

STATE OF NEW YORK

8815

2017-2018 Regular Sessions

IN ASSEMBLY

November 29, 2017

Introduced by M. of A. GIGLIO, GRAF -- read once and referred to the
Committee on Codes

AN ACT to amend the family court act and the criminal procedure law, in
relation to extensions of orders of protection

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

1 Section 1. Subdivision 1 of section 154-c of the family court act, as
2 added by chapter 186 of the laws of 1997, is amended to read as follows:

3 1. Expiration dates and extensions. (a) Any order of protection or
4 temporary order of protection issued under articles four, five, six and
5 eight of this act shall plainly state the date that such order expires.

6 (b) Any order of protection or temporary order of protection issued
7 under this act shall be extended for up to two years past the date that
8 such order expires if the court finds an extreme case for such extension
9 and states on the record the reasons for the extension. For purposes of
10 this paragraph, "extreme case" shall mean a threat of harm to the
11 protected party continues; respondent has been found guilty of repeated
12 criminal contempt due to a violation of an order of protection; respond-
13 ent has continued to express intent to commit harm to, intimidate or
14 threaten the protected party.

15 § 2. The opening paragraph of subdivision 5 of section 530.12 of the
16 criminal procedure law, as amended by chapter 240 of the laws of 2015,
17 is amended to read as follows:

18 Upon sentencing on a conviction for any crime or violation between
19 spouses, between a parent and child, or between members of the same
20 family or household as defined in subdivision one of section 530.11 of
21 this article, the court may in addition to any other disposition,
22 including a conditional discharge or youthful offender adjudication,
23 enter an order of protection. Where a temporary order of protection was
24 issued, the court shall state on the record the reasons for issuing or
25 not issuing an order of protection. The duration of such an order shall

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

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1 be fixed by the court and: (A) in the case of a felony conviction, shall
2 not exceed the greater of: (i) eight years from the date of such
3 sentencing, except where the sentence is or includes a sentence of
4 probation on a conviction for a felony sexual assault, as provided in
5 subparagraph (iii) of paragraph (a) of subdivision three of section
6 65.00 of the penal law, in which case, ten years from the date of such
7 sentencing, or (ii) eight years from the date of the expiration of the
8 maximum term of an indeterminate or the term of a determinate sentence
9 of imprisonment actually imposed; or (B) in the case of a conviction for
10 a class A misdemeanor, shall not exceed the greater of: (i) five years
11 from the date of such sentencing, except where the sentence is or
12 includes a sentence of probation on a conviction for a misdemeanor sexu-
13 al assault, as provided in subparagraph (ii) of paragraph (b) of subdivi-
14 sion three of section 65.00 of the penal law, in which case, six years
15 from the date of such sentencing, or (ii) five years from the date of
16 the expiration of the maximum term of a definite or intermittent term
17 actually imposed; or (C) in the case of a conviction for any other
18 offense, shall not exceed the greater of: (i) two years from the date of
19 sentencing, or (ii) two years from the date of the expiration of the
20 maximum term of a definite or intermittent term actually imposed. For
21 purposes of determining the duration of an order of protection entered
22 pursuant to this subdivision, a conviction shall be deemed to include a
23 conviction that has been replaced by a youthful offender adjudication.
24 Any order of protection entered pursuant to this section shall be
25 extended for up to two years past the date that such order expires if
26 the court finds an extreme case for such extension and states on the
27 record the reasons for the extension. For purposes of this paragraph,
28 "extreme case" shall mean a threat of harm to the protected party
29 continues; defendant has been found guilty of repeated criminal contempt
30 due to a violation of an order of protection; defendant has continued to
31 express intent to commit harm to, intimidate or threaten the protected
32 party. In addition to any other conditions, such an order may require
33 the defendant:

34 § 3. The opening paragraph of subdivision 5 of section 530.12 of the
35 criminal procedure law, as amended by section 2 of chapter 9 of the laws
36 of 2011, 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, in the case of a felony conviction, shall not
46 exceed the greater of: (i) five years from the date of such sentencing,
47 or (ii) three years from the date of the expiration of the maximum term
48 of an indeterminate sentence of imprisonment actually imposed; or in the
49 case of a conviction for a class A misdemeanor, shall not exceed three
50 years from the date of such sentencing; or in the case of a conviction
51 for any other offense, shall not exceed one year from the date of
52 sentencing. For purposes of determining the duration of an order of
53 protection entered pursuant to this subdivision, a conviction shall be
54 deemed to include a conviction that has been replaced by a youthful
55 offender adjudication. Any order of protection entered pursuant to this
56 section shall be extended for up to two years past the date that such

1 order expires if the court finds an extreme case for such extension and
2 states on the record the reasons for the extension. For purposes of this
3 paragraph, "extreme case" shall mean a threat of harm to the protected
4 party continues; defendant has been found guilty of repeated criminal
5 contempt due to a violation of an order of protection; defendant has
6 continued to express intent to commit harm to, intimidate or threaten
7 the protected party. In addition to any other conditions, such an order
8 may require the defendant:

9 § 4. The opening paragraph of subdivision 4 of section 530.13 of the
10 criminal procedure law, as amended by chapter 240 of the laws of 2015,
11 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 provided in subparagraph
23 (iii) of paragraph (a) of subdivision three of section 65.00 of the
24 penal law, in which case, ten years from the date of such sentencing, or
25 (ii) eight years from the date of the expiration of the maximum term of
26 an indeterminate or the term of a determinate sentence of imprisonment
27 actually imposed; or (B) in the case of a conviction for a class A
28 misdemeanor, shall not exceed the greater of: (i) five years from the
29 date of such sentencing, except where the sentence is or includes a
30 sentence of probation on a conviction for a misdemeanor sexual assault,
31 as provided in subparagraph (ii) of paragraph (b) of subdivision three
32 of section 65.00 of the penal law, in which case, six years from the
33 date of such sentencing or (ii) five years from the date of the expira-
34 tion of the maximum term of a definite or intermittent term actually
35 imposed; or (C) in the case of a conviction for any other offense, shall
36 not exceed the greater of: (i) two years from the date of sentencing, or
37 (ii) two years from the date of the expiration of the maximum term of a
38 definite or intermittent term actually imposed. For purposes of deter-
39 mining the duration of an order of protection entered pursuant to this
40 subdivision, a conviction shall be deemed to include a conviction that
41 has been replaced by a youthful offender adjudication. Any order of
42 protection entered pursuant to this section shall be extended for up to
43 two years past the date that such order expires if the court finds an
44 extreme case for such extension and states on the record the reasons for
45 the extension. For purposes of this paragraph, "extreme case" shall mean
46 a threat of harm to the protected party continues; defendant has been
47 found guilty of repeated criminal contempt due to a violation of an
48 order of protection; defendant has continued to express intent to commit
49 harm to, intimidate or threaten the protected party. In addition to any
50 other conditions such an order may require that the defendant:

51 § 5. The opening paragraph of subdivision 4 of section 530.13 of the
52 criminal procedure law, as amended by section 4 of chapter 9 of the laws
53 of 2011, is amended to read as follows:

54 Upon sentencing on a conviction for any offense, where the court has
55 not issued an order of protection pursuant to section 530.12 of this
56 article, the court may, in addition to any other disposition, including

1 a conditional discharge or youthful offender adjudication, enter an
2 order of protection. Where a temporary order of protection was issued,
3 the court shall state on the record the reasons for issuing or not issu-
4 ing an order of protection. The duration of such an order shall be fixed
5 by the court and, in the case of a felony conviction, shall not exceed
6 the greater of: (i) five years from the date of such sentencing, or (ii)
7 three years from the date of the expiration of the maximum term of an
8 indeterminate sentence of imprisonment actually imposed; or in the case
9 of a conviction for a class A misdemeanor, shall not exceed three years
10 from the date of such sentencing; or in the case of a conviction for any
11 other offense, shall not exceed one year from the date of sentencing.
12 For purposes of determining the duration of an order of protection
13 entered pursuant to this subdivision, a conviction shall be deemed to
14 include a conviction that has been replaced by a youthful offender adju-
15 dication. Any order of protection entered pursuant to this section shall
16 be extended for up to two years past the date that such order expires if
17 the court finds an extreme case for such extension and states on the
18 record the reasons for the extension. For purposes of this paragraph,
19 "extreme case" shall mean a threat of harm to the protected party
20 continues; defendant has been found guilty of repeated criminal contempt
21 due to a violation of an order of protection; defendant has continued to
22 express intent to commit harm to, intimidate or threaten the protected
23 party. In addition to any other conditions such an order may require
24 that the defendant:

25 § 6. This act shall take effect on the ninetieth day after it shall
26 have become a law; provided that the amendments to the opening paragraph
27 of subdivision 5 of section 530.12 of the criminal procedure law, made
28 by section two of this act, and the amendments to the opening paragraph
29 of subdivision 4 of section 530.13 of the criminal procedure law, made
30 by section four of this act, shall be subject to the expiration and
31 reversion of such paragraphs pursuant to subdivision d of section 74 of
32 chapter 3 of the laws of 1995, as amended, when upon such date the
33 provisions of sections three and five of this act shall take effect.