

2809

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 18, 2013

---

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 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, between a parent and child, or between members of the same  
6     family or household as defined in subdivision one of section 530.11 of  
7     this article, the court may in addition to any other disposition,  
8     including a conditional discharge or youthful offender adjudication,  
9     enter an order of protection. Where a temporary order of protection was  
10    issued, the court shall state on the record the reasons for issuing or  
11    not issuing an order of protection. The duration of such an order shall  
12    be fixed by the court and: (A) in the case of a felony conviction, shall  
13    not exceed the greater of: (i) eight years from the date of such  
14    sentencing, or (ii) eight years from the date of the expiration of the  
15    maximum term of an indeterminate or the term of a determinate sentence  
16    of imprisonment actually imposed; or (B) in the case of a conviction for  
17    a class A misdemeanor, shall not exceed the greater of: (i) five years  
18    from the date of such sentencing, or (ii) five years from the date of  
19    the expiration of the maximum term of a definite or intermittent term  
20    actually imposed; or (C) in the case of a conviction for any other  
21    offense, shall not exceed the greater of: (i) two years from the date of  
22    sentencing, or (ii) two years from the date of the expiration of the  
23    maximum term of a definite or intermittent term actually imposed. For  
24    purposes of determining the duration of an order of protection entered  
25    pursuant to this subdivision, a conviction shall be deemed to include a

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

LBD00635-01-3

conviction that has been replaced by a youthful offender adjudication.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 2. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by section 2 of chapter 9 of the laws of 2011, is amended to read as follows:

Upon sentencing on a conviction for any crime or violation between spouses, between a 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, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, 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 sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. 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.

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

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

8 S 6. The opening paragraph of subdivision 4 of section 530.13 of the  
9 criminal procedure law, as amended by section 3 of chapter 9 of the laws  
10 of 2011, is amended to read as follows:

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

40 S 7. The opening paragraph of subdivision 4 of section 530.13 of the  
41 criminal procedure law, as amended by section 4 of chapter 9 of the laws  
42 of 2011, is amended to read as follows:

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

1 For purposes of determining the duration of an order of protection  
2 entered pursuant to this subdivision, a conviction shall be deemed to  
3 include a conviction that has been replaced by a youthful offender adju-  
4 dication. IF THE COURT FINDS THAT AGGRAVATING CIRCUMSTANCES AS DEFINED  
5 IN SUBDIVISION FOUR-A OF THIS SECTION EXIST, THE COURT MAY ENTER AN  
6 ORDER OF PROTECTION FOR A FIXED PERIOD OF TIME IN EXCESS OF THE RELEVANT  
7 TERMS SET FORTH ABOVE, OR MAY ENTER A PERMANENT ORDER OF PROTECTION. THE  
8 COURT'S FINDING OF AGGRAVATING CIRCUMSTANCES SHALL BE STATED UPON THE  
9 ORDER OF PROTECTION. In addition to any other conditions such an order  
10 may require that the defendant:

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

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

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

26 S 9. Section 842 of the family court act, as amended by chapter 222 of  
27 the laws of 1994, the opening paragraph as separately amended by chap-  
28 ters 325 and 341 of the laws of 2010, subdivisions (a), (b), (c), (d)  
29 and (e) as amended by chapter 483 of the laws of 1995, subdivision (i)  
30 as added by chapter 253 of the laws of 2006, subdivision (j) as added by  
31 chapter 483 of the laws of 1995 and as relettered by chapter 253 of the  
32 laws of 2006, the second undesignated paragraph as amended by chapter  
33 325 of the laws of 2010, the third undesignated paragraph as amended by  
34 chapter 224 of the laws of 1994, the sixth undesignated paragraph as  
35 amended by section 114 of subpart B of part C of chapter 62 of the laws  
36 of 2011, the seventh undesignated paragraph as amended by chapter 326 of  
37 the laws of 2008 and the closing paragraph as added by chapter 73 of the  
38 laws of 2007, is amended to read as follows:

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

1 within the second degree. Nothing in this section gives the court power  
2 to place or board out any child or to commit a child to an institution  
3 or agency.

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

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

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

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

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

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

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

55 S 10. This act shall take effect immediately, provided that the amend-  
56 ments to the opening paragraph of subdivision 5 of section 530.12 and

1 the opening paragraph of subdivision 4 of section 530.13 of the criminal  
2 procedure law made by sections one and six, respectively, of this act  
3 shall be subject to the expiration and reversion of such subdivisions  
4 pursuant to section 74 of chapter 3 of the laws of 1995, as amended,  
5 when upon such date the provisions of sections two and seven of this act  
6 shall take effect.