

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.

LBD05050-01-5

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.