S T A T E O F N E W Y O R K

7208

2013-2014 Regular Sessions

I N A S S E M B L Y

May 7, 2013

Introduced by M. of A. GJONAJ -- 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 allowing for lifetime orders of protection for aggravating circumstances

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

Section 1. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by section 1 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: (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. 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order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication.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 SUBDIVI-

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

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SION 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 UP TO A LIFETIME 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 UP TO A LIFETIME 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 THE COURT DETERMINES, AFTER A HEARING, CONSTITUTE AN IMMEDIATE AND ONGOING DANGER TO THE COMPLAINANT OR ANY MEMBER OF THE COMPLAINANT'S FAMILY OR HOUSEHOLD. AFTER A DISPOSITIONAL HEARING IS HELD AND THE COURT FINDS BY A FAIR PREPONDERANCE OF THE EVIDENCE THAT AGGRAVATING CIRCUMSTANCES EXIST, THE COURT MAY ISSUE AN ORDER OF PROTECTION FOR UP TO THE LIFETIME OF THE VICTIM, THE VICTIM'S FAMILY, OR MEMBERS OF THE VICTIM'S 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 LIFETIME DURATION, THE ORDER SHALL CLEARLY SO STATE.

S 5. The opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law, as amended by section 3 of chapter 9 of the laws of 2011, is amended to read as follows:

Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 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; (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. 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 FOUR-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 UP TO A LIFETIME 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 that the defendant:

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

Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 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 FOUR-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 UP TO A LIFETIME 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 that the defendant:

S 7. Section 530.13 of the criminal procedure law is amended by adding a new subdivision 4-a to read as follows:

4-A. FOR THE PURPOSES OF SUBDIVISION FOUR OF THIS SECTION, "AGGRAVATING CIRCUMSTANCES" SHALL MEAN PHYSICAL INJURY OR SERIOUS PHYSICAL INJURY TO THE VICTIM CAUSED BY THE DEFENDANT, THE USE OF A DANGEROUS INSTRUMENT AGAINST THE VICTIM BY THE DEFENDANT, A HISTORY OF REPEATED VIOLATIONS OF PRIOR ORDERS OF PROTECTION BY THE DEFENDANT, PRIOR CONVICTIONS FOR CRIMES AGAINST THE VICTIM 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 THE COURT DETERMINES, AFTER A HEARING, CONSTITUTE AN IMMEDIATE AND ONGOING DANGER TO THE VICTIM, OR ANY MEMBER OF THE VICTIM'S FAMILY OR HOUSEHOLD. AFTER A DISPOSITIONAL HEARING IS HELD AND THE COURT FINDS BY A FAIR PREPONDERANCE OF THE EVIDENCE THAT AGGRAVATING CIRCUMSTANCES EXIST, THE COURT MAY ISSUE AN ORDER OF PROTECTION FOR UP TO THE LIFETIME OF THE VICTIM, THE VICTIM'S FAMILY, OR MEMBERS OF THE VICTIM'S HOUSEHOLD.

S 8. The opening paragraph of section 842 of the family court act, as separately amended by chapters 325 and 341 of the laws of 2010, is amended to read as follows:

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or [for a period not in excess of five years] UP TO A LIFETIME ORDER OF PROTECTION upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must 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:

S 9. This act shall take effect immediately provided that the amendments to the opening paragraph of subdivision 5 of section 530.12 and the opening paragraph of subdivision 4 of section 530.13 of the criminal procedure law made by sections one and five of this act respectively, shall be subject to the expiration and reversion of such paragraphs, when upon such date the provisions of sections two and six of this act shall take effect.