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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by chapter 476 of the laws of 2009, 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 as defined in subdivision one of section 530.11 of this article, 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: (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such conviction, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such conviction, or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of conviction, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. 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order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a

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:

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

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

Upon conviction of any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, 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; (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such conviction, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such conviction, or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of conviction, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. 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 FOUR-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 that the defendant:

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

Upon conviction of any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, 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 adju-

dication. IF THE COURT FINDS THAT AGGRAVATING CIRCUMSTANCES AS DEFINED IN SUBDIVISION FOUR-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 that the defendant:

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

4-A. FOR THE PURPOSES OF SUBDIVISION FOUR OF THIS SECTION, "AGGRAVATING CIRCUMSTANCES" SHALL MEAN PHYSICAL INJURY OR SERIOUS PHYSICAL INJURY TO THE VICTIM CAUSED BY THE DEFENDANT, THE USE OF A DANGEROUS INSTRUMENT AGAINST THE VICTIM BY THE DEFENDANT, A HISTORY OF REPEATED VIOLATIONS OF PRIOR ORDERS OF PROTECTION BY THE DEFENDANT, PRIOR CONVICTIONS FOR CRIMES AGAINST THE VICTIM 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 VICTIM, OR ANY MEMBER OF THE VICTIM'S FAMILY OR HOUSEHOLD.

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

S 9. Section 842 of the family court act, as amended by chapter 222 of the laws of 1994, the opening paragraph as separately amended by chapters 325 and 341 of the laws of 2010, subdivisions (a), (b), (c), (d) and (e) as amended by chapter 483 of the laws of 1995, subdivision (i) as added by chapter 253 of the laws of 2006, subdivision (j) as added by chapter 483 of the laws of 1995 and as relettered by chapter 253 of the laws of 2006, the second undesignated paragraph as amended by chapter 325 of the laws of 2010, the third undesignated paragraph as amended by chapter 224 of the laws of 1994, the sixth undesignated paragraph as added by section 8 of part D of chapter 56 of the laws of 2008, the seventh undesignated paragraph as amended by chapter 326 of the laws of 2008 and the closing paragraph as added by chapter 73 of the laws of 2007, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or division of parole where the individual is under probation or parole supervision.

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

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

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

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

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