

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, MAYERSOHN, GALEF, DINOWITZ, COOK, WEISENBERG, BENEDETTO, JAFFEE, TITUS, N. RIVERA -- Multi-Sponsored by -- M. of A. CLARK, GABRYSZAK, GLICK, LATIMER, McDONOUGH, McENENY, PEOPLES-STOKES, PHEFFER, SWEENEY -- read once and referred 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 476 of the laws of
3 2009, 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 as defined in subdivi-
7 sion one of section 530.11 of this article, the court may in addition to
8 any other disposition, including a conditional discharge or youthful
9 offender adjudication, enter an order of protection. Where a temporary
10 order of protection was issued, the court shall state on the record the
11 reasons for issuing or not issuing an order of protection. The duration
12 of such an order shall be fixed by the court and: (A) in the case of a
13 felony conviction, shall not exceed the greater of: (i) eight years from
14 the date of such [conviction] SENTENCING, EXCEPT WHERE THE SENTENCE IS
15 OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL
16 ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL
17 LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii)
18 eight years from the date of the expiration of the maximum term of an
19 indeterminate or the term of a determinate sentence of imprisonment
20 actually imposed; or (B) in the case of a conviction for a class A
21 misdemeanor, shall not exceed the greater of: (i) five years from the

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

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1 date of such [conviction] SENTENCING, EXCEPT WHERE THE SENTENCE IS OR
2 INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEA-
3 NOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF
4 THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE DATE OF SUCH
5 SENTENCING, or (ii) five years from the date of the expiration of the
6 maximum term of a definite or intermittent term actually imposed; or (C)
7 in the case of a conviction for any other offense, shall not exceed the
8 greater of: (i) two years from the date of [conviction] SENTENCING, or
9 (ii) two years from the date of the expiration of the maximum term of a
10 definite or intermittent term actually imposed. FOR PURPOSES OF THIS
11 SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM
12 OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISON-
13 MENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT
14 THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDI-
15 VISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION,
16 WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF
17 THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT
18 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF
19 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF
20 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration
21 of an order of protection entered pursuant to this subdivision, a
22 conviction shall be deemed to include a conviction that has been
23 replaced by a youthful offender adjudication. In addition to any other
24 conditions, such an order may require the defendant:

25 S 2. The opening paragraph of subdivision 4 of section 530.13 of the
26 criminal procedure law, as amended by chapter 476 of the laws of 2009,
27 is amended to read as follows:

28 Upon SENTENCING ON A conviction [of] FOR any offense, where the court
29 has not issued an order of protection pursuant to section 530.12 of this
30 article, the court may, in addition to any other disposition, including
31 a conditional discharge or youthful offender adjudication, enter an
32 order of protection. Where a temporary order of protection was issued,
33 the court shall state on the record the reasons for issuing or not issu-
34 ing an order of protection. The duration of such an order shall be fixed
35 by the court and; (A) in the case of a felony conviction, shall not
36 exceed the greater of: (i) eight years from the date of such
37 [conviction] SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
38 SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS
39 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
40 CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) eight years
41 from the date of the expiration of the maximum term of an indeterminate
42 or the term of a determinate sentence of imprisonment actually imposed;
43 or (B) in the case of a conviction for a class A misdemeanor, shall not
44 exceed the greater of: (i) five years from the date of such [conviction]
45 SENTENCING, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
46 PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS
47 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
48 CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) five years
49 from the date of the expiration of the maximum term of a definite or
50 intermittent term actually imposed; or (C) in the case of a conviction
51 for any other offense, shall not exceed the greater of: (i) two years
52 from the date of [conviction] SENTENCING, or (ii) two years from the
53 date of the expiration of the maximum term of a definite or intermittent
54 term actually imposed. FOR PURPOSES OF THIS SUBDIVISION ONLY, IN CALCU-
55 LATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR
56 THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE

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

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