735.40 of this article.

29 § 735.40 Restraining order - exceptions, content, distribution, modifi-
30 cations.

31 1. The court may forego issuing a restraining order for which applica-
32 tion has been made only if the defendant establishes by clear and
33 convincing evidence that: (a) the defendant lawfully resides at or has
34 legitimate business on or near the place, or otherwise legitimately
35 needs to enter the place. In such event, the court shall not issue an
36 order pursuant to this article unless the court is clearly convinced
37 that the need to bar the person from the place in order to protect the
38 public safety and the rights, safety and health of the residents and
39 persons working in the place outweighs the person's interest in return-
40 ing to the place. If the balance of the interest of the person and the
41 public so warrants, the court may issue an order imposing conditions
42 upon the person's entry at, upon or near the place; or

43 (b) the issuance of an order would cause undue hardship to innocent
44 persons and would constitute a serious injustice which overrides the
45 need to protect the rights, safety and health of persons residing in or
46 having business in the place.

47 2. A restraining order issued pursuant to this article shall describe
48 the place from which the person has been barred and any conditions upon
49 the person's entry into the place, with sufficient specificity to enable
50 the person to guide his conduct accordingly and to enable a law enforce-
51 ment officer to enforce the order. The order shall also prohibit the
52 person from entering an area of up to five hundred feet surrounding the
53 place, unless the court rules that a different buffer zone would better
54 effectuate the purposes of this article. In the discretion of the court,
55 the order may contain modifications to permit the person to enter the
56 area during specified times for specified purposes such as attending

1 school during regular school hours. When appropriate, the court may
2 append to the order a map depicting the place. The person shall be given
3 a copy of the restraining order and any appended map and shall acknowl-
4 edge in writing the receipt thereof.

5 3. (a) The court shall provide notice of the restraining order to the
6 local law enforcement agency where the arrest occurred and to the county
7 district attorney.

8 (b) Prior to the person's conviction or adjudication of delinquency
9 for a criminal offense, the local law enforcement agency may post a copy
10 of any orders issued pursuant to this article, or an equivalent notice
11 containing the terms of the order, upon one or more of the principal
12 entrances of the place or in any other conspicuous location. Such post-
13 ing shall be for the purpose of informing the public, and the failure to
14 post a copy of the order shall in no way excuse any violation of the
15 order.

16 (c) Prior to the person's conviction or adjudication of delinquency
17 for a criminal offense, any law enforcement agency may publish a copy of
18 any orders issued pursuant to this article, or an equivalent notice
19 containing the terms of the order, in a newspaper circulating in the
20 area of the restraining order. Such publication shall be for the purpose
21 of informing the public, and the failure to publish a copy of the order
22 shall in no way excuse any violation of the order.

23 (d) Prior to the person's conviction or adjudication of delinquency
24 for a criminal offense, any law enforcement agency may distribute copies
25 of any orders issued pursuant to this article, or an equivalent notice
26 containing the terms of the order, to residents or businesses located
27 within the area delineated in the order or, in the case of a school or
28 any government-owned property, to the appropriate administrator, or to
29 any tenant association representing the residents of the affected area.
30 Such publication shall be for the purpose of informing the public, and
31 the failure to publish a copy of the order shall in no way excuse any
32 violation of the order.

33 4. When a person is convicted of or adjudicated delinquent for any
34 criminal offense described in this article, the court, upon application
35 of a law enforcement officer or prosecuting attorney and except as
36 provided in subdivision one of this section, shall, by separate order or
37 within the judgment of conviction, issue an order prohibiting the person
38 from entering any place where the crime occurred, including a buffer
39 zone surrounding the place or modifications as provided by subdivision
40 two of this section. Upon the person's conviction or adjudication of
41 delinquency for a criminal offense described in this article, a law
42 enforcement agency, in addition to posting, publishing and distributing
43 the order or an equivalent notice pursuant to paragraphs (b), (c), and
44 (d) of subdivision three of this section, may also post, publish and
45 distribute a photograph of the person.

46 5. When a juvenile has been adjudicated delinquent for an act which,
47 if committed by an adult, would be a criminal offense, in addition to an
48 order required by subdivision four of this section or any other disposi-
49 tion authorized by law, the court may order the juvenile and any parent,
50 guardian or any family member over whom the court has jurisdiction to
51 take such actions or obey such restraints as may be necessary to facili-
52 tate the rehabilitation of the juvenile or to protect public safety or
53 to safeguard or enforce the rights of residents of the place. The court
54 may commit the juvenile to the care of the office of children and family
55 services until such time as the juvenile reaches the age of eighteen or

1 until the order of removal and restraint expires, whichever first
2 occurs, or to such alternative residential placement as is practicable.

3 6. An order issued pursuant to sections 735.00, 735.10, 735.15,
4 735.20, 735.25, 735.30, and 735.35 of this article shall remain in
5 effect until the case has been adjudicated or dismissed, or for not less
6 than two years, whichever is less. An order issued pursuant to subdivi-
7 sion four of this section shall remain in effect for such period of,
8 time as shall be fixed by the court but not longer than the maximum
9 terms of imprisonment or incarceration allowed by law for the underlying
10 offense or offenses. When the court issues a restraining order pursuant
11 to subdivision four of this section and the person is also sentenced to
12 any form of probationary supervision, the court shall make continuing
13 compliance with the order an express condition of probation. When the
14 person has been sentenced to a term of incarceration, continuing compli-
15 ance with the terms and conditions of the order shall be made an express
16 condition of the person's release from confinement or incarceration on
17 parole. At the time of sentencing or, in the case of a juvenile, at the
18 time of disposition of the juvenile case, the court shall advise the
19 defendant that the restraining order shall include a fixed time period
20 in accordance with this subdivision and shall include that provision in
21 the judgment of conviction, dispositional order, separate order or order
22 vacating an existing restraining order, to the law enforcement agency
23 that made the arrest and to the county district attorney.

24 7. All applications to stay or modify an order issued pursuant to this
25 section shall be made in supreme court. The court shall immediately
26 notify the county district attorney in writing whenever an application
27 is made to stay or modify an order issued pursuant to this section. If
28 the court does not issue a restraining order, the sentence imposed by
29 the court for a criminal offense as defined in this article shall not
30 become final for ten days in order to permit the appeal of the court's
31 findings by the prosecution.

32 8. Nothing in this article shall be construed in any way to limit the
33 authority of the court to take such other actions or to issue such
34 orders as may be necessary to protect the public safety or to safeguard
35 or enforce the rights of others with respect to the place.

36 9. Notwithstanding any other provision of this article, the court may
37 permit the person to return to the place to obtain personal belongings
38 and effects and, by court order, may restrict the time and duration and
39 provide for police supervision of such visit.

40 § 735.45 Certification of offense location.

41 The court shall issue a restraining order pursuant to this article
42 only upon request by a law enforcement officer or prosecuting attorney
43 and submission of a certification describing the location of the
44 offense.

45 § 735.50 Discretion to not seek restraining order.

46 A law enforcement or prosecuting attorney shall have discretion to not
47 seek a restraining order if the defendant is charged with an offense
48 resulting from the stop of a motor vehicle or if the defendant was using
49 public transportation.

50 ARTICLE 740

51 RESTRAINING ORDER FROM LOCATION; CERTAIN CRIMES

52 Section 740.00 Restraining order - criminal possession of a weapon in
53 the third degree.

54 740.10 Restraining order -- exceptions, content, distribution,
55 modifications.

56 740.15 Certification of offense location.

1 740.20 Discretion to not seek restraining order.

2 § 740.00 Restraining order - criminal possession of a weapon in the
3 third degree.

4 1. When a person is charged with a criminal offense as defined in
5 subdivision seven of section 265.02 of the penal law and the person is
6 released from custody before trial on bail or personal recognizance, the
7 court, upon application of a law enforcement officer or prosecuting
8 attorney and except as provided in subdivision one of section 740.10 of
9 this article, shall as a condition of release issue an order prohibiting
10 the person from entering any place where the crime occurred, including a
11 buffer zone surrounding the place or modifications as provided by subdivi-
12 vision two of section 740.10 of this article.

13 2. When a person is charged with a criminal offense as defined in
14 subdivision seven of section 265.02 of the penal law on a summons, the
15 court, upon application of a law enforcement officer or prosecuting
16 attorney and except as provided in subdivision one of section 740.10 of
17 this article, shall, at the time of the defendant's first appearance,
18 issue an order prohibiting the person from entering any place where the
19 crime occurred, including a buffer zone surrounding the place or modifi-
20 cations as provided by subdivision two of section 740.10 of this arti-
21 cle.

22 3. When a person is charged with a criminal offense as defined in
23 subdivision seven of section 265.02 of the penal law on a juvenile
24 delinquency complaint and is released from custody at a detention hear-
25 ing, the court, upon application of a law enforcement officer or prose-
26 cuting attorney and except as provided in subdivision one of section
27 740.10 of this article, shall issue an order prohibiting the person from
28 entering any place where the crime occurred, including a buffer zone
29 surrounding the place or modifications as provided by subdivision two of
30 section 740.10 of this article.

31 4. When a person is charged with a criminal offense as defined in
32 subdivision seven of section 265.02 of the penal law on a juvenile
33 delinquency complaint and is released without being detained, the law
34 enforcement officer or prosecuting attorney shall prepare an application
35 for filing on the next day. The law enforcement officer releasing the
36 juvenile shall serve the juvenile and his or her parent or guardian with
37 written notice that an order shall be issued by the family court on the
38 next court day prohibiting the juvenile from entering any place where
39 the crime occurred including a buffer zone surrounding the place or
40 modifications as provided by subdivision two of section 740.10 of this
41 article. The court shall issue such order on the first court day follow-
42 ing the release of the juvenile. If the restraints contained in the
43 court order differ from the restraints contained in the notice, the
44 order shall not be effective until the third court day following the
45 issuance of the order. The juvenile may apply to the court to stay or
46 modify the order on the grounds set forth in subdivision one of section
47 740.10 of this article.

48 § 740.10 Restraining order -- exceptions, content, distribution, modifi-
49 cations.

50 1. The court may forego issuing a restraining order for which applica-
51 tion has been made only if the defendant establishes by clear and
52 convincing evidence that: (a) the defendant lawfully resides at or has
53 legitimate business on or near the place, or otherwise legitimately
54 needs to enter the place. In such an event, the court shall not issue an
55 order pursuant to this article unless the court is clearly convinced
56 that the need to bar the person from the place in order to protect the

1 public safety and the rights, safety and health of the residents and
2 persons working in the place outweighs the person's interest in return-
3 ing to the place. If the balance of the interest of the person and the
4 public so warrants, the court may issue an order imposing conditions
5 upon the person's entry at, upon or near the place; or

6 (b) the issuance of an order would cause undue hardship to innocent
7 persons and would constitute a serious injustice which overrides the
8 need to protect the rights, safety and health of persons residing in or
9 having business in the place.

10 2. A restraining order issued pursuant to this article shall describe
11 the place from which the person has been barred and any conditions upon
12 the person's entry into the place, with sufficient specificity to enable
13 the person to guide his conduct accordingly and to enable a law enforce-
14 ment officer to enforce the order. The order shall also prohibit the
15 person from entering an area of up to five hundred feet surrounding the
16 place, unless the court rules that a different buffer zone would better
17 effectuate the purposes of this act. In the discretion of the court, the
18 order may contain modifications to permit the person to enter the area
19 during specified times for specified purposes such as attending school
20 during regular school hours. When appropriate, the court may append to
21 the order a map depicting the place. The person shall be given a copy of
22 the restraining order and any appended map and shall acknowledge in
23 writing the receipt thereof.

24 3. (a) The court shall provide notice of the restraining order to the
25 local law enforcement agency where the arrest occurred and to the county
26 district attorney.

27 (b) Prior to the person's conviction or adjudication of delinquency
28 for a criminal offense, the local law enforcement agency may post a copy
29 of any orders issued pursuant to this article, or an equivalent notice
30 containing the terms of the order, upon one or more of the principal
31 entrances of the place or in any other conspicuous location. Such post-
32 ing shall be for the purpose of informing the public, and the failure to
33 post a copy of the order shall in no way excuse any violation of the
34 order.

35 (c) Prior to the person's conviction or adjudication of delinquency
36 for a criminal offense, any law enforcement agency may publish a copy of
37 any orders issued pursuant to this article, or an equivalent notice
38 containing the terms of the order, in a newspaper circulating in the
39 area of the restraining order. Such publication shall be for the purpose
40 of informing the public, and the failure to publish a copy of the order
41 shall in no way excuse any violation of the order.

42 (d) Prior to the person's conviction or adjudication of delinquency
43 for a criminal offense, any law enforcement agency may distribute copies
44 of any orders issued pursuant to this article, or an equivalent notice
45 containing the terms of the order, to residents or businesses located
46 within the area delineated in the order or, in the case of a school or
47 any government-owned property, to the appropriate administrator, or to
48 any tenant association representing the residents of the affected area.
49 Such publication shall be for the purpose of informing the public, and
50 the failure to publish a copy of the order shall in no way excuse any
51 violation of the order.

52 4. When a person is convicted of or adjudicated delinquent for any
53 criminal offense described in this article, the court, upon application
54 of a law enforcement officer or prosecuting attorney and except as
55 provided in subdivision one of this section, shall, by separate order or
56 within the judgment of conviction, issue an order prohibiting the person

1 from entering any place where the crime occurred, including a buffer
2 zone surrounding the place or modifications as provided by subdivision
3 two of this section. Upon the person's conviction or adjudication of
4 delinquency for a criminal offense described in this article, a law
5 enforcement agency, in addition to posting, publishing and distributing
6 the order or an equivalent notice pursuant to paragraphs (b), (c), and
7 (d) of subdivision three of this section, may also post, publish and
8 distribute a photograph of the person.

9 5. When a juvenile has been adjudicated delinquent for an act which,
10 if committed by an adult, would be a criminal offense, in addition to an
11 order required by subdivision four of this section or any other disposi-
12 tion authorized by law, the court may order the juvenile and any parent,
13 guardian or any family member over whom the court has jurisdiction to
14 take such actions or obey such restraints as may be necessary to facili-
15 tate the rehabilitation of the juvenile or to protect public safety or
16 to safeguard or enforce the rights of residents of the place. The court
17 may commit the juvenile to the care of the office of children and family
18 services until such time as the juvenile reaches the age of eighteen or
19 until the order of removal and restraint expires, whichever first
20 occurs, or to such alternative residential placement as is practicable.

21 6. An order issued pursuant to section 740.00 of this article shall
22 remain in effect until the case has been adjudicated or dismissed, or
23 for not less than two years, whichever is less. An order issued pursuant
24 to subdivision four of this section shall remain in effect for such
25 period of time as shall be fixed by the court but not longer than the
26 maximum terms of imprisonment or incarceration allowed by law for the
27 underlying offense or offenses. When the court issues a restraining
28 order pursuant to subdivision four of this section and the person is
29 also sentenced to any form of probationary supervision, the court shall
30 make continuing compliance with the order an express condition of
31 probation. When the person has been sentenced to a term of incarceration,
32 continuing compliance with the terms and conditions of the order
33 shall be made an express condition of the person's release from confine-
34 ment or incarceration on parole. At the time of sentencing or, in the
35 case of a juvenile, at the time of disposition of the juvenile case, the
36 court shall advise the defendant that the restraining order shall
37 include a fixed time period in accordance with this subdivision and
38 shall include that provision in the judgment of conviction, disposi-
39 tional order, separate order or order vacating an existing restraining
40 order, to the law enforcement agency that made the arrest and to the
41 county district attorney.

42 7. All applications to stay or modify an order issued pursuant to this
43 section shall be made in supreme court. The court shall immediately
44 notify the county district attorney in writing whenever an application
45 is made to stay or modify an order issued pursuant to this section. If
46 the court does not issue a restraining order, the sentence imposed by
47 the court for a criminal offense as defined in this article shall not
48 become final for ten days in order to permit the appeal of the court's
49 findings by the prosecution.

50 8. Nothing in this article shall be construed in any way to limit the
51 authority of the court to take such other actions or to issue such
52 orders as may be necessary to protect the public safety or to safeguard
53 or enforce the rights of others with respect to the place.

54 9. Notwithstanding any other provision of this article, the court may
55 permit the person to return to the place to obtain personal belongings

1 and effects and, by court order, may restrict the time and duration and
2 provide for police supervision of such visit.

3 § 740.15 Certification of offense location.

4 The court shall issue a restraining order pursuant to this article
5 only upon request by a law enforcement officer or prosecuting district
6 attorney and submission of a certification describing the location of
7 the offense.

8 § 740.20 Discretion to not seek restraining order.

9 A law enforcement or prosecuting district attorney shall have
10 discretion to not seek a restraining order if the defendant is charged
11 with an offense resulting from the stop of a motor vehicle or if the
12 defendant was using public transportation.

13 § 2. This act shall take effect on the ninetieth day after it shall
14 have become a law.