

4591

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and
when printed to be committed to the Committee on Codes

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 addition to any other disposition, including a conditional discharge or
7 youthful offender adjudication, enter an order of protection. Where a
8 temporary order of protection was issued, the court shall state on the
9 record the reasons for issuing or not issuing an order of protection.
10 The duration of such an order shall be fixed by the court and, in the
11 case of a felony conviction, shall not exceed the greater of: (i) eight
12 years from the date of such [conviction] SENTENCING, EXCEPT WHERE THE
13 SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A
14 FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00
15 OF THE PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH
16 SENTENCING, or (ii) eight years from the date of the expiration of the
17 maximum term of an indeterminate or the term of a determinate sentence
18 of imprisonment actually imposed; or in the case of a conviction for a
19 class A misdemeanor, shall not exceed five years from the date of such
20 [conviction;] SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
21 SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL
22 ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL
23 LAW, IN WHICH CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, or in
24 the case of a conviction for any other offense, shall not exceed two
25

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

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1 years from the date of [conviction] SENTENCING. FOR PURPOSES OF THIS
2 SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM
3 OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISON-
4 MENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT
5 THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDI-
6 VISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION,
7 WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF
8 THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT
9 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF
10 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF
11 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration
12 of an order of protection entered pursuant to this subdivision, a
13 conviction shall be deemed to include a conviction that has been
14 replaced by a youthful offender adjudication. In addition to any other
15 conditions, such an order may require the defendant:

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

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

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