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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of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, [~~except where the sentence is or includes a sentence of probation on a conviction for a misdemeanor sexual assault, as provided in subparagraph (ii) of paragraph (b) of subdivision three of section 65.00 of the penal law, in which case, six years from the date of such sentencing,~~] or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed**; or in the case of the issuance of an order of conditions, shall run concurrently with the term of such order of conditions and any extensions thereof. In the case of a final or temporary order of observation, issued pursuant to article seven hundred thirty of this part, the duration of such an order of protection shall be fixed by the court and shall not exceed a term of three years after the date of the final or temporary order of observation**. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant:

§ 2. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by section 2 of chapter 9 of the laws of 2011, 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 metal 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, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing**; or in the case of the issuance of an order of conditions, shall run concurrently with the term of such order of conditions and any extensions thereof. In the case of a final or temporary order of observation, issued pursuant to article seven hundred thirty of this part, the duration of such an order of protection shall be fixed by the court and shall not exceed a term of three years after the date of the final or temporary order of observation**. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been

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

§ 3. The opening paragraph of subdivision 4 of section 530.13 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 offense, where the court has not issued an order of protection pursuant to section 530.12 of this article**; or when a defendant is found not responsible by reason of mental disease or defect for such offense 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 offense**, 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 of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, [~~except where the sentence is or includes a sentence of probation on a conviction for a misdemeanor sexual assault, as provided in subparagraph (ii) of paragraph (b) of subdivision three of section 65.00 of the penal law, in which case, six years from the date of such sentencing~~] or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed**; or in the case of the issuance of an order of conditions, shall run concurrently with the term of such order of conditions and any extension thereof. In the case of a final or temporary order of observation, issued pursuant to article seven hundred thirty of this part, the duration of such an order of protection shall be fixed by the court and shall not exceed a term of three years after the date of the final or temporary order of observation**. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

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

Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article**; or when a defendant is found not responsible by reason of mental disease or defect for such offense 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 crime, 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, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing**; or in the case of the issuance of an order of conditions, shall run concurrently with the term of such order of conditions and any extensions thereof. In the case of a final or temporary order of observation, issued pursuant to article seven hundred thirty of this part, the duration of such order of protection shall be fixed by the court and shall not exceed a term of three years after the date of the final or temporary order of observation**. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

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