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

4340

2015-2016 Regular Sessions

I N S E N A T E

March 16, 2015

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

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 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 OR FORMER 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, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN 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, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) five years from the date

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

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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 THIS SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL LAW. 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. 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 OR FORMER 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) [five] EIGHT years from the date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) [three] EIGHT years from the date of the expiration of the maximum term of an indeterminate OR THE TERM OF THE DETERMINATE sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed [three] THE GREATER OF: (I) FIVE years from the date of such sentencing EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, OR (II) FIVE YEARS FROM THE DATE OF 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 [one year from the date of sentencing] 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 THIS SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF THE

TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL LAW. 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. In addition to any other conditions, such an order may require the defendant:

S 3. 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, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN 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, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX 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 THIS SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL LAW. 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. In addition to any other conditions such an order may require that the defendant:

S 4. 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, (A) in the case of a felony conviction, shall not exceed the greater of: (i) [five] EIGHT years from the date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) [three] 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 [three] THE GREATER OF: (I) FIVE years from the date of such sentencing EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX 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 [one year from the date of sentencing] 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 THIS SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL LAW. 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. In addition to any other conditions such an order may require that the defendant:

S 5. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to all criminal actions whenever commenced provided sentence therein has not been imposed prior to such effective date; provided, however, 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 three of this act shall be subject to the expiration and reversion of such paragraphs pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of sections two and four of this act shall take effect.