

S T A T E O F N E W Y O R K

776--A

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. PAULIN, WEINSTEIN, JOHN, BENJAMIN, CANESTRARI, COOK, CYMBROWITZ, DINOWITZ, EDDINGTON, ESPAILLAT, GALEF, JAFFEE, PHEFFER, ROBINSON, SCHIMMINGER, SWEENEY, CHRISTENSEN -- Multi-Sponsored by -- M. of A. GREENE, MAGEE, MARKEY, REILLY -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 215 of the laws of
3 2006, 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, the court may in addi-
7 tion to any other disposition, including a conditional discharge or
8 youthful offender adjudication, enter an order of protection. Where a
9 temporary order of protection was issued, the court shall state on the
10 record the reasons for issuing or not issuing an order of protection.
11 The duration of such an order shall be fixed by the court and, in the
12 case of a felony conviction, shall not exceed the greater of: (i) eight
13 years from the date of such [conviction] SENTENCING, EXCEPT WHERE THE
14 SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A
15 FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00
16 OF THE PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH
17 SENTENCING, or (ii) eight years from the date of the expiration of the
18 maximum term of an indeterminate or the term of a determinate sentence
19 of imprisonment actually imposed; or in the case of a conviction for a
20 class A misdemeanor, shall not exceed five years from the date of such

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

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1 [conviction;] SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
2 SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL
3 ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL
4 LAW, IN WHICH CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, or in
5 the case of a conviction for any other offense, shall not exceed two
6 years from the date of [conviction] SENTENCING. FOR PURPOSES OF THIS
7 SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM
8 OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISON-
9 MENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT
10 THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDI-
11 VISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION,
12 WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF
13 THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT
14 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF
15 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF
16 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration
17 of an order of protection entered pursuant to this subdivision, a
18 conviction shall be deemed to include a conviction that has been
19 replaced by a youthful offender adjudication. In addition to any other
20 conditions, such an order may require the defendant:

21 S 2. The opening paragraph of subdivision 4 of section 530.13 of the
22 criminal procedure law, as amended by chapter 215 of the laws of 2006,
23 is amended to read as follows:

24 Upon SENTENCING ON A conviction [of] FOR any offense, where the court
25 has not issued an order of protection pursuant to section 530.12 of this
26 article, the court may, in addition to any other disposition, including
27 a conditional discharge or youthful offender adjudication, enter an
28 order of protection. Where a temporary order of protection was issued,
29 the court shall state on the record the reasons for issuing or not issu-
30 ing an order of protection. The duration of such an order shall be fixed
31 by the court and, in the case of a felony conviction, shall not exceed
32 the greater of: (i) eight years from the date of such [conviction]
33 SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
34 PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN
35 SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN
36 YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) eight years from the
37 date of the expiration of the maximum term of an indeterminate or the
38 term of a determinate sentence of imprisonment actually imposed; or in
39 the case of a conviction for a class A misdemeanor, shall not exceed
40 five years from the date of such [conviction;] SENTENCING, EXCEPT WHERE
41 THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR
42 A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF
43 SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE DATE
44 OF SUCH SENTENCING, or in the case of a conviction for any other
45 offense, shall not exceed two years from the date of [conviction]
46 SENTENCING. FOR PURPOSES OF THIS SUBDIVISION ONLY, IN CALCULATING THE
47 EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR THE TERM OF A
48 DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE COURT SHALL
49 DISREGARD ANY JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST THE DEFEND-
50 ANT'S SENTENCE PURSUANT TO SUBDIVISION THREE OF SECTION 70.30 OF THE
51 PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE
52 SENTENCE, CALCULATE THE EXPIRATION DATE OF THE TERM OF SUCH SENTENCE BY
53 ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS
54 IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RELEASE SUPERVISION
55 IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL
56 LAW. For purposes of determining the duration of an order of protection

1 entered pursuant to this subdivision, a conviction shall be deemed to
2 include a conviction that has been replaced by a youthful offender adju-
3 dication. In addition to any other conditions such an order may require
4 that the defendant:
5 S 3. This act shall take effect on the thirtieth day after it shall
6 have become a law and shall apply to all criminal actions whenever
7 commenced provided sentence therein has not been imposed prior to such
8 effective date; provided, further, that the amendments to the opening
9 paragraph of subdivision 5 of section 530.12 and the opening paragraph
10 of subdivision 4 of section 530.13 of the criminal procedure law made by
11 sections one and two of this act shall not affect the expiration of such
12 paragraphs and shall be deemed to expire therewith.