

STATE OF NEW YORK

5123

2019-2020 Regular Sessions

IN ASSEMBLY

February 7, 2019

Introduced by M. of A. RAIA, FITZPATRICK, KOLB, HAWLEY, CROUCH, MONTESANO, GIGLIO, BRABENEC, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, McDONOUGH, M. L. MILLER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the issuance of orders of protection

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

Section 1. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by chapter 240 of the laws of 2015, is amended to read as follows:

Upon sentencing on a conviction for any crime or violation between spouses, between a parent and child, or between members of the same family or household; or when a defendant is found not responsible by reason of mental disease or defect for such a crime and the court pursuant to section 330.20 of this chapter issues an order of conditions; or upon the issuance of a final or temporary order of observation, pursuant to article seven hundred thirty of this part, relating to such a crime as defined in subdivision one of section 530.11 of this article, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and: (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, [~~except where the sentence is or includes a sentence of probation on a conviction for a felony sexual assault, as provided in subparagraph (iii) of paragraph (a) of subdivision three of section 65.00 of the penal law, in which case, ten years from the date of such sentencing,~~] or (ii) eight years from the date of the expiration of the maximum term

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

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1 of an indeterminate or the term of a determinate sentence of imprison-
2 ment actually imposed; or (B) in the case of a conviction for a class A
3 misdemeanor, shall not exceed the greater of: (i) five years from the
4 date of such sentencing, [~~except where the sentence is or includes a~~
5 ~~sentence of probation on a conviction for a misdemeanor sexual assault,~~
6 ~~as provided in subparagraph (ii) of paragraph (b) of subdivision three~~
7 ~~of section 65.00 of the penal law, in which case, six years from the~~
8 ~~date of such sentencing,~~] or (ii) five years from the date of the expi-
9 ration of the maximum term of a definite or intermittent term actually
10 imposed; or (C) in the case of a conviction for any other offense, shall
11 not exceed the greater of: (i) two years from the date of sentencing, or
12 (ii) two years from the date of the expiration of the maximum term of a
13 definite or intermittent term actually imposed; or in the case of the
14 issuance of an order of conditions, shall run concurrently with the term
15 of such order of conditions and any extensions thereof. In the case of a
16 final or temporary order of observation, issued pursuant to article
17 seven hundred thirty of this part, the duration of such an order of
18 protection shall be fixed by the court and shall not exceed a term of
19 three years after the date of the final or temporary order of observa-
20 tion. For purposes of determining the duration of an order of protection
21 entered pursuant to this subdivision, a conviction shall be deemed to
22 include a conviction that has been replaced by a youthful offender adju-
23 dication. In addition to any other conditions, such an order may
24 require the defendant:

25 § 2. The opening paragraph of subdivision 5 of section 530.12 of the
26 criminal procedure law, as amended by section 2 of chapter 9 of the laws
27 of 2011, is amended to read as follows:

28 Upon sentencing on a conviction for any crime or violation between
29 spouses, between a parent and child, or between members of the same
30 family or household; or when a defendant is found not responsible by
31 reason of mental disease or defect for such a crime and the court pursu-
32 ant to section 330.20 of this chapter issues an order of conditions; or
33 upon the issuance of a final or temporary order of observation, pursuant
34 to article seven hundred thirty of this part, relating to such a crime
35 as defined in subdivision one of section 530.11 of this article, the
36 court may in addition to any other disposition, including a conditional
37 discharge or youthful offender adjudication, enter an order of
38 protection. Where a temporary order of protection was issued, the court
39 shall state on the record the reasons for issuing or not issuing an
40 order of protection. The duration of such an order shall be fixed by the
41 court and, in the case of a felony conviction, shall not exceed the
42 greater of: (i) five years from the date of such sentencing, or (ii)
43 three years from the date of the expiration of the maximum term of an
44 indeterminate sentence of imprisonment actually imposed; or in the case
45 of a conviction for a class A misdemeanor, shall not exceed three years
46 from the date of such sentencing; or in the case of a conviction for any
47 other offense, shall not exceed one year from the date of sentencing; or
48 in the case of the issuance of an order of conditions, shall run concu-
49 rently with the term of such order of conditions and any extensions
50 thereof. In the case of a final or temporary order of observation,
51 issued pursuant to article seven hundred thirty of this part, the dura-
52 tion of such an order of protection shall be fixed by the court and
53 shall not exceed a term of three years after the date of the final or
54 temporary order of observation. For purposes of determining the dura-
55 tion of an order of protection entered pursuant to this subdivision, a
56 conviction shall be deemed to include a conviction that has been

1 replaced by a youthful offender adjudication. In addition to any other
2 conditions, such an order may require the defendant:

3 § 3. The opening paragraph of subdivision 4 of section 530.13 of the
4 criminal procedure law, as amended by chapter 240 of the laws of 2015,
5 is amended to read as follows:

6 Upon sentencing on a conviction for any offense, where the court has
7 not issued an order of protection pursuant to section 530.12 of this
8 article; or when a defendant is found not responsible by reason of
9 mental disease or defect for such offense and the court pursuant to
10 section 330.20 of this chapter issues an order of conditions; or upon
11 the issuance of a final or temporary order of observation, pursuant to
12 article seven hundred thirty of this part, relating to such offense, the
13 court may, in addition to any other disposition, including a conditional
14 discharge or youthful offender adjudication, enter an order of
15 protection. Where a temporary order of protection was issued, the court
16 shall state on the record the reasons for issuing or not issuing an
17 order of protection. The duration of such an order shall be fixed by the
18 court and; (A) in the case of a felony conviction, shall not exceed the
19 greater of: (i) eight years from the date of such sentencing, [~~except~~
20 ~~where the sentence is or includes a sentence of probation on a~~
21 ~~conviction for a felony sexual assault, as provided in subparagraph~~
22 ~~(iii) of paragraph (a) of subdivision three of section 65.00 of the~~
23 ~~penal law, in which case, ten years from the date of such sentencing,~~]
24 or (ii) eight years from the date of the expiration of the maximum term
25 of an indeterminate or the term of a determinate sentence of imprison-
26 ment actually imposed; or (B) in the case of a conviction for a class A
27 misdemeanor, shall not exceed the greater of: (i) five years from the
28 date of such sentencing, [~~except where the sentence is or includes a~~
29 ~~sentence of probation on a conviction for a misdemeanor sexual assault,~~
30 ~~as provided in subparagraph (ii) of paragraph (b) of subdivision three~~
31 ~~of section 65.00 of the penal law, in which case, six years from the~~
32 ~~date of such sentencing]~~ or (ii) five years from the date of the expira-
33 tion of the maximum term of a definite or intermittent term actually
34 imposed; or (C) in the case of a conviction for any other offense, shall
35 not exceed the greater of: (i) two years from the date of sentencing, or
36 (ii) two years from the date of the expiration of the maximum term of a
37 definite or intermittent term actually imposed; or in the case of the
38 issuance of an order of conditions, shall run concurrently with the term
39 of such order of conditions and any extension thereof. In the case of a
40 final or temporary order of observation, issued pursuant to article
41 seven hundred thirty of this part, the duration of such an order of
42 protection shall be fixed by the court and shall not exceed a term of
43 three years after the date of the final or temporary order of observa-
44 tion. For purposes of determining the duration of an order of protection
45 entered pursuant to this subdivision, a conviction shall be deemed to
46 include a conviction that has been replaced by a youthful offender adju-
47 dication. In addition to any other conditions such an order may require
48 that the defendant:

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

52 Upon sentencing on a conviction for any offense, where the court has
53 not issued an order of protection pursuant to section 530.12 of this
54 article; or when a defendant is found not responsible by reason of
55 mental disease or defect for such offense and the court pursuant to
56 section 330.20 of this chapter issues an order of conditions; or upon

1 the issuance of a final or temporary order of observation, pursuant to
2 article seven hundred thirty of this part, relating to such crime, the
3 court may, in addition to any other disposition, including a conditional
4 discharge or youthful offender adjudication, enter an order of
5 protection. Where a temporary order of protection was issued, the court
6 shall state on the record the reasons for issuing or not issuing an
7 order of protection. The duration of such an order shall be fixed by the
8 court and, in the case of a felony conviction, shall not exceed the
9 greater of: (i) five years from the date of such sentencing, or (ii)
10 three years from the date of the expiration of the maximum term of an
11 indeterminate sentence of imprisonment actually imposed; or in the case
12 of a conviction for a class A misdemeanor, shall not exceed three years
13 from the date of such sentencing; or in the case of a conviction for any
14 other offense, shall not exceed one year from the date of sentencing; or
15 in the case of the issuance of an order of conditions, shall run concu-
16 rently with the term of such order of conditions and any extensions
17 thereof. In the case of a final or temporary order of observation,
18 issued pursuant to article seven hundred thirty of this part, the dura-
19 tion of such order of protection shall be fixed by the court and shall
20 not exceed a term of three years after the date of the final or tempo-
21 rary order of observation. For purposes of determining the duration of
22 an order of protection entered pursuant to this subdivision, a
23 conviction shall be deemed to include a conviction that has been
24 replaced by a youthful offender adjudication. In addition to any other
25 conditions such an order may require that the defendant:

26 § 5. This act shall take effect immediately; provided that the amend-
27 ments to the opening paragraph of subdivision 5 of section 530.12 of the
28 criminal procedure law, made by section one of this act, and the amend-
29 ments to the opening paragraph of subdivision 4 of section 530.13 of the
30 criminal procedure law, made by section three of this act, shall be
31 subject to the expiration and reversion of such paragraphs pursuant to
32 subdivision d of section 74 of chapter 3 of the laws of 1995, as
33 amended, when upon such date the provisions of sections two and four of
34 this act, respectively, shall take effect.