

# 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  
24  
25  
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] 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 sion 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 nilite 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

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

6 3. When a person is charged with a criminal offense as defined in  
7 section 220.34 of the penal law on a juvenile delinquency complaint and  
8 is released from custody at a detention hearing, the court, upon appli-  
9 cation of a law enforcement officer or prosecuting attorney and except  
10 as provided in subdivision one of section 735.40 of this article, shall  
11 issue an order prohibiting the person from entering any place where the  
12 crime occurred, including a buffer zone surrounding the place or modifi-  
13 cations as provided by subdivision two of section 735.40 of this arti-  
14 cle.

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

31 § 735.15 Restraining order - criminal sale of a controlled substance to  
32 a child.

33 1. When a person is charged with a criminal offense as defined in  
34 section 220.48 of the penal law and the person is released from custody  
35 before trial on bail or personal recognizance, the court, upon applica-  
36 tion of a law enforcement officer or prosecuting attorney and except as  
37 provided in subdivision one of section 735.40 of this article, shall as  
38 a condition of release issue an order prohibiting the person from enter-  
39 ing any place where the crime occurred, including a buffer zone  
40 surrounding the place or modifications as provided by subdivision two of  
41 section 735.40 of this article.

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

50 3. When a person is charged with a criminal offense as defined in  
51 section 220.48 of the penal law on a juvenile delinquency complaint and  
52 is released from custody at a detention hearing, the court, upon appli-  
53 cation of a law enforcement officer or prosecuting attorney and except  
54 as provided in subdivision one of section 735.40 of this article, shall  
55 issue an order prohibiting the person from entering any place where the  
56 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 subdivi-  
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 vision 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.

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

9 4. When a person is charged with a criminal offense as defined in  
10 section 220.77 of the penal law on a juvenile delinquency complaint and  
11 is released without being detained, the law enforcement officer or pros-  
12 ecuting attorney shall prepare an application for filing on the next  
13 day. The law enforcement officer releasing the juvenile shall serve the  
14 juvenile and his or her parent or guardian with written notice that an  
15 order shall be issued by the family court on the next court day prohib-  
16 iting the juvenile from entering any place where the crime occurred  
17 including a buffer zone surrounding the place or modifications as  
18 provided by subdivision two of section 735.40 of this article. The court  
19 shall issue such order on the first court day following the release of  
20 the juvenile. If the restraints contained in the court order differ from  
21 the restraints contained in the notice, the order shall not be effective  
22 until the third court day following the issuance of the order. The juve-  
23 nile may apply to the court to stay or modify the order on the grounds  
24 set forth in subdivision one of section 735.40 of this article.

25 § 735.40 Restraining order - exceptions, content, distribution, modifi-  
26 cations.

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

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

43 2. A restraining order issued pursuant to this article shall describe  
44 the place from which the person has been barred and any conditions upon  
45 the person's entry into the place, with sufficient specificity to enable  
46 the person to guide his conduct accordingly and to enable a law enforce-  
47 ment officer to enforce the order. The order shall also prohibit the  
48 person from entering an area of up to five hundred feet surrounding the  
49 place, unless the court rules that a different buffer zone would better  
50 effectuate the purposes of this article. In the discretion of the court,  
51 the order may contain modifications to permit the person to enter the  
52 area during specified times for specified purposes such as attending  
53 school during regular school hours. When appropriate, the court may  
54 append to the order a map depicting the place. The person shall be given  
55 a copy of the restraining order and any appended map and shall acknowl-  
56 edge 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



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

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

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

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

35 § 735.45 Certification of offense location.

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

40 § 735.50 Discretion to not seek restraining order.

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

45 ARTICLE 740

46 RESTRAINING ORDER FROM LOCATION; CERTAIN CRIMES

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

49 740.10 Restraining order -- exceptions, content, distribution,  
50 modifications.

51 740.15 Certification of offense location.

52 740.20 Discretion to not seek restraining order.

53 § 740.00 Restraining order - criminal possession of a weapon in the  
54 third degree.

55 1. When a person is charged with a criminal offense as defined in  
56 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 subdivi-  
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 incarcera-  
27 tion, 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.