

1667

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. CAHILL, STEVENSON, ZEBROWSKI, MILLER, ORTIZ, MAGNARELLI, ROBINSON, CRESPO, GIBSON, GUNTHER, TITONE, LAVINE, SCHIMEL, CASTRO, JAFFEE, ENGLEBRIGHT, COOK, GABRYSZAK, PERRY, HOOPER, WEPRIN -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, AUBRY, BOYLAND, CERETTO, CROUCH, DUPREY, FINCH, MARKEY, RAIA, WRIGHT -- read once and referred to the Committee on Judiciary

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-

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

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1 tute sufficient ground for denying or failing to extend the order. The  
2 court must articulate a basis for its decision on the record. The dura-  
3 tion of any temporary order shall not by itself be a factor in determin-  
4 ing the length or issuance of any final order. Any order of protection  
5 issued pursuant to this section shall specify if an order of probation  
6 is in effect. Any order of protection issued pursuant to this section  
7 may require the petitioner or the respondent:

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

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

24 S 3. The opening paragraph of paragraph a of subdivision 3 of section  
25 240 of the domestic relations law, as amended by chapter 597 of the laws  
26 of 1998, is amended to read as follows:

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

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

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

1 of protection entered pursuant to this subdivision, a conviction shall  
2 be deemed to include a conviction that has been replaced by a youthful  
3 offender adjudication. In addition to any other conditions, such an  
4 order may require the defendant:

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

8 Upon sentencing on a conviction for any crime or violation between  
9 spouses, between a parent and child, or between members of the same  
10 family or household as defined in subdivision one of section 530.11 of  
11 this article, the court may in addition to any other disposition,  
12 including a conditional discharge or youthful offender adjudication,  
13 enter an order of protection. Where a temporary order of protection was  
14 issued, the court shall state on the record the reasons for issuing or  
15 not issuing an order of protection. The duration of such an order shall  
16 be fixed by the court and, in the case of a felony conviction, shall  
17 [not exceed the greater of] BE NO LESS THAN: (i) [five] TEN years from  
18 the date of such sentencing, or (ii) [three] TEN years from the date of  
19 the expiration of the maximum term of an indeterminate sentence of  
20 imprisonment actually imposed; or in the case of a conviction for a  
21 class A misdemeanor, shall not exceed three years from the date of such  
22 sentencing; or in the case of a conviction for any other offense, shall  
23 not exceed one year from the date of sentencing. For purposes of deter-  
24 mining the duration of an order of protection entered pursuant to this  
25 subdivision, a conviction shall be deemed to include a conviction that  
26 has been replaced by a youthful offender adjudication. In addition to  
27 any other conditions, such an order may require the defendant:

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