

1877

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. PAULIN, GALEF, DINOWITZ, COOK, WEISENBERG, BENE-
DETTO, JAFFEE, TITUS -- 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 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 section 1 of chapter 9 of the
3 laws of 2011, is amended to read as follows:
4 Upon sentencing on a conviction for any crime or violation between
5 spouses OR FORMER SPOUSES, between a parent and child, or between
6 members of the same family or household as defined in subdivision one of
7 section 530.11 of this article, the court may in addition to any other
8 disposition, including a conditional discharge or youthful offender
9 adjudication, enter an order of protection. Where a temporary order of
10 protection was issued, the court shall state on the record the reasons
11 for issuing or not issuing an order of protection. The duration of such
12 an order shall be fixed by the court and: (A) in the case of a felony
13 conviction, shall not exceed the greater of: (i) eight years from the
14 date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
15 SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS
16 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
17 CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) eight years
18 from the date of the expiration of the maximum term of an indeterminate
19 or the term of a determinate sentence of imprisonment actually imposed;
20 or (B) in the case of a conviction for a class A misdemeanor, shall not
21 exceed the greater of: (i) five years from the date of such sentencing,
22 EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A
23 CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN

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

LBD03040-01-3

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

22 S 2. The opening paragraph of subdivision 5 of section 530.12 of the
23 criminal procedure law, as amended by section 2 of chapter 9 of the laws
24 of 2011, is amended to read as follows:

25 Upon sentencing on a conviction for any crime or violation between
26 spouses OR FORMER SPOUSES, between a parent and child, or between
27 members of the same family or household as defined in subdivision one of
28 section 530.11 of this article, the court may in addition to any other
29 disposition, including a conditional discharge or youthful offender
30 adjudication, enter an order of protection. Where a temporary order of
31 protection was issued, the court shall state on the record the reasons
32 for issuing or not issuing an order of protection. The duration of such
33 an order shall be fixed by the court and[,]: (A) in the case of a felony
34 conviction, shall not exceed the greater of: (i) [five] EIGHT years from
35 the date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
36 SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS
37 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
38 CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) [three] EIGHT
39 years from the date of the expiration of the maximum term of an indeter-
40 minate OR THE TERM OF THE DETERMINATE sentence of imprisonment actually
41 imposed; or (B) in the case of a conviction for a class A misdemeanor,
42 shall not exceed [three] THE GREATER OF: (I) FIVE years from the date of
43 such sentencing EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
44 PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS
45 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
46 CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, OR (II) FIVE YEARS
47 FROM THE DATE OF EXPIRATION OF THE MAXIMUM TERM OF A DEFINITE OR INTER-
48 MITTENT TERM ACTUALLY IMPOSED; or (C) in the case of a conviction for
49 any other offense, shall not exceed [one year from the date of sentenc-
50 ing] THE GREATER OF: (I) TWO YEARS FROM THE DATE OF SENTENCING, OR (II)
51 TWO YEARS FROM THE DATE OF THE EXPIRATION OF THE MAXIMUM TERM OF A DEFI-
52 NITE OR INTERMITTENT TERM ACTUALLY IMPOSED. FOR PURPOSES OF THIS SUBDI-
53 VISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF
54 AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT
55 ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT
56 MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION

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

11 S 3. The opening paragraph of subdivision 4 of section 530.13 of the
12 criminal procedure law, as amended by section 3 of chapter 9 of the laws
13 of 2011, is amended to read as follows:

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

54 S 4. The opening paragraph of subdivision 4 of section 530.13 of the
55 criminal procedure law, as amended by section 4 of chapter 9 of the laws
56 of 2011, is amended to read as follows:

1 Upon sentencing on a conviction for any offense, where the court has
2 not issued an order of protection pursuant to section 530.12 of this
3 article, the court may, in addition to any other disposition, including
4 a conditional discharge or youthful offender adjudication, enter an
5 order of protection. Where a temporary order of protection was issued,
6 the court shall state on the record the reasons for issuing or not issu-
7 ing an order of protection. The duration of such an order shall be fixed
8 by the court and, (A) in the case of a felony conviction, shall not
9 exceed the greater of: (i) [five] EIGHT years from the date of such
10 sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
11 PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN
12 SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN
13 YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) [three] 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 [three] THE GREATER OF: (I) FIVE years from the date of such
18 sentencing EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
19 PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS
20 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
21 CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, OR (II) FIVE YEARS
22 FROM THE DATE OF THE EXPIRATION OF THE MAXIMUM TERM OF A DEFINITE OR
23 INTERMITTENT TERM ACTUALLY IMPOSED; or (C) in the case of a conviction
24 for any other offense, shall not exceed [one year from the date of
25 sentencing] THE GREATER OF: (I) TWO YEARS FROM THE DATE OF SENTENCING,
26 OR (II) TWO YEARS FROM THE DATE OF THE EXPIRATION OF THE MAXIMUM TERM OF
27 A DEFINITE OR INTERMITTENT TERM ACTUALLY IMPOSED. FOR PURPOSES OF THIS
28 SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM
29 OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISON-
30 MENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT
31 THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDI-
32 VISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION,
33 WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF
34 THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT
35 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF
36 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF
37 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration
38 of an order of protection entered pursuant to this subdivision, a
39 conviction shall be deemed to include a conviction that has been
40 replaced by a youthful offender adjudication. In addition to any other
41 conditions such an order may require that the defendant:

42 S 5. This act shall take effect on the thirtieth day after it shall
43 have become a law and shall apply to all criminal actions whenever
44 commenced provided sentence therein has not been imposed prior to such
45 effective date; provided, however, that the amendments to the opening
46 paragraph of subdivision 5 of section 530.12 and the opening paragraph
47 of subdivision 4 of section 530.13 of the criminal procedure law made by
48 sections one and three of this act shall be subject to the expiration
49 and reversion of such paragraphs pursuant to subdivision d of section 74
50 of chapter 3 of the laws of 1995, as amended, when upon such date the
51 provisions of sections two and four of this act shall take effect.