

STATE OF NEW YORK

7880

IN SENATE

March 6, 2018

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to issuing restraining orders for certain offenders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new title
2 V to read as follows:

TITLE V

RESTRAINING ORDERS WITH RESPECT TO DEFENDANTS IN CRIMINAL ACTIONS AND PROCEEDINGS

ARTICLE 735

RESTRAINING ORDER FROM LOCATION; DRUG RELATED OFFENSES

3 Section 735.00 Restraining order - use of a child to commit a controlled
4 substance offense.

5 735.10 Restraining order - criminal sale of a controlled
6 substance in the fourth degree.

7 735.15 Restraining order - criminal sale of a controlled
8 substance to a child.

9 735.20 Restraining order - unlawful manufacture of methampheta-
10 mine in the third degree.

11 735.25 Restraining order - unlawful manufacture of methampheta-
12 mine in the second degree.

13 735.30 Restraining order - unlawful manufacture of methampheta-
14 mine in the first degree.

15 735.35 Restraining order - operating as a major trafficker.

16 735.40 Restraining order - exceptions, content, distribution,
17 modifications.

18 735.45 Certification of offense location.

19 735.50 Discretion to not seek restraining order.

20 § 735.00 Restraining order - use of a child to commit a controlled
21 substance offense.

22
23 EXPLANATION--Matter in italics (underscored) is new; matter in brackets
24 [-] is old law to be omitted.

LBD11972-01-7

1 1. When a person is charged with a criminal offense as defined in
2 section 220.28 of the penal law and the person is released from custody
3 before trial on bail or personal recognizance, the court, upon applica-
4 tion of a law enforcement officer or prosecuting attorney and except as
5 provided in subdivision one of section 735.40 of this article, shall as
6 a condition of release issue an order prohibiting the person from enter-
7 ing any place where the crime occurred, including a buffer zone
8 surrounding the place or modifications as provided by subdivision two of
9 section 735.40 of this article.

10 2. When a person is charged with a criminal offense as defined in
11 section 220.28 of the penal law on a summons, the court, upon applica-
12 tion of a law enforcement officer or prosecuting attorney and except as
13 provided in subdivision one of section 735.40 of this article, shall, at
14 the time of the defendant's first appearance, issue an order prohibiting
15 the person from entering any place where the crime occurred, including a
16 buffer zone surrounding the place or modifications as provided by subdivi-
17 vision two of section 735.40 of this article.

18 3. When a person is charged with a criminal offense as defined in
19 section 220.28 of the penal law on a juvenile delinquency complaint and
20 is released from custody at a detention hearing, the court, upon appli-
21 cation of a law enforcement officer or prosecuting attorney and except
22 as provided in subdivision one of section 735.40 of this article, shall
23 issue an order prohibiting the person from entering any place where the
24 crime occurred, including a buffer zone surrounding the place or modifi-
25 cations as provided by subdivision two of section 735.40 of this arti-
26 cle.

27 4. When a person is charged with a criminal offense as defined in
28 section 220.28 of the penal law on a juvenile delinquency complaint and
29 is released without being detained, the law enforcement officer or pros-
30 ecuting attorney shall prepare an application for filing on the next
31 day. The law enforcement officer releasing the juvenile shall serve the
32 juvenile and his or her parent or guardian with written notice that an
33 order shall be issued by the family court on the next court day prohib-
34 iting the juvenile from entering any place where the crime occurred
35 including a buffer zone surrounding the place or modifications as
36 provided by subdivision two of section 735.40 of this article. The court
37 shall issue such order on the first court day following the release of
38 the juvenile. If the restraints contained in the court order differ from
39 the restraints contained in the notice, the order shall not be effective
40 until the third court day following the issuance of the order. The juve-
41 nile may apply to the court to stay or modify the order on the grounds
42 set forth in subdivision one of section 735.40 of this article.

43 § 735.10 Restraining order - criminal sale of a controlled substance in
44 the fourth degree.

45 1. When a person is charged with a criminal offense as defined in
46 section 220.34 of the penal law and the person is released from custody
47 before trial on bail or personal recognizance, the court, upon applica-
48 tion of a law enforcement officer or prosecuting district attorney and
49 except as provided in subdivision one of section 735.40 of this article,
50 shall as a condition of release issue an order prohibiting the person
51 from entering any place where the crime occurred, including a buffer
52 zone surrounding the place or modifications as provided by subdivision
53 two of section 735.40 of this article.

54 2. When a person is charged with a criminal offense as defined in
55 section 220.34 of the penal law on a summons, the court, upon applica-
56 tion of a law enforcement officer or prosecuting attorney and except as

provided in subdivision one of section 735.40 of this article, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

3. When a person is charged with a criminal offense as defined in section 220.34 of the penal law on a juvenile delinquency complaint and is released from custody at a detention hearing, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

4. When a person is charged with a criminal offense as defined in section 220.34 of the penal law on a juvenile delinquency complaint and is released without being detained, the law enforcement officer or prosecuting attorney shall prepare an application for filing on the next day. The law enforcement officer releasing the juvenile shall serve the juvenile and his parent or guardian with written notice that an order shall be issued by the family court on the next court day prohibiting the juvenile from entering any place where the crime occurred including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article. The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subdivision one of section 735.40 of this article.

§ 735.15 Restraining order - criminal sale of a controlled substance to a child.

1. When a person is charged with a criminal offense as defined in section 220.48 of the penal law and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall as a condition of release issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

2. When a person is charged with a criminal offense as defined in section 220.48 of the penal law on a summons, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

3. When a person is charged with a criminal offense as defined in section 220.48 of the penal law on a juvenile delinquency complaint and is released from custody at a detention hearing, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40 of this article, shall issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifi-

1 cations as provided by subdivision two of section 735.40 of this arti-
2 cle.

3 4. When a person is charged with a criminal offense as defined in
4 section 220.48 of the penal law on a juvenile delinquency complaint and
5 is released without being detained, the law enforcement officer or pros-
6 ecuting attorney shall prepare an application for filing on the next
7 day. The law enforcement officer releasing the juvenile shall serve the
8 juvenile and his or her parent or guardian with written notice that an
9 order shall be issued by the family court on the next court day prohib-
10 iting the juvenile from entering any place where the crime occurred
11 including a buffer zone surrounding the place or modifications as
12 provided by subdivision two of section 735.40 of this article. The court
13 shall issue such order on the first court day following the release of
14 the juvenile. If the restraints contained in the court order differ from
15 the restraints contained in the notice, the order shall not be effective
16 until the third court day following the issuance of the order. The juve-
17 nile may apply to the court to stay or modify the order on the grounds
18 set forth in subdivision one of section 735.40 of this article.

19 § 735.20 Restraining order - unlawful manufacture of methamphetamine in
20 the third degree.

21 1. When a person is charged with a criminal offense as defined in
22 section 220.73 of the penal law and the person is released from custody
23 before trial on bail or personal recognizance, the court, upon applica-
24 tion of a law enforcement officer or prosecuting attorney and except as
25 provided in subdivision one of section 735.40 of this article, shall as
26 a condition of release issue an order prohibiting the person from enter-
27 ing any place where the crime occurred, including a buffer zone
28 surrounding the place or modifications as provided by subdivision two of
29 section 735.40 of this article.

30 2. When a person is charged with a criminal offense as defined in
31 section 220.73 of the penal law on a summons, the court, upon applica-
32 tion of a law enforcement officer or prosecuting attorney and except as
33 provided in subdivision one of section 735.40 of this article, shall, at
34 the time of the defendant's first appearance, issue an order prohibiting
35 the person from entering any place where the crime occurred, including a
36 buffer zone surrounding the place or modifications as provided by subdivi-
37 sion two of section 735.40 of this article.

38 3. When a person is charged with a criminal offense as defined in
39 section 220.73 of the penal law on a juvenile delinquency complaint and
40 is released from custody at a detention hearing, the court, upon appli-
41 cation of a law enforcement officer or prosecuting attorney and except
42 as provided in subdivision one of section 735.40 of this article, shall
43 issue an order prohibiting the person from entering any place where the
44 crime occurred, including a buffer zone surrounding the place or modifi-
45 cations as provided by subdivision two of section 735.40 of this arti-
46 cle.

47 4. When a person is charged with a criminal offense as defined in
48 section 220.73 of the penal law on a juvenile delinquency complaint and
49 is released without being detained, the law enforcement officer or pros-
50 ecuting attorney shall prepare an application for filing on the next
51 day. The law enforcement officer releasing the juvenile shall serve the
52 juvenile and his or her parent or guardian with written notice that an
53 order shall be issued by the family court on the next court day prohib-
54 iting the juvenile from entering any place where the crime occurred
55 including a buffer zone surrounding the place or modifications as
56 provided by subdivision two of section 735.40 of this article. The court

1 shall issue such order on the first court day following the release of
2 the juvenile. If the restraints contained in the court order differ from
3 the restraints contained in the notice, the order shall not be effective
4 until the third court day following the issuance of the order. The juve-
5 nile may apply to the court to stay or modify the order on the grounds
6 set forth in subdivision one of section 735.40 of this article.

7 § 735.25 Restraining order - unlawful manufacture of methamphetamine in
8 the second degree.

9 1. When a person is charged with a criminal offense as defined in
10 section 220.74 of the penal law and the person is released from custody
11 before trial on bail or personal recognizance, the court, upon applica-
12 tion of a law enforcement officer or prosecuting attorney and except as
13 provided in subdivision one of section 735.40 of this article, shall as
14 a condition of release issue an order prohibiting the person from enter-
15 ing any place where the crime occurred, including a buffer zone
16 surrounding the place or modifications as provided by subdivision two of
17 section 735.40 of this article.

18 2. When a person is charged with a criminal offense as defined in
19 section 220.74 of the penal law on a summons, the court, upon applica-
20 tion of a law enforcement officer or prosecuting attorney and except as
21 provided in subdivision one of section 735.40 of this article, shall, at
22 the time of the defendant's first appearance, issue an order prohibiting
23 the person from entering any place where the crime occurred, including a
24 buffer zone surrounding the place or modifications as provided by subdi-
25 vision two of section 735.40 of this article.

26 3. When a person is charged with a criminal offense as defined in
27 section 220.74 of the penal law on a juvenile delinquency complaint and
28 is released from custody at a detention hearing, the court, upon appli-
29 cation of a law enforcement officer or prosecuting attorney and except
30 as provided in subdivision one of section 735.40 of this article, shall
31 issue an order prohibiting the person from entering any place where the
32 crime occurred, including a buffer zone surrounding the place or modifi-
33 cations as provided by subdivision two of section 735.40 of this arti-
34 cle.

35 4. When a person is charged with a criminal offense as defined in
36 section 220.74 of the penal law on a juvenile delinquency complaint and
37 is released without being detained, the law enforcement officer or pros-
38 ecuting attorney shall prepare an application for filing on the next
39 day. The law enforcement officer releasing the juvenile shall serve the
40 juvenile and his or her parent or guardian with written notice that an
41 order shall be issued by the family court on the next court day prohib-
42 iting the juvenile from entering any place where the crime occurred
43 including a buffer zone surrounding the place or modifications as
44 provided by subdivision two of section 735.40 of this article. The court
45 shall issue such order on the first court day following the release of
46 the juvenile. If the restraints contained in the court order differ from
47 the restraints contained in the notice, the order shall not be effective
48 until the third court day following the issuance of the order. The juve-
49 nile may apply to the court to stay or modify the order on the grounds
50 set forth in subdivision one of section 735.40 of this article.

51 § 735.30 Restraining order - unlawful manufacture of methamphetamine in
52 the first degree.

53 1. When a person is charged with a criminal offense as defined in
54 section 220.75 of the penal law and the person is released from custody
55 before trial on bail or personal recognizance, the court, upon applica-
56 tion of a law enforcement officer or prosecuting attorney and except as

1 provided in subdivision one of section 735.40 of this article, shall as
2 a condition of release issue an order prohibiting the person from enter-
3 ing any place where the crime occurred, including a buffer zone
4 surrounding the place or modifications as provided by subdivision two of
5 section 735.40 of this article.

6 2. When a person is charged with a criminal offense as defined in
7 section 220.75 of the penal law on a summons, the court, upon applica-
8 tion of a law enforcement officer or prosecuting attorney and except as
9 provided in subdivision one of section 735.40 of this article, shall, at
10 the time of the defendant's first appearance, issue an order prohibiting
11 the person from entering any place where the crime occurred, including a
12 buffer zone surrounding the place or modifications as provided by subdivi-
13 sion two of section 735.40 of this article.

14 3. When a person is charged with a criminal offense as defined in
15 section 220.75 of the penal law on a juvenile delinquency complaint and
16 is released from custody at a detention hearing, the court, upon appli-
17 cation of a law enforcement officer or prosecuting attorney and except
18 as provided in subdivision one of section 735.40 of this article, shall
19 issue an order prohibiting the person from entering any place where the
20 crime occurred, including a buffer zone surrounding the place or modifi-
21 cations as provided by subdivision two of section 735.40 of this arti-
22 cle.

23 4. When a person is charged with a criminal offense as defined in
24 section 220.75 of the penal law on a juvenile delinquency complaint and
25 is released without being detained, the law enforcement officer or pros-
26 ecuting attorney shall prepare an application for filing on the next
27 day. The law enforcement officer releasing the juvenile shall serve the
28 juvenile and his or her parent or guardian with written notice that an
29 order shall be issued by the family court on the next court day prohib-
30 iting the juvenile from entering any place where the crime occurred
31 including a buffer zone surrounding the place or modifications as
32 provided by subdivision two of section 735.40 of this article. The court
33 shall issue such order on the first court day following the release of
34 the juvenile. If the restraints contained in the court order differ from
35 the restraints contained in the notice, the order shall not be effective
36 until the third court day following the issuance of the order. The juve-
37 nile may apply to the court to stay or modify the order on the grounds
38 set forth in subdivision one of section 735.40 of this article.

39 § 735.35 Restraining order - operating as a major trafficker.

40 1. When a person is charged with a criminal offense as defined in
41 section 220.77 of the penal law and the person is released from custody
42 before trial on bail or personal recognizance, the court, upon applica-
43 tion of a law enforcement officer or prosecuting attorney and except as
44 provided in subdivision one of section 735.40 of this article, shall as
45 a condition of release issue an order prohibiting the person from enter-
46 ing any place where the crime occurred, including a buffer zone
47 surrounding the place or modifications as provided by subdivision two of
48 section 735.40 of this article.

49 2. When a person is charged with a criminal offense as defined in
50 section 220.77 of the penal law on a summons, the court, upon applica-
51 tion of a law enforcement officer or prosecuting attorney and except as
52 provided in subdivision one of section 735.40, shall, at the time of the
53 defendant's first appearance, issue an order prohibiting the person from
54 entering any place where the crime occurred, including a buffer zone
55 surrounding the place or modifications as provided by subdivision two of
56 section 735.40 of this article.

3. When a person is charged with a criminal offense as defined in section 220.77 of the penal law on a juvenile delinquency complaint and is released from custody at a detention hearing, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of section 735.40, shall issue an order prohibiting the person from entering any place where the crime occurred, including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article.

4. When a person is charged with a criminal offense as defined in section 220.77 of the penal law on a juvenile delinquency complaint and is released without being detained, the law enforcement officer or prosecuting attorney shall prepare an application for filing on the next day. The law enforcement officer releasing the juvenile shall serve the juvenile and his or her parent or guardian with written notice that an order shall be issued by the family court on the next court day prohibiting the juvenile from entering any place where the crime occurred including a buffer zone surrounding the place or modifications as provided by subdivision two of section 735.40 of this article. The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subdivision one of section 735.40 of this article.

§ 735.40 Restraining order - exceptions, content, distribution, modifications.

1. The court may forego issuing a restraining order for which application has been made only if the defendant establishes by clear and convincing evidence that: (a) the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such event, the court shall not issue an order pursuant to this article unless the court is clearly convinced that the need to bar the person from the place in order to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place. If the balance of the interest of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place; or

(b) the issuance of an order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of persons residing in or having business in the place.

2. A restraining order issued pursuant to this article shall describe the place from which the person has been barred and any conditions upon the person's entry into the place, with sufficient specificity to enable the person to guide his conduct accordingly and to enable a law enforcement officer to enforce the order. The order shall also prohibit the person from entering an area of up to five hundred feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of this article. In the discretion of the court, the order may contain modifications to permit the person to enter the area during specified times for specified purposes such as attending school during regular school hours. When appropriate, the court may append to the order a map depicting the place. The person shall be given a copy of the restraining order and any appended map and shall acknowledge in writing the receipt thereof.

1 3. (a) The court shall provide notice of the restraining order to the
2 local law enforcement agency where the arrest occurred and to the county
3 district attorney.

4 (b) Prior to the person's conviction or adjudication of delinquency
5 for a criminal offense, the local law enforcement agency may post a copy
6 of any orders issued pursuant to this article, or an equivalent notice
7 containing the terms of the order, upon one or more of the principal
8 entrances of the place or in any other conspicuous location. Such post-
9 ing shall be for the purpose of informing the public, and the failure to
10 post a copy of the order shall in no way excuse any violation of the
11 order.

12 (c) Prior to the person's conviction or adjudication of delinquency
13 for a criminal offense, any law enforcement agency may publish a copy of
14 any orders issued pursuant to this article, or an equivalent notice
15 containing the terms of the order, in a newspaper circulating in the
16 area of the restraining order. Such publication shall be for the purpose
17 of informing the public, and the failure to publish a copy of the order
18 shall in no way excuse any violation of the order.

19 (d) Prior to the person's conviction or adjudication of delinquency
20 for a criminal offense, any law enforcement agency may distribute copies
21 of any orders issued pursuant to this article, or an equivalent notice
22 containing the terms of the order, to residents or businesses located
23 within the area delineated in the order or, in the case of a school or
24 any government-owned property, to the appropriate administrator, or to
25 any tenant association representing the residents of the affected area.
26 Such publication shall be for the purpose of informing the public, and
27 the failure to publish a copy of the order shall in no way excuse any
28 violation of the order.

29 4. When a person is convicted of or adjudicated delinquent for any
30 criminal offense described in this article, the court, upon application
31 of a law enforcement officer or prosecuting attorney and except as
32 provided in subdivision one of this section, shall, by separate order or
33 within the judgment of conviction, issue an order prohibiting the person
34 from entering any place where the crime occurred, including a buffer
35 zone surrounding the place or modifications as provided by subdivision
36 two of this section. Upon the person's conviction or adjudication of
37 delinquency for a criminal offense described in this article, a law
38 enforcement agency, in addition to posting, publishing and distributing
39 the order or an equivalent notice pursuant to paragraphs (b), (c), and
40 (d) of subdivision three of this section, may also post, publish and
41 distribute a photograph of the person.

42 5. When a juvenile has been adjudicated delinquent for an act which,
43 if committed by an adult, would be a criminal offense, in addition to an
44 order required by subdivision four of this section or any other disposi-
45 tion authorized by law, the court may order the juvenile and any parent,
46 guardian or any family member over whom the court has jurisdiction to
47 take such actions or obey such restraints as may be necessary to facili-
48 tate the rehabilitation of the juvenile or to protect public safety or
49 to safeguard or enforce the rights of residents of the place. The court
50 may commit the juvenile to the care of the office of children and family
51 services until such time as the juvenile reaches the age of eighteen or
52 until the order of removal and restraint expires, whichever first
53 occurs, or to such alternative residential placement as is practicable.

54 6. An order issued pursuant to sections 735.00, 735.10, 735.15,
55 735.20, 735.25, 735.30, and 735.35 of this article shall remain in
56 effect until the case has been adjudicated or dismissed, or for not less

than two years, whichever is less. An order issued pursuant to subdivision four of this section shall remain in effect for such period of, time as shall be fixed by the court but not longer than the maximum terms of imprisonment or incarceration allowed by law for the underlying offense or offenses. When the court issues a restraining order pursuant to subdivision four of this section and the person is also sentenced to any form of probationary supervision, the court shall make continuing compliance with the order an express condition of probation. When the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order shall be made an express condition of the person's release from confinement or incarceration on parole. At the time of sentencing or, in the case of a juvenile, at the time of disposition of the juvenile case, the court shall advise the defendant that the restraining order shall include a fixed time period in accordance with this subdivision and shall include that provision in the judgment of conviction, dispositional order, separate order or order vacating an existing restraining order, to the law enforcement agency that made the arrest and to the county district attorney.

7. All applications to stay or modify an order issued pursuant to this section shall be made in supreme court. The court shall immediately notify the county district attorney in writing whenever an application is made to stay or modify an order issued pursuant to this section. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense as defined in this article shall not become final for ten days in order to permit the appeal of the court's findings by the prosecution.

8. Nothing in this article shall be construed in any way to limit the authority of the court to take such other actions or to issue such orders as may be necessary to protect the public safety or to safeguard or enforce the rights of others with respect to the place.

9. Notwithstanding any other provision of this article, the court may permit the person to return to the place to obtain personal belongings and effects and, by court order, may restrict the time and duration and provide for police supervision of such visit.

§ 735.45 Certification of offense location.

The court shall issue a restraining order pursuant to this article only upon request by a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

§ 735.50 Discretion to not seek restraining order.

A law enforcement or prosecuting attorney shall have discretion to not seek a restraining order if the defendant is charged with an offense resulting from the stop of a motor vehicle or if the defendant was using public transportation.

ARTICLE 740

RESTRAINING ORDER FROM LOCATION; CERTAIN CRIMES

Section 740.00 Restraining order - criminal possession of a weapon in the third degree.

740.10 Restraining order -- exceptions, content, distribution, modifications.

740.15 Certification of offense location.

740.20 Discretion to not seek restraining order.

§ 740.00 Restraining order - criminal possession of a weapon in the third degree.

1. When a person is charged with a criminal offense as defined in subdivision seven of section 265.02 of the penal law and the person is

1 released from custody before trial on bail or personal recognizance, the
2 court, upon application of a law enforcement officer or prosecuting
3 attorney and except as provided in subdivision one of section 740.10 of
4 this article, shall as a condition of release issue an order prohibiting
5 the person from entering any place where the crime occurred, including a
6 buffer zone surrounding the place or modifications as provided by subdi-
7 vision two of section 740.10 of this article.

8 2. When a person is charged with a criminal offense as defined in
9 subdivision seven of section 265.02 of the penal law on a summons, the
10 court, upon application of a law enforcement officer or prosecuting
11 attorney and except as provided in subdivision one of section 740.10 of
12 this article, shall, at the time of the defendant's first appearance,
13 issue an order prohibiting the person from entering any place where the
14 crime occurred, including a buffer zone surrounding the place or modifi-
15 cations as provided by subdivision two of section 740.10 of this arti-
16 cle.

17 3. When a person is charged with a criminal offense as defined in
18 subdivision seven of section 265.02 of the penal law on a juvenile
19 delinquency complaint and is released from custody at a detention hear-
20 ing, the court, upon application of a law enforcement officer or prose-
21 cuting attorney and except as provided in subdivision one of section
22 740.10 of this article, shall issue an order prohibiting the person from
23 entering any place where the crime occurred, including a buffer zone
24 surrounding the place or modifications as provided by subdivision two of
25 section 740.10 of this article.

26 4. When a person is charged with a criminal offense as defined in
27 subdivision seven of section 265.02 of the penal law on a juvenile
28 delinquency complaint and is released without being detained, the law
29 enforcement officer or prosecuting attorney shall prepare an application
30 for filing on the next day. The law enforcement officer releasing the
31 juvenile shall serve the juvenile and his or her parent or guardian with
32 written notice that an order shall be issued by the family court on the
33 next court day prohibiting the juvenile from entering any place where
34 the crime occurred including a buffer zone surrounding the place or
35 modifications as provided by subdivision two of section 740.10 of this
36 article. The court shall issue such order on the first court day follow-
37 ing the release of the juvenile. If the restraints contained in the
38 court order differ from the restraints contained in the notice, the
39 order shall not be effective until the third court day following the
40 issuance of the order. The juvenile may apply to the court to stay or
41 modify the order on the grounds set forth in subdivision one of section
42 740.10 of this article.

43 § 740.10 Restraining order -- exceptions, content, distribution, modifi-
44 cations.

45 1. The court may forego issuing a restraining order for which applica-
46 tion has been made only if the defendant establishes by clear and
47 convincing evidence that: (a) the defendant lawfully resides at or has
48 legitimate business on or near the place, or otherwise legitimately
49 needs to enter the place. In such an event, the court shall not issue an
50 order pursuant to this article unless the court is clearly convinced
51 that the need to bar the person from the place in order to protect the
52 public safety and the rights, safety and health of the residents and
53 persons working in the place outweighs the person's interest in return-
54 ing to the place. If the balance of the interest of the person and the
55 public so warrants, the court may issue an order imposing conditions
56 upon the person's entry at, upon or near the place; or

1 (b) the issuance of an order would cause undue hardship to innocent
2 persons and would constitute a serious injustice which overrides the
3 need to protect the rights, safety and health of persons residing in or
4 having business in the place.

5 2. A restraining order issued pursuant to this article shall describe
6 the place from which the person has been barred and any conditions upon
7 the person's entry into the place, with sufficient specificity to enable
8 the person to guide his conduct accordingly and to enable a law enforce-
9 ment officer to enforce the order. The order shall also prohibit the
10 person from entering an area of up to five hundred feet surrounding the
11 place, unless the court rules that a different buffer zone would better
12 effectuate the purposes of this act. In the discretion of the court, the
13 order may contain modifications to permit the person to enter the area
14 during specified times for specified purposes such as attending school
15 during regular school hours. When appropriate, the court may append to
16 the order a map depicting the place. The person shall be given a copy of
17 the restraining order and any appended map and shall acknowledge in
18 writing the receipt thereof.

19 3. (a) The court shall provide notice of the restraining order to the
20 local law enforcement agency where the arrest occurred and to the county
21 district attorney.

22 (b) Prior to the person's conviction or adjudication of delinquency
23 for a criminal offense, the local law enforcement agency may post a copy
24 of any orders issued pursuant to this article, or an equivalent notice
25 containing the terms of the order, upon one or more of the principal
26 entrances of the place or in any other conspicuous location. Such post-
27 ing shall be for the purpose of informing the public, and the failure to
28 post a copy of the order shall in no way excuse any violation of the
29 order.

30 (c) Prior to the person's conviction or adjudication of delinquency
31 for a criminal offense, any law enforcement agency may publish a copy of
32 any orders issued pursuant to this article, or an equivalent notice
33 containing the terms of the order, in a newspaper circulating in the
34 area of the restraining order. Such publication shall be for the purpose
35 of informing the public, and the failure to publish a copy of the order
36 shall in no way excuse any violation of the order.

37 (d) Prior to the person's conviction or adjudication of delinquency
38 for a criminal offense, any law enforcement agency may distribute copies
39 of any orders issued pursuant to this article, or an equivalent notice
40 containing the terms of the order, to residents or businesses located
41 within the area delineated in the order or, in the case of a school or
42 any government-owned property, to the appropriate administrator, or to
43 any tenant association representing the residents of the affected area.
44 Such publication shall be for the purpose of informing the public, and
45 the failure to publish a copy of the order shall in no way excuse any
46 violation of the order.

47 4. When a person is convicted of or adjudicated delinquent for any
48 criminal offense described in this article, the court, upon application
49 of a law enforcement officer or prosecuting attorney and except as
50 provided in subdivision one of this section, shall, by separate order or
51 within the judgment of conviction, issue an order prohibiting the person
52 from entering any place where the crime occurred, including a buffer
53 zone surrounding the place or modifications as provided by subdivision
54 two of this section. Upon the person's conviction or adjudication of
55 delinquency for a criminal offense described in this article, a law
56 enforcement agency, in addition to posting, publishing and distributing

1 the order or an equivalent notice pursuant to paragraphs (b), (c), and
2 (d) of subdivision three of this section, may also post, publish and
3 distribute a photograph of the person.

4 5. When a juvenile has been adjudicated delinquent for an act which,
5 if committed by an adult, would be a criminal offense, in addition to an
6 order required by subdivision four of this section or any other disposi-
7 tion authorized by law, the court may order the juvenile and any parent,
8 guardian or any family member over whom the court has jurisdiction to
9 take such actions or obey such restraints as may be necessary to facili-
10 tate the rehabilitation of the juvenile or to protect public safety or
11 to safeguard or enforce the rights of residents of the place. The court
12 may commit the juvenile to the care of the office of children and family
13 services until such time as the juvenile reaches the age of eighteen or
14 until the order of removal and restraint expires, whichever first
15 occurs, or to such alternative residential placement as is practicable.

16 6. An order issued pursuant to section 740.00 of this article shall
17 remain in effect until the case has been adjudicated or dismissed, or
18 for not less than two years, whichever is less. An order issued pursuant
19 to subdivision four of this section shall remain in effect for such
20 period of time as shall be fixed by the court but not longer than the
21 maximum terms of imprisonment or incarceration allowed by law for the
22 underlying offense or offenses. When the court issues a restraining
23 order pursuant to subdivision four of this section and the person is
24 also sentenced to any form of probationary supervision, the court shall
25 make continuing compliance with the order an express condition of
26 probation. When the person has been sentenced to a term of incarceration,
27 continuing compliance with the terms and conditions of the order
28 shall be made an express condition of the person's release from confine-
29 ment or incarceration on parole. At the time of sentencing or, in the
30 case of a juvenile, at the time of disposition of the juvenile case, the
31 court shall advise the defendant that the restraining order shall
32 include a fixed time period in accordance with this subdivision and
33 shall include that provision in the judgment of conviction, disposi-
34 tional order, separate order or order vacating an existing restraining
35 order, to the law enforcement agency that made the arrest and to the
36 county district attorney.

37 7. All applications to stay or modify an order issued pursuant to this
38 section shall be made in supreme court. The court shall immediately
39 notify the county district attorney in writing whenever an application
40 is made to stay or modify an order issued pursuant to this section. If
41 the court does not issue a restraining order, the sentence imposed by
42 the court for a criminal offense as defined in this article shall not
43 become final for ten days in order to permit the appeal of the court's
44 findings by the prosecution.

45 8. Nothing in this article shall be construed in any way to limit the
46 authority of the court to take such other actions or to issue such
47 orders as may be necessary to protect the public safety or to safeguard
48 or enforce the rights of others with respect to the place.

49 9. Notwithstanding any other provision of this article, the court may
50 permit the person to return to the place to obtain personal belongings
51 and effects and, by court order, may restrict the time and duration and
52 provide for police supervision of such visit.

53 § 740.15 Certification of offense location.

54 The court shall issue a restraining order pursuant to this article
55 only upon request by a law enforcement officer or prosecuting district

1 attorney and submission of a certification describing the location of
2 the offense.

3 § 740.20 Discretion to not seek restraining order.

4 A law enforcement or prosecuting district attorney shall have
5 discretion to not seek a restraining order if the defendant is charged
6 with an offense resulting from the stop of a motor vehicle or if the
7 defendant was using public transportation.

8 § 2. This act shall take effect on the ninetieth day after it shall
9 have become a law.