

638--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. KENNEDY, PANEPINTO -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- 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
19 occurred during the pendency of an order shall not, in itself, consti-

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

LBD04278-02-6

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

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

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

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

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

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

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

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

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

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

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