

4839

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. WRIGHT -- 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 duration of orders of protection

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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 conviction of any crime or violation between spouses, parent and
5 child, or between members of the same family or household as defined in
6 subdivision one of section 530.11 of this article, the court may in
7 addition 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: (A) in
12 the case of a felony conviction, shall not exceed the greater of: (i)
13 eight years from the date of such conviction, or (ii) eight years from
14 the date of the expiration of the maximum term of an indeterminate or
15 the term of a determinate sentence of imprisonment actually imposed; or
16 (B) in the case of a conviction for a class A misdemeanor, shall not
17 exceed the greater of: (i) five years from the date of such conviction,
18 or (ii) five years from the date of the expiration of the maximum term
19 of a definite or intermittent term actually imposed; or (C) in the case
20 of a conviction for any other offense, shall not exceed the greater of:
21 (i) two years from the date of conviction, or (ii) two years from the
22 date of the expiration of the maximum term of a definite or intermittent
23 term actually imposed. For purposes of determining the duration of an
24 order of protection entered pursuant to this subdivision, a conviction
25 shall be deemed to include a conviction that has been replaced by a

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

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youthful offender adjudication. IF THE COURT FINDS THAT AGGRAVATING CIRCUMSTANCES AS DEFINED IN SUBDIVISION FIVE-A OF THIS SECTION EXIST, THE COURT MAY ENTER AN ORDER OF PROTECTION FOR A FIXED PERIOD OF TIME IN EXCESS OF THE RELEVANT TERMS SET FORTH ABOVE, OR MAY ENTER A PERMANENT ORDER OF PROTECTION. THE COURT'S FINDING OF AGGRAVATING CIRCUMSTANCES SHALL BE STATED UPON THE ORDER OF PROTECTION. In addition to any other conditions, such an order may require the defendant:

S 2. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by section 2 of chapter 384 of the laws of 2001, is amended to read as follows:

Upon conviction of any crime or violation between spouses, parent and child, or between members of the same family or household, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such conviction, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such conviction; or in the case of a conviction for any other offense, shall not exceed one year from the date of conviction. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. IF THE COURT FINDS THAT AGGRAVATING CIRCUMSTANCES AS DEFINED IN SUBDIVISION FIVE-A OF THIS SECTION EXIST, THE COURT MAY ENTER AN ORDER OF PROTECTION FOR A FIXED PERIOD OF TIME IN EXCESS OF THE RELEVANT TERMS SET FORTH ABOVE, OR MAY ENTER A PERMANENT ORDER OF PROTECTION. THE COURT'S FINDING OF AGGRAVATING CIRCUMSTANCES SHALL BE STATED UPON THE ORDER OF PROTECTION. In addition to any other conditions, such an order may require the defendant:

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

5-A. FOR THE PURPOSES OF SUBDIVISION FIVE OF THIS SECTION, "AGGRAVATING CIRCUMSTANCES" SHALL MEAN PHYSICAL INJURY OR SERIOUS PHYSICAL INJURY TO THE COMPLAINANT CAUSED BY THE DEFENDANT, THE USE OF A DANGEROUS INSTRUMENT AGAINST THE COMPLAINANT BY THE DEFENDANT, A HISTORY OF REPEATED VIOLATIONS OF PRIOR ORDERS OF PROTECTION BY THE DEFENDANT, PRIOR CONVICTIONS FOR CRIMES AGAINST THE COMPLAINANT BY THE DEFENDANT OR THE EXPOSURE OF ANY FAMILY OR HOUSEHOLD MEMBER TO PHYSICAL INJURY BY THE DEFENDANT, AND LIKE INCIDENTS, BEHAVIORS, AND OCCURRENCES WHICH TO THE COURT CONSTITUTE AN IMMEDIATE AND ONGOING DANGER TO THE COMPLAINANT OR ANY MEMBER OF THE COMPLAINANT'S FAMILY OR HOUSEHOLD.

S 4. The closing paragraph of subdivision 6 of section 530.12 of the criminal procedure law, as added by chapter 222 of the laws of 1994, is amended to read as follows:

[Such] WHEN AN ORDER OF PROTECTION IS OF FIXED DURATION, THE order of protection shall plainly state the date that such order expires, AND WHERE THE ORDER IS OF PERMANENT DURATION, THE ORDER SHALL CLEARLY SO STATE.

S 5. Subdivision 15 of section 530.12 of the criminal procedure law, as amended by chapter 186 of the laws of 1997, is amended to read as follows:

1 15. Any motion to vacate or modify an order of protection, INCLUDING A
2 PERMANENT ORDER OF PROTECTION, or A temporary order of protection shall
3 be MADE on notice to the non-moving party, except as provided in subdi-
4 vision three-b of this section.

5 S 6. The opening paragraph of subdivision 4 of section 530.13 of the
6 criminal procedure law, as amended by chapter 476 of the laws of 2009,
7 is amended to read as follows:

8 Upon conviction of any offense, where the court has not issued an
9 order of protection pursuant to section 530.12 of this article, the
10 court may, in addition to any other disposition, including a conditional
11 discharge or youthful offender adjudication, enter an order of
12 protection. Where a temporary order of protection was issued, the court
13 shall state on the record the reasons for issuing or not issuing an
14 order of protection. The duration of such an order shall be fixed by the
15 court and; (A) in the case of a felony conviction, shall not exceed the
16 greater of: (i) eight years from the date of such conviction, or (ii)
17 eight years from the date of the expiration of the maximum term of an
18 indeterminate or the term of a determinate sentence of imprisonment
19 actually imposed; or (B) in the case of a conviction for a class A
20 misdemeanor, shall not exceed the greater of: (i) five years from the
21 date of such conviction, or (ii) five years from the date of the expira-
22 tion of the maximum term of a definite or intermittent term actually
23 imposed; or (C) in the case of a conviction for any other offense, shall
24 not exceed the greater of: (i) two years from the date of conviction, or
25 (ii) two years from the date of the expiration of the maximum term of a
26 definite or intermittent term actually imposed. For purposes of deter-
27 mining the duration of an order of protection entered pursuant to this
28 subdivision, a conviction shall be deemed to include a conviction that
29 has been replaced by a youthful offender adjudication. IF THE COURT
30 FINDS THAT AGGRAVATING CIRCUMSTANCES AS DEFINED IN SUBDIVISION FOUR-A OF
31 THIS SECTION EXIST, THE COURT MAY ENTER AN ORDER OF PROTECTION FOR A
32 FIXED PERIOD OF TIME IN EXCESS OF THE RELEVANT TERMS SET FORTH ABOVE, OR
33 MAY ENTER A PERMANENT ORDER OF PROTECTION. THE COURT'S FINDING OF AGGRA-
34 VATING CIRCUMSTANCES SHALL BE STATED UPON THE ORDER OF PROTECTION. In
35 addition to any other conditions such an order may require that the
36 defendant:

37 S 7. The opening paragraph of subdivision 4 of section 530.13 of the
38 criminal procedure law, as amended by section 4 of chapter 384 of the
39 laws of 2001, is amended to read as follows:

40 Upon conviction of any offense, where the court has not issued an
41 order of protection pursuant to section 530.12 of this article, the
42 court may, in addition to any other disposition, including a conditional
43 discharge or youthful offender adjudication, enter an order of
44 protection. Where a temporary order of protection was issued, the court
45 shall state on the record the reasons for issuing or not issuing an
46 order of protection. The duration of such an order shall be fixed by
47 the court and, in the case of a felony conviction, shall not exceed the
48 greater of: (i) five years from the date of such conviction, or (ii)
49 three years from the date of the expiration of the maximum term of an
50 indeterminate sentence of imprisonment actually imposed; or in the case
51 of a conviction for a class A misdemeanor, shall not exceed three years
52 from the date of such conviction; or in the case of a conviction for any
53 other offense, shall not exceed one year from the date of conviction.
54 For purposes of determining the duration of an order of protection
55 entered pursuant to this subdivision, a conviction shall be deemed to
56 include a conviction that has been replaced by a youthful offender adju-

1 dication. IF THE COURT FINDS THAT AGGRAVATING CIRCUMSTANCES AS DEFINED
2 IN SUBDIVISION FOUR-A OF THIS SECTION EXIST, THE COURT MAY ENTER AN
3 ORDER OF PROTECTION FOR A FIXED PERIOD OF TIME IN EXCESS OF THE RELEVANT
4 TERMS SET FORTH ABOVE, OR MAY ENTER A PERMANENT ORDER OF PROTECTION. THE
5 COURT'S FINDING OF AGGRAVATING CIRCUMSTANCES SHALL BE STATED UPON THE
6 ORDER OF PROTECTION. In addition to any other conditions such an order
7 may require that the defendant:

8 S 8. Section 530.13 of the criminal procedure law is amended by adding
9 two new subdivisions 4-a and 10 to read as follows:

10 4-A. FOR THE PURPOSES OF SUBDIVISION FOUR OF THIS SECTION, "AGGRAVAT-
11 ING CIRCUMSTANCES" SHALL MEAN PHYSICAL INJURY OR SERIOUS PHYSICAL INJURY
12 TO THE VICTIM CAUSED BY THE DEFENDANT, THE USE OF A DANGEROUS INSTRUMENT
13 AGAINST THE VICTIM BY THE DEFENDANT, A HISTORY OF REPEATED VIOLATIONS OF
14 PRIOR ORDERS OF PROTECTION BY THE DEFENDANT, PRIOR CONVICTIONS FOR
15 CRIMES AGAINST THE VICTIM BY THE DEFENDANT OR THE EXPOSURE OF ANY FAMILY
16 OR HOUSEHOLD MEMBER TO PHYSICAL INJURY BY THE DEFENDANT, AND LIKE INCI-
17 DENTS, BEHAVIORS, AND OCCURRENCES WHICH TO THE COURT CONSTITUTE AN IMME-
18 DIATE AND ONGOING DANGER TO THE VICTIM, OR ANY MEMBER OF THE VICTIM'S
19 FAMILY OR HOUSEHOLD.

20 10. ANY MOTION TO VACATE OR MODIFY AN ORDER OF PROTECTION, INCLUDING A
21 PERMANENT ORDER OF PROTECTION, OR A TEMPORARY ORDER OF PROTECTION SHALL
22 BE MADE ON NOTICE TO THE NON-MOVING PARTY.

23 S 9. Section 842 of the family court act, as amended by chapter 222 of
24 the laws of 1994, the opening paragraph as separately amended by chap-
25 ters 325 and 341 of the laws of 2010, subdivisions (a), (b), (c), (d)
26 and (e) as amended by chapter 483 of the laws of 1995, subdivision (i)
27 as added by chapter 253 of the laws of 2006, subdivision (j) as added by
28 chapter 483 of the laws of 1995 and as relettered by chapter 253 of the
29 laws of 2006, the second undesignated paragraph as amended by chapter
30 325 of the laws of 2010, the third undesignated paragraph as amended by
31 chapter 224 of the laws of 1994, the sixth undesignated paragraph as
32 added by section 8 of part D of chapter 56 of the laws of 2008, the
33 seventh undesignated paragraph as amended by chapter 326 of the laws of
34 2008 and the closing paragraph as added by chapter 73 of the laws of
35 2007, is amended to read as follows:

36 S 842. Order of protection. An order of protection under section
37 eight hundred forty-one of this part shall set forth reasonable condi-
38 tions of behavior to be observed for a period not in excess of two years
39 by the petitioner or respondent or for a period not in excess of five
40 years upon (i) a finding by the court on the record of the existence of
41 aggravating circumstances as defined in paragraph (vii) of subdivision
42 (a) of section eight hundred twenty-seven of this article, THE COURT MAY
43 ISSUE AN ORDER OF PROTECTION FOR A FIXED PERIOD IN EXCESS OF ONE YEAR OR
44 A PERMANENT ORDER OF PROTECTION; or (ii) a finding by the court on the
45 record that the conduct alleged in the petition is in violation of a
46 valid order of protection. Any finding of aggravating circumstances
47 pursuant to this section shall be stated on the record and upon the
48 order of protection. The court may also, upon motion, extend the order
49 of protection for a reasonable period of time upon a showing of good
50 cause or consent of the parties. The fact that abuse has not occurred
51 during the pendency of an order shall not, in itself, constitute suffi-
52 cient ground for denying or failing to extend the order. The court must
53 articulate a basis for its decision on the record. The duration of any
54 temporary order shall not by itself be a factor in determining the
55 length or issuance of any final order. Any order of protection issued
56 pursuant to this section shall specify if an order of probation is in

1 effect. Any order of protection issued pursuant to this section may
2 require the petitioner or the respondent:

3 (a) to stay away from the home, school, business or place of employ-
4 ment of any other party, the other spouse, the other parent, or the
5 child, and to stay away from any other specific location designated by
6 the court, provided that the court shall make a determination, and shall
7 state such determination in a written decision or on the record, whether
8 to impose a condition pursuant to this subdivision, provided further,
9 however, that failure to make such a determination shall not affect the
10 validity of such order of protection. In making such determination, the
11 court shall consider, but shall not be limited to consideration of,
12 whether the order of protection is likely to achieve its purpose in the
13 absence of such a condition, conduct subject to prior orders of
14 protection, prior incidents of abuse, extent of past or present injury,
15 threats, drug or alcohol abuse, and access to weapons;

16 (b) to permit a parent, or a person entitled to visitation by a court
17 order or a separation agreement, to visit the child at stated periods;

18 (c) to refrain from committing a family offense, as defined in subdi-
19 vision one of section eight hundred twelve of this act, or any criminal
20 offense against the child or against the other parent or against any
21 person to whom custody of the child is awarded, or from harassing,
22 intimidating or threatening such persons;

23 (d) to permit a designated party to enter the residence during a spec-
24 ified period of time in order to remove personal belongings not in issue
25 in this proceeding or in any other proceeding or action under this act
26 or the domestic relations law;

27 (e) to refrain from acts of commission or omission that create an
28 unreasonable risk to the health, safety or welfare of a child;

29 (f) to pay the reasonable counsel fees and disbursements involved in
30 obtaining or enforcing the order of the person who is protected by such
31 order if such order is issued or enforced;

32 (g) to require the respondent to participate in a batterer's education
33 program designed to help end violent behavior, which may include refer-
34 ral to drug and alcohol counselling, and to pay the costs thereof if the
35 person has the means to do so, provided however that nothing contained
36 herein shall be deemed to require payment of the costs of any such
37 program by the petitioner, the state or any political subdivision there-
38 of; [and]

39 (h) to provide, either directly or by means of medical and health
40 insurance, for expenses incurred for medical care and treatment arising
41 from the incident or incidents forming the basis for the issuance of the
42 order[.]; AND

43 (i) 1. to refrain from intentionally injuring or killing, without
44 justification, any companion animal the respondent knows to be owned,
45 possessed, leased, kept or held by the petitioner or a minor child
46 residing in the household.

47 2. "Companion animal", as used in this section, shall have the same
48 meaning as in subdivision five of section three hundred fifty of the
49 agriculture and markets law.

50 (j) to observe such other conditions as are necessary to further the
51 purposes of protection.

52 The court may also award custody of the child, during the term of the
53 order of protection to either parent, or to an appropriate relative
54 within the second degree. Nothing in this section gives the court power
55 to place or board out any child or to commit a child to an institution
56 or agency.

1 Notwithstanding the provisions of section eight hundred seventeen of
2 this article, where a temporary order of child support has not already
3 been issued, the court may in addition to the issuance of an order of
4 protection pursuant to this section, issue an order for temporary child
5 support in an amount sufficient to meet the needs of the child, without
6 a showing of immediate or emergency need. The court shall make an order
7 for temporary child support notwithstanding that information with
8 respect to income and assets of the respondent may be unavailable. Where
9 such information is available, the court may make an award for temporary
10 child support pursuant to the formula set forth in subdivision one of
11 section four hundred thirteen of this act. Temporary orders of support
12 issued pursuant to this article shall be deemed to have been issued
13 pursuant to section four hundred thirteen of this act.

14 Upon making an order for temporary child support pursuant to this
15 subdivision, the court shall advise the petitioner of the availability
16 of child support enforcement services by the support collection unit of
17 the local department of social services, to enforce the temporary order
18 and to assist in securing continued child support, and shall set the
19 support matter down for further proceedings in accordance with article
20 four of this act.

21 Where the court determines that the respondent has employer-provided
22 medical insurance, the court may further direct, as part of an order of
23 temporary support under this subdivision, that a medical support
24 execution be issued and served upon the respondent's employer as
25 provided for in section fifty-two hundred forty-one of the civil prac-
26 tice law and rules.

27 In any proceeding in which an order of protection or temporary order
28 of protection or a warrant has been issued under this section, the clerk
29 of the court shall issue to the petitioner and respondent and his coun-
30 sel and to any other person affected by the order a copy of the order of
31 protection or temporary order of protection and ensure that a copy of
32 the order of protection or temporary order of protection be transmitted
33 to the local correctional facility where the individual is or will be
34 detained, the state or local correctional facility where the individual
35 is or will be imprisoned, and the supervising probation department or
36 division of parole where the individual is under probation or parole
37 supervision.

38 Notwithstanding the foregoing provisions, an order of protection, or
39 temporary order of protection where applicable, may be entered against a
40 former spouse and persons who have a child in common, regardless of
41 whether such persons have been married or have lived together at any
42 time, or against a member of the same family or household as defined in
43 subdivision one of section eight hundred twelve of this article.

44 In addition to the foregoing provisions, the court may issue an order,
45 pursuant to section two hundred twenty-seven-c of the real property law,
46 authorizing the party for whose benefit any order of protection has been
47 issued to terminate a lease or rental agreement pursuant to section two
48 hundred twenty-seven-c of the real property law.

49 ANY MOTION TO VACATE OR MODIFY AN ORDER OF PROTECTION, INCLUDING A
50 PERMANENT ORDER OF PROTECTION, OR A TEMPORARY ORDER OF PROTECTION SHALL
51 BE MADE ON NOTICE TO THE NON-MOVING PARTY.

52 S 10. This act shall take effect immediately, provided that the amend-
53 ments to the opening paragraph of subdivision 5 of section 530.12 and
54 the opening paragraph of subdivision 4 of section 530.13 of the criminal
55 procedure law made by sections one and six, respectively, of this act
56 shall be subject to the expiration and reversion of such subdivisions

1 pursuant to section 74 of chapter 3 of the laws of 1995, as amended,
2 when upon such date the provisions of sections two and seven of this act
3 shall take effect.