

4393

2013-2014 Regular Sessions

I N   S E N A T E

March 26, 2013

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Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, the domestic relations law and the criminal procedure law, in relation to orders of protection in cases involving domestic violence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The opening paragraph of section 842 of the family court  
2     act, as separately amended by chapters 325 and 341 of the laws of 2010,  
3     is amended to read as follows:  
4     An order of protection under section eight hundred forty-one of this  
5     part shall set forth reasonable conditions of behavior to be observed  
6     for a period not in excess of two years by the petitioner or respondent  
7     or for a period not in excess of five years upon (i) a finding by the  
8     court on the record of the existence of aggravating circumstances as  
9     defined in paragraph (vii) of subdivision (a) of section eight hundred  
10    twenty-seven of this article; or (ii) a finding by the court on the  
11    record that the conduct alleged in the petition is in violation of a  
12    valid order of protection. IN CASES INVOLVING DOMESTIC VIOLENCE, AN  
13    ORDER OF PROTECTION SHALL BE OBSERVED BY THE PETITIONER OR RESPONDENT  
14    FOR A PERIOD OF NO LESS THAN FIVE YEARS. Any finding of aggravating  
15    circumstances pursuant to this section shall be stated on the record and  
16    upon the order of protection. The court may also, upon motion, extend  
17    the order of protection for a reasonable period of time upon a showing  
18    of good cause or consent of the parties. The fact that abuse has not  
19    occurred during the pendency of an order shall not, in itself, consti-  
20    tute sufficient ground for denying or failing to extend the order. The  
21    court must articulate a basis for its decision on the record. The dura-  
22    tion of any temporary order shall not by itself be a factor in determin-  
23    ing the length or issuance of any final order. Any order of protection  
24    issued pursuant to this section shall specify if an order of probation

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

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

3 S 2. The opening paragraph of subdivision 1 of section 1056 of the  
4 family court act, as amended by chapter 622 of the laws of 1990, is  
5 amended to read as follows:

6 The court may make an order of protection in assistance or as a condi-  
7 tion of any other order made under this part. Such order of protection  
8 shall remain in effect concurrently with, shall expire no later than the  
9 expiration date of, and may be extended concurrently with, such other  
10 order made under this part, except as provided in subdivision four of  
11 this section. The order of protection may set forth reasonable condi-  
12 tions of behavior to be observed for a specified time by a person who is  
13 before the court and is a parent or a person legally responsible for the  
14 child's care or the spouse of the parent or other person legally respon-  
15 sible for the child's care, or both. IN CASES INVOLVING DOMESTIC  
16 VIOLENCE, AN ORDER OF PROTECTION SHALL BE OBSERVED BY THE PETITIONER OR  
17 RESPONDENT FOR A PERIOD OF NO LESS THAN FIVE YEARS. Such an order may  
18 require any such person

19 S 3. The opening paragraph of paragraph a of subdivision 3 of section  
20 240 of the domestic relations law, as amended by chapter 597 of the laws  
21 of 1998, is amended to read as follows:

22 The court may make an order of protection in assistance or as a condi-  
23 tion of any other order made under this section. The order of  
24 protection may set forth reasonable conditions of behavior to be  
25 observed for a specified time by any party. IN CASES INVOLVING DOMESTIC  
26 VIOLENCE, AN ORDER OF PROTECTION SHALL BE OBSERVED FOR A PERIOD OF NO  
27 LESS THAN FIVE YEARS. Such an order may require any party:

28 S 4. The opening paragraph of subdivision 5 of section 530.12 of the  
29 criminal procedure law, as amended by section 1 of chapter 9 of the laws  
30 of 2011, is amended to read as follows:

31 Upon sentencing on a conviction for any crime or violation between  
32 spouses, between a parent and child, or between members of the same  
33 family or household as defined in subdivision one of section 530.11 of  
34 this article, the court may in addition to any other disposition,  
35 including a conditional discharge or youthful offender adjudication,  
36 enter an order of protection. Where a temporary order of protection was  
37 issued, the court shall state on the record the reasons for issuing or  
38 not issuing an order of protection. The duration of such an order shall  
39 be fixed by the court and: (A) in the case of a felony conviction, shall  
40 [not exceed the greater of] BE NO LESS THAN: (i) [eight] TEN years from  
41 the date of such sentencing, or (ii) [eight] TEN years from the date of  
42 the expiration of the maximum term of an indeterminate or the term of a  
43 determinate sentence of imprisonment actually imposed; or (B) in the  
44 case of a conviction for a class A misdemeanor, shall not exceed the  
45 greater of: (i) five years from the date of such sentencing, or (ii)  
46 five years from the date of the expiration of the maximum term of a  
47 definite or intermittent term actually imposed; or (C) in the case of a  
48 conviction for any other offense, shall not exceed the greater of: (i)  
49 two years from the date of sentencing, or (ii) two years from the date  
50 of the expiration of the maximum term of a definite or intermittent term  
51 actually imposed. For purposes of determining the duration of an order  
52 of protection entered pursuant to this subdivision, a conviction shall  
53 be deemed to include a conviction that has been replaced by a youthful  
54 offender adjudication. In addition to any other conditions, such an  
55 order may require the defendant:

1 S 5. The opening paragraph of subdivision 5 of section 530.12 of the  
2 criminal procedure law, as amended by section 2 of chapter 9 of the laws  
3 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, in the case of a felony conviction, shall  
13 [not exceed the greater of] BE NO LESS THAN: (i) [five] TEN years from  
14 the date of such sentencing, or (ii) [three] TEN years from the date of  
15 the expiration of the maximum term of an indeterminate sentence of  
16 imprisonment actually imposed; or in the case of a conviction for a  
17 class A misdemeanor, shall not exceed three years from the date of such  
18 sentencing; or in the case of a conviction for any other offense, shall  
19 not exceed one year from the date of sentencing. For purposes of deter-  
20 mining the duration of an order of protection entered pursuant to this  
21 subdivision, a conviction shall be deemed to include a conviction that  
22 has been replaced by a youthful offender adjudication. In addition to  
23 any other conditions, such an order may require the defendant:

24 S 6. This act shall take effect immediately, provided that the amend-  
25 ments to the opening paragraph of subdivision 5 of section 530.12 of the  
26 criminal procedure law made by section four of this act shall be subject  
27 to the expiration and reversion of such opening paragraph pursuant to  
28 section 74 of chapter 3 of the laws of 1995, as amended, when upon such  
29 date the provisions of section five of this act shall take effect.