STATE OF NEW YORK

5740

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. GIGLIO, BARCLAY, FINCH, GOODELL, HAWLEY, KOLB, LAWRENCE, McDONOUGH, B. MILLER, MORINELLO, PALMESANO, REILLY, SAYEGH, TAGUE -- read once and referred to the Committee on Codes

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

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

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

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

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

§ 2. 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 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

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

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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. 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. **Any order of protection entered pursuant to this section shall be extended for up to two years past the date that such order expires if the court finds an extreme case for such extension and states on the record the reasons for the extension. For purposes of this paragraph, "extreme case" shall mean a threat of harm to the protected party continues; defendant has been found guilty of repeated criminal contempt due to a violation of an order of protection; defendant has continued to express intent to commit harm to, intimidate or threaten the protected party.** In addition to any other conditions, such an order may require the defendant:

§ 3. 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 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. 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. **Any order of protection entered pursuant to this**

section shall be extended for up to two years past the date that such order expires if the court finds an extreme case for such extension and states on the record the reasons for the extension. For purposes of this paragraph, "extreme case" shall mean a threat of harm to the protected party continues; defendant has been found guilty of repeated criminal contempt due to a violation of an order of protection; defendant has continued to express intent to commit harm to, intimidate or threaten the protected party. In addition to any other conditions, such an order may require the defendant:

§ 4. 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, 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. 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. Any order of protection entered pursuant to this section shall be extended for up to two years past the date that such order expires if the court finds an extreme case for such extension and states on the record the reasons for the extension. For purposes of this paragraph, "extreme case" shall mean a threat of harm to the protected party continues; defendant has been found guilty of repeated criminal contempt due to a violation of an order of protection; defendant has continued to express intent to commit harm to, intimidate or threaten the protected party. In addition to any other conditions such an order may require that the defendant:

§ 5. 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, 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. 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. **Any order of protection entered pursuant to this section shall be extended for up to two years past the date that such order expires if the court finds an extreme case for such extension and states on the record the reasons for the extension. For purposes of this paragraph, "extreme case" shall mean a threat of harm to the protected party continues; defendant has been found guilty of repeated criminal contempt due to a violation of an order of protection; defendant has continued to express intent to commit harm to, intimidate or threaten the protected party.** In addition to any other conditions such an order may require that the defendant:

§ 6. This act shall take effect on the ninetieth day after it shall have become a law; provided that the amendments to the opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, made by section two 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 four 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 three and five of this act shall take effect.