

4340--B

2015-2016 Regular Sessions

I N   S E N A T E

March 16, 2015

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Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, between a parent and child, or between members of the same  
6     family or household as defined in subdivision one of section 530.11 of  
7     this article, the court may in addition to any other disposition,  
8     including a conditional discharge or youthful offender adjudication,  
9     enter an order of protection. Where a temporary order of protection was  
10    issued, the court shall state on the record the reasons for issuing or  
11    not issuing an order of protection. The duration of such an order shall  
12    be fixed by the court and: (A) in the case of a felony conviction, shall  
13    not exceed the greater of: (i) eight years from the date of such  
14    sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF  
15    PROBATION ON A CONVICTION FOR A FELONY SEXUAL ASSAULT, AS PROVIDED IN  
16    SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION  
17    65.00 OF THE PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH  
18    SENTENCING, or (ii) eight years from the date of the expiration of the  
19    maximum term of an indeterminate or the term of a determinate sentence  
20    of imprisonment actually imposed; or (B) in the case of a conviction for  
21    a class A misdemeanor, shall not exceed the greater of: (i) five years  
22    from the date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR

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

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1 INCLUDES A SENTENCE OF PROBATION ON A CONVICTION FOR A MISDEMEANOR SEXU-  
2 AL ASSAULT, AS PROVIDED IN SUBPARAGRAPH (II) OF PARAGRAPH (B) OF SUBDI-  
3 VISION THREE OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX YEARS  
4 FROM THE DATE OF SUCH SENTENCING, or (ii) five years from the date of  
5 the expiration of the maximum term of a definite or intermittent term  
6 actually imposed; or (C) in the case of a conviction for any other  
7 offense, shall not exceed the greater of: (i) two years from the date of  
8 sentencing, or (ii) two years from the date of the expiration of the  
9 maximum term of a definite or intermittent term actually imposed. For  
10 purposes of determining the duration of an order of protection entered  
11 pursuant to this subdivision, a conviction shall be deemed to include a  
12 conviction that has been replaced by a youthful offender adjudication.  
13 In addition to any other conditions, such an order may require the  
14 defendant:

15 S 2. The opening paragraph of subdivision 4 of section 530.13 of the  
16 criminal procedure law, as amended by section 3 of chapter 9 of the laws  
17 of 2011, is amended to read as follows:

18 Upon sentencing on a conviction for any offense, where the court has  
19 not issued an order of protection pursuant to section 530.12 of this  
20 article, the court may, in addition to any other disposition, including  
21 a conditional discharge or youthful offender adjudication, enter an  
22 order of protection. Where a temporary order of protection was issued,  
23 the court shall state on the record the reasons for issuing or not issu-  
24 ing an order of protection. The duration of such an order shall be fixed  
25 by the court and; (A) in the case of a felony conviction, shall not  
26 exceed the greater of: (i) eight years from the date of such sentencing,  
27 EXCEPT WHERE THE SENTENCE IS OR INCLUDES A SENTENCE OF PROBATION ON A  
28 CONVICTION FOR A FELONY SEXUAL ASSAULT, AS PROVIDED IN SUBPARAGRAPH  
29 (III) OF PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION 65.00 OF THE  
30 PENAL LAW, IN WHICH CASE, TEN YEARS FROM THE DATE OF SUCH SENTENCING, or  
31 (ii) eight years from the date of the expiration of the maximum term of  
32 an indeterminate or the term of a determinate sentence of imprisonment  
33 actually imposed; or (B) in the case of a conviction for a class A  
34 misdemeanor, shall not exceed the greater of: (i) five years from the  
35 date of such sentencing, EXCEPT WHERE THE SENTENCE IS OR INCLUDES A  
36 SENTENCE OF PROBATION ON A CONVICTION FOR A MISDEMEANOR SEXUAL ASSAULT,  
37 AS PROVIDED IN SUBPARAGRAPH (II) OF PARAGRAPH (B) OF SUBDIVISION THREE  
38 OF SECTION 65.00 OF THE PENAL LAW, IN WHICH CASE, SIX YEARS FROM THE  
39 DATE OF SUCH SENTENCING or (ii) five years from the date of the expira-  
40 tion of the maximum term of a definite or intermittent term actually  
41 imposed; or (C) in the case of a conviction for any other offense, shall  
42 not exceed the greater of: (i) two years from the date of sentencing, or  
43 (ii) two years from the date of the expiration of the maximum term of a  
44 definite or intermittent term actually imposed. For purposes of deter-  
45 mining the duration of an order of protection entered pursuant to this  
46 subdivision, a conviction shall be deemed to include a conviction that  
47 has been replaced by a youthful offender adjudication. In addition to  
48 any other conditions such an order may require that the defendant:

49 S 3. This act shall take effect on the thirtieth day after it shall  
50 have become a law and shall apply to offenses committed on or after such  
51 effective date; provided, however, that the amendments to the opening  
52 paragraph of subdivision 5 of section 530.12 and the opening paragraph  
53 of subdivision 4 of section 530.13 of the criminal procedure law made by  
54 sections one and two of this act shall not affect the expiration of such  
55 paragraphs and shall be deemed to expire therewith.