

# STATE OF NEW YORK

1570

2019-2020 Regular Sessions

## IN SENATE

January 15, 2019

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:

Section 1. The criminal procedure law is amended by adding a new title 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

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

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

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

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

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

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

735.35 Restraining order - operating as a major trafficker.

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

735.45 Certification of offense location.

735.50 Discretion to not seek restraining order.

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

LBD00976-01-9

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

1. When a person is charged with a criminal offense as defined in section 220.28 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 220.28 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 220.28 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 220.28 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.

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

1. When a person is charged with a criminal offense as defined in section 220.34 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 district 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 220.34 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 220.34 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

1 as provided in subdivision one of section 735.40 of this article, shall  
2 issue an order prohibiting the person from entering any place where the  
3 crime occurred, including a buffer zone surrounding the place or modifi-  
4 cations as provided by subdivision two of section 735.40 of this arti-  
5 cle.

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

22 § 735.20 Restraining order - unlawful manufacture of methamphetamine in  
23 the third degree.

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

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

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

50 4. When a person is charged with a criminal offense as defined in  
51 section 220.73 of the penal law on a juvenile delinquency complaint and  
52 is released without being detained, the law enforcement officer or pros-  
53 ecuting attorney shall prepare an application for filing on the next  
54 day. The law enforcement officer releasing the juvenile shall serve the  
55 juvenile and his or her parent or guardian with written notice that an  
56 order shall be issued by the family court on the next court day prohib-

1 iting the juvenile from entering any place where the crime occurred  
2 including a buffer zone surrounding the place or modifications as  
3 provided by subdivision two of section 735.40 of this article. The court  
4 shall issue such order on the first court day following the release of  
5 the juvenile. If the restraints contained in the court order differ from  
6 the restraints contained in the notice, the order shall not be effective  
7 until the third court day following the issuance of the order. The juve-  
8 nile may apply to the court to stay or modify the order on the grounds  
9 set forth in subdivision one of section 735.40 of this article.

10 § 735.25 Restraining order - unlawful manufacture of methamphetamine in  
11 the second degree.

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

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

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

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

54 § 735.30 Restraining order - unlawful manufacture of methamphetamine in  
55 the first degree.



1 1. When a person is charged with a criminal offense as defined in  
2 section 220.75 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 220.75 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 subdi-  
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 220.75 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 220.75 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 § 735.35 Restraining order - operating as a major trafficker.

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

53 2. When a person is charged with a criminal offense as defined in  
54 section 220.77 of the penal law on a summons, the court, upon applica-  
55 tion of a law enforcement officer or prosecuting attorney and except as  
56 provided in subdivision one of section 735.40, shall, at the time of the

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

5 3. When a person is charged with a criminal offense as defined in  
6 section 220.77 of the penal law on a juvenile delinquency complaint and  
7 is released from custody at a detention hearing, the court, upon appli-  
8 cation of a law enforcement officer or prosecuting attorney and except  
9 as provided in subdivision one of section 735.40, shall issue an order  
10 prohibiting the person 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.

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

29 § 735.40 Restraining order - exceptions, content, distribution, modifi-  
30 cations.

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

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

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

1 school during regular school hours. When appropriate, the court may  
2 append to the order a map depicting the place. The person shall be given  
3 a copy of the restraining order and any appended map and shall acknowl-  
4 edge in writing the receipt thereof.

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

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

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

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

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

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



1 until the order of removal and restraint expires, whichever first  
2 occurs, or to such alternative residential placement as is practicable.

3 6. An order issued pursuant to sections 735.00, 735.10, 735.15,  
4 735.20, 735.25, 735.30, and 735.35 of this article shall remain in  
5 effect until the case has been adjudicated or dismissed, or for not less  
6 than two years, whichever is less. An order issued pursuant to subdivi-  
7 sion four of this section shall remain in effect for such period of,  
8 time as shall be fixed by the court but not longer than the maximum  
9 terms of imprisonment or incarceration allowed by law for the underlying  
10 offense or offenses. When the court issues a restraining order pursuant  
11 to subdivision four of this section and the person is also sentenced to  
12 any form of probationary supervision, the court shall make continuing  
13 compliance with the order an express condition of probation. When the  
14 person has been sentenced to a term of incarceration, continuing compli-  
15 ance with the terms and conditions of the order shall be made an express  
16 condition of the person's release from confinement or incarceration on  
17 parole. At the time of sentencing or, in the case of a juvenile, at the  
18 time of disposition of the juvenile case, the court shall advise the  
19 defendant that the restraining order shall include a fixed time period  
20 in accordance with this subdivision and shall include that provision in  
21 the judgment of conviction, dispositional order, separate order or order  
22 vacating an existing restraining order, to the law enforcement agency  
23 that made the arrest and to the county district attorney.

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

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

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

40 § 735.45 Certification of offense location.

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

45 § 735.50 Discretion to not seek restraining order.

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

50 ARTICLE 740

51 RESTRAINING ORDER FROM LOCATION; CERTAIN CRIMES

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

54 740.10 Restraining order -- exceptions, content, distribution,  
55 modifications.

56 740.15 Certification of offense location.

1       740.20 Discretion to not seek restraining order.

2       § 740.00 Restraining order - criminal possession of a weapon in the  
3       third degree.

4       1. When a person is charged with a criminal offense as defined in  
5       subdivision seven of section 265.02 of the penal law and the person is  
6       released from custody before trial on bail or personal recognizance, the  
7       court, upon application of a law enforcement officer or prosecuting  
8       attorney and except as provided in subdivision one of section 740.10 of  
9       this article, shall as a condition of release issue an order prohibiting  
10      the person from entering any place where the crime occurred, including a  
11      buffer zone surrounding the place or modifications as provided by subdivi-  
12      sion two of section 740.10 of this article.

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

22      3. When a person is charged with a criminal offense as defined in  
23      subdivision seven of section 265.02 of the penal law on a juvenile  
24      delinquency complaint and is released from custody at a detention hear-  
25      ing, the court, upon application of a law enforcement officer or prose-  
26      cuting attorney and except as provided in subdivision one of section  
27      740.10 of this article, shall issue an order prohibiting the person from  
28      entering any place where the crime occurred, including a buffer zone  
29      surrounding the place or modifications as provided by subdivision two of  
30      section 740.10 of this article.

31      4. When a person is charged with a criminal offense as defined in  
32      subdivision seven of section 265.02 of the penal law on a juvenile  
33      delinquency complaint and is released without being detained, the law  
34      enforcement officer or prosecuting attorney shall prepare an application  
35      for filing on the next day. The law enforcement officer releasing the  
36      juvenile shall serve the juvenile and his or her parent or guardian with  
37      written notice that an order shall be issued by the family court on the  
38      next court day prohibiting the juvenile from entering any place where  
39      the crime occurred including a buffer zone surrounding the place or  
40      modifications as provided by subdivision two of section 740.10 of this  
41      article. The court shall issue such order on the first court day follow-  
42      ing the release of the juvenile. If the restraints contained in the  
43      court order differ from the restraints contained in the notice, the  
44      order shall not be effective until the third court day following the  
45      issuance of the order. The juvenile may apply to the court to stay or  
46      modify the order on the grounds set forth in subdivision one of section  
47      740.10 of this article.

48      § 740.10 Restraining order -- exceptions, content, distribution, modifi-  
49      cations.

50      1. The court may forego issuing a restraining order for which applica-  
51      tion has been made only if the defendant establishes by clear and  
52      convincing evidence that: (a) the defendant lawfully resides at or has  
53      legitimate business on or near the place, or otherwise legitimately  
54      needs to enter the place. In such an event, the court shall not issue an  
55      order pursuant to this article unless the court is clearly convinced  
56      that the need to bar the person from the place in order to protect the

1 public safety and the rights, safety and health of the residents and  
2 persons working in the place outweighs the person's interest in return-  
3 ing to the place. If the balance of the interest of the person and the  
4 public so warrants, the court may issue an order imposing conditions  
5 upon the person's entry at, upon or near the place; or

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

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

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

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

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

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

52 4. When a person is convicted of or adjudicated delinquent for any  
53 criminal offense described in this article, the court, upon application  
54 of a law enforcement officer or prosecuting attorney and except as  
55 provided in subdivision one of this section, shall, by separate order or  
56 within the judgment of conviction, issue an order prohibiting the person

1 from entering any place where the crime occurred, including a buffer  
2 zone surrounding the place or modifications as provided by subdivision  
3 two of this section. Upon the person's conviction or adjudication of  
4 delinquency for a criminal offense described in this article, a law  
5 enforcement agency, in addition to posting, publishing and distributing  
6 the order or an equivalent notice pursuant to paragraphs (b), (c), and  
7 (d) of subdivision three of this section, may also post, publish and  
8 distribute a photograph of the person.

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

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

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

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

54 9. Notwithstanding any other provision of this article, the court may  
55 permit the person to return to the place to obtain personal belongings

1 and effects and, by court order, may restrict the time and duration and  
2 provide for police supervision of such visit.

3 § 740.15 Certification of offense location.

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

8 § 740.20 Discretion to not seek restraining order.

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

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