

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:

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 OR FORMER SPOUSES, between a parent and child, or between
6 members of the same family or household as defined in subdivision one of
7 section 530.11 of this article, the court may in addition to any other
8 disposition, including a conditional discharge or youthful offender
9 adjudication, enter an order of protection. Where a temporary order of
10 protection was issued, the court shall state on the record the reasons
11 for issuing or not issuing an order of protection. The duration of such
12 an order shall be fixed by the court and: (A) in the case of a felony
13 conviction, shall not exceed the greater of: (i) eight years from the
14 date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
15 SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS
16 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
17 CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) eight years
18 from the date of the expiration of the maximum term of an indeterminate
19 or the term of a determinate sentence of imprisonment actually imposed;
20 or (B) in the case of a conviction for a class A misdemeanor, shall not
21 exceed the greater of: (i) five years from the date of such sentencing,
22 EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A
23 CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN
24 SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX
25 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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1 of the expiration of the maximum term of a definite or intermittent term
2 actually imposed; or (C) in the case of a conviction for any other
3 offense, shall not exceed the greater of: (i) two years from the date of
4 sentencing, or (ii) two years from the date of the expiration of the
5 maximum term of a definite or intermittent term actually imposed. FOR
6 PURPOSES OF THIS SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF
7 THE MAXIMUM TERM OF AN INDETERMINATE OR THE TERM OF A DETERMINATE
8 SENTENCE OF IMPRISONMENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY
9 JAIL TIME CREDIT THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE
10 PURSUANT TO SUBDIVISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND
11 SHALL, IN ADDITION, WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE
12 THE EXPIRATION DATE OF THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM
13 OF THE IMPRISONMENT PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND
14 THE FULL PERIOD OF POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH
15 SUBDIVISION TWO OF SECTION 70.45 OF THE PENAL LAW. For purposes of
16 determining the duration of an order of protection entered pursuant to
17 this subdivision, a conviction shall be deemed to include a conviction
18 that has been replaced by a youthful offender adjudication. In addition
19 to any other conditions, such an order may require the defendant:

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

23 Upon sentencing on a conviction for any crime or violation between
24 spouses OR FORMER SPOUSES, between a parent and child, or between
25 members of the same family or household as defined in subdivision one of
26 section 530.11 of this article, the court may in addition to any other
27 disposition, including a conditional discharge or youthful offender
28 adjudication, enter an order of protection. Where a temporary order of
29 protection was issued, the court shall state on the record the reasons
30 for issuing or not issuing an order of protection. The duration of such
31 an order shall be fixed by the court and[,]: (A) in the case of a felony
32 conviction, shall not exceed the greater of: (i) [five] EIGHT years from
33 the date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A
34 SENTENCE OF PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS
35 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
36 CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) [three] EIGHT
37 years from the date of the expiration of the maximum term of an indeter-
38 minate OR THE TERM OF THE DETERMINATE sentence of imprisonment actually
39 imposed; or (B) in the case of a conviction for a class A misdemeanor,
40 shall not exceed [three] THE GREATER OF: (I) FIVE years from the date of
41 such sentencing EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
42 PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS
43 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
44 CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, OR (II) FIVE YEARS
45 FROM THE DATE OF EXPIRATION OF THE MAXIMUM TERM OF A DEFINITE OR INTER-
46 MITTENT TERM ACTUALLY IMPOSED; or (C) in the case of a conviction for
47 any other offense, shall not exceed [one year from the date of sentenc-
48 ing] THE GREATER OF: (I) TWO YEARS FROM THE DATE OF SENTENCING, OR (II)
49 TWO YEARS FROM THE DATE OF THE EXPIRATION OF THE MAXIMUM TERM OF A DEFI-
50 NITE OR INTERMITTENT TERM ACTUALLY IMPOSED. FOR PURPOSES OF THIS SUBDI-
51 VISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF
52 AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT
53 ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT
54 MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION
55 THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH
56 RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF THE

1 TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT
2 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF
3 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF
4 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration
5 of an order of protection entered pursuant to this subdivision, a
6 conviction shall be deemed to include a conviction that has been
7 replaced by a youthful offender adjudication. In addition to any other
8 conditions, such an order may require the defendant:

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

12 Upon sentencing on a conviction for any offense, where the court has
13 not issued an order of protection pursuant to section 530.12 of this
14 article, the court may, in addition to any other disposition, including
15 a conditional discharge or youthful offender adjudication, enter an
16 order of protection. Where a temporary order of protection was issued,
17 the court shall state on the record the reasons for issuing or not issu-
18 ing an order of protection. The duration of such an order shall be fixed
19 by the court and; (A) in the case of a felony conviction, shall not
20 exceed the greater of: (i) eight years from the date of such sentencing,
21 EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A
22 CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE
23 OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE
24 DATE OF SUCH SENTENCING, or (ii) eight years from the date of the expi-
25 ration of the maximum term of an indeterminate or the term of a determi-
26 nate sentence of imprisonment actually imposed; or (B) in the case of a
27 conviction for a class A misdemeanor, shall not exceed the greater of:
28 (i) five years from the date of such sentencing, EXCEPT WHERE THE
29 SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A
30 CLASS A MISDEMEANOR SEXUAL ASSAULT, AS DEFINED IN SUBDIVISION THREE OF
31 SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE DATE
32 OF SUCH SENTENCING or (ii) five years from the date of the expiration of
33 the maximum term of a definite or intermittent term actually imposed; or
34 (C) in the case of a conviction for any other offense, shall not exceed
35 the greater of: (i) two years from the date of sentencing, or (ii) two
36 years from the date of the expiration of the maximum term of a definite
37 or intermittent term actually imposed. FOR PURPOSES OF THIS SUBDIVISION
38 ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM OF AN INDE-
39 TERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISONMENT ACTUALLY
40 IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT THAT MAY BE
41 APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDIVISION THREE
42 OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION, WITH RESPECT
43 TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF THE TERM OF
44 SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT PORTION OF
45 SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF POST-RE-
46 LEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION
47 70.45 OF THE PENAL LAW. For purposes of determining the duration of an
48 order of protection entered pursuant to this subdivision, a conviction
49 shall be deemed to include a conviction that has been replaced by a
50 youthful offender adjudication. In addition to any other conditions
51 such an order may require that the defendant:

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

55 Upon sentencing on a conviction for any offense, where the court has
56 not issued an order of protection pursuant to section 530.12 of this

1 article, the court may, in addition to any other disposition, including
2 a conditional discharge or youthful offender adjudication, enter an
3 order of protection. Where a temporary order of protection was issued,
4 the court shall state on the record the reasons for issuing or not issu-
5 ing an order of protection. The duration of such an order shall be fixed
6 by the court and, (A) in the case of a felony conviction, shall not
7 exceed the greater of: (i) [five] EIGHT years from the date of such
8 sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
9 PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS DEFINED IN
10 SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, TEN
11 YEARS FROM THE DATE OF SUCH SENTENCING, or (ii) [three] EIGHT years from
12 the date of the expiration of the maximum term of an indeterminate OR
13 THE TERM OF A DETERMINATE sentence of imprisonment actually imposed; or
14 (B) in the case of a conviction for a class A misdemeanor, shall not
15 exceed [three] THE GREATER OF: (I) FIVE years from the date of such
16 sentencing EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF
17 PROBATION ON A CONVICTION FOR A CLASS A MISDEMEANOR SEXUAL ASSAULT, AS
18 DEFINED IN SUBDIVISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH
19 CASE, SIX YEARS FROM THE DATE OF SUCH SENTENCING, OR (II) FIVE YEARS
20 FROM THE DATE OF THE EXPIRATION OF THE MAXIMUM TERM OF A DEFINITE OR
21 INTERMITTENT TERM ACTUALLY IMPOSED; or (C) in the case of a conviction
22 for any other offense, shall not exceed [one year from the date of
23 sentencing] THE GREATER OF: (I) TWO YEARS FROM THE DATE OF SENTENCING,
24 OR (II) TWO YEARS FROM THE DATE OF THE EXPIRATION OF THE MAXIMUM TERM OF
25 A DEFINITE OR INTERMITTENT TERM ACTUALLY IMPOSED. FOR PURPOSES OF THIS
26 SUBDIVISION ONLY, IN CALCULATING THE EXPIRATION DATE OF THE MAXIMUM TERM
27 OF AN INDETERMINATE OR THE TERM OF A DETERMINATE SENTENCE OF IMPRISON-
28 MENT ACTUALLY IMPOSED, THE COURT SHALL DISREGARD ANY JAIL TIME CREDIT
29 THAT MAY BE APPLIED AGAINST THE DEFENDANT'S SENTENCE PURSUANT TO SUBDI-
30 VISION THREE OF SECTION 70.30 OF THE PENAL LAW, AND SHALL, IN ADDITION,
31 WITH RESPECT TO A DETERMINATE SENTENCE, CALCULATE THE EXPIRATION DATE OF
32 THE TERM OF SUCH SENTENCE BY ADDING THE FULL TERM OF THE IMPRISONMENT
33 PORTION OF SUCH SENTENCE AS IMPOSED BY THE COURT AND THE FULL PERIOD OF
34 POST-RELEASE SUPERVISION IMPOSED IN ACCORDANCE WITH SUBDIVISION TWO OF
35 SECTION 70.45 OF THE PENAL LAW. For purposes of determining the duration
36 of an order of protection entered pursuant to this subdivision, a
37 conviction shall be deemed to include a conviction that has been
38 replaced by a youthful offender adjudication. In addition to any other
39 conditions such an order may require that the defendant:

40 S 5. This act shall take effect on the thirtieth day after it shall
41 have become a law and shall apply to all criminal actions whenever
42 commenced provided sentence therein has not been imposed prior to such
43 effective date; provided, however, that the amendments to the opening
44 paragraph of subdivision 5 of section 530.12 and the opening paragraph
45 of subdivision 4 of section 530.13 of the criminal procedure law made by
46 sections one and three of this act shall be subject to the expiration
47 and reversion of such paragraphs pursuant to subdivision d of section 74
48 of chapter 3 of the laws of 1995, as amended, when upon such date the
49 provisions of sections two and four of this act shall take effect.