

984--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 8, 2015

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Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, AUBRY, CERETTO, COOK, CRESPO, CROUCH, DUPREY, ENGLEBRIGHT, FINCH, GUNTHER, HOOPER, JAFFEE, LAVINE, MAGNARELLI, MARKEY, MILLER, ORTIZ, PERRY, RAIA, ROBINSON, SCHIMEL, TITONE, WEPRIN, WRIGHT, ZEBROW-SKI -- read once and referred to the Committee on Judiciary -- recommended to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 amended by chapter 526 of the laws of 2013, is amended to read  
3     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

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

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

9 S 2. The opening paragraph of subdivision 1 of section 1056 of the  
10 family court act, as amended by chapter 526 of the laws of 2013, is  
11 amended to read as follows:

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

25 S 3. The opening paragraph of paragraph a of subdivision 3 of section  
26 240 of the domestic relations law, as amended by chapter 526 of the laws  
27 of 2013, is amended to read as follows:

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

34 S 4. The opening paragraph of subdivision 5 of section 530.12 of the  
35 criminal procedure law, as amended by chapter 240 of the laws of 2015,  
36 is amended to read as follows:

37 Upon sentencing on a conviction for any crime or violation between  
38 spouses, between a parent and child, or between members of the same  
39 family or household as defined in subdivision one of section 530.11 of  
40 this article, the court may in addition to any other disposition,  
41 including a conditional discharge or youthful offender adjudication,  
42 enter an order of protection. Where a temporary order of protection was  
43 issued, the court shall state on the record the reasons for issuing or  
44 not issuing an order of protection. The duration of such an order shall  
45 be fixed by the court and: (A) in the case of a felony conviction,  
46 [shall not exceed the greater of] BE NO LESS THAN: (i) [eight] TEN  
47 years from the date of such sentencing, [except] INCLUDING where the  
48 sentence is or includes a sentence of probation on a conviction for a  
49 felony sexual assault, as provided in subparagraph (iii) of paragraph  
50 (a) of subdivision three of section 65.00 of the penal law[, in which  
51 case, ten years from the date of such sentencing], or (ii) [eight] TEN  
52 years from the date of the expiration of the maximum term of an indeter-  
53 minate or the term of a determinate sentence of imprisonment actually  
54 imposed; or (B) in the case of a conviction for a class A misdemeanor,  
55 shall not exceed the greater of: (i) five years from the date of such  
56 sentencing, except where the sentence is or includes a sentence of

1 probation on a conviction for a misdemeanor sexual assault, as provided  
2 in subparagraph (ii) of paragraph (b) of subdivision three of section  
3 65.00 of the penal law, in which case, six years from the date of such  
4 sentencing, or (ii) five years from the date of the expiration of the  
5 maximum term of a definite or intermittent term actually imposed; or (C)  
6 in the case of a conviction for any other offense, shall not exceed the  
7 greater of: (i) two years from the date of sentencing, or (ii) two years  
8 from the date of the expiration of the maximum term of a definite or  
9 intermittent term actually imposed. For purposes of determining the  
10 duration of an order of protection entered pursuant to this subdivision,  
11 a conviction shall be deemed to include a conviction that has been  
12 replaced by a youthful offender adjudication. In addition to any other  
13 conditions, such an order may require the defendant:

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

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

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