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 methampheta-mine in the third degree.
735.25 Restraining order - unlawful manufacture of methampheta-mine in the second degree.
735.30 Restraining order - unlawful manufacture of methampheta-mine 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

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 220.48 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.

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

1. When a person is charged with a criminal offense as defined in section 220.73 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 220.73 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 220.73 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 220.73 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 prohib-

iting 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.

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

1. When a person is charged with a criminal offense as defined in section 220.74 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 220.74 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 220.74 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 220.74 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.

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

1. When a person is charged with a criminal offense as defined in section 220.75 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 220.75 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 220.75 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 220.75 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.

§ 735.35 Restraining order - operating as a major trafficker.

1. When a person is charged with a criminal offense as defined in section 220.77 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 220.77 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, 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 220.77 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, 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 220.77 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.

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

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

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

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

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

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

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

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

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

4. When a person is convicted of or adjudicated delinquent for any criminal offense described in this article, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of this section, shall, by separate order or within the judgment of conviction, 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 this section. Upon the person's conviction or adjudication of delinquency for a criminal offense described in this article, a law enforcement agency, in addition to posting, publishing and distributing the order or an equivalent notice pursuant to paragraphs (b), (c), and (d) of subdivision three of this section, may also post, publish and distribute a photograph of the person.

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

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

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

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

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

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

§ 735.45 Certification of offense location.

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

§ 735.50 Discretion to not seek restraining order.

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

ARTICLE 740
RESTRAINING ORDER FROM LOCATION; CERTAIN CRIMES

Section 740.00 Restraining order - criminal possession of a weapon in the third degree.
740.10 Restraining order -- exceptions, content, distribution, modifications.
740.15 Certification of offense location.

740.20 Discretion to not seek restraining order.

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

1. When a person is charged with a criminal offense as defined in subdivision seven of section 265.02 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 740.10 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 740.10 of this article.

2. When a person is charged with a criminal offense as defined in subdivision seven of section 265.02 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 740.10 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 740.10 of this article.

3. When a person is charged with a criminal offense as defined in subdivision seven of section 265.02 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 740.10 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 740.10 of this article.

4. When a person is charged with a criminal offense as defined in subdivision seven of section 265.02 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 740.10 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 740.10 of this article.

§ 740.10 Restraining order -- exceptions, content, distribution, modifications.

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

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

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

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

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

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

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

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

4. When a person is convicted of or adjudicated delinquent for any criminal offense described in this article, the court, upon application of a law enforcement officer or prosecuting attorney and except as provided in subdivision one of this section, shall, by separate order or within the judgment of conviction, 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 this section. Upon the person's conviction or adjudication of delinquency for a criminal offense described in this article, a law enforcement agency, in addition to posting, publishing and distributing the order or an equivalent notice pursuant to paragraphs (b), (c), and (d) of subdivision three of this section, may also post, publish and distribute a photograph of the person.

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

6. An order issued pursuant to section 740.00 of this article shall remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. An order issued pursuant to subdivision four of this section shall remain in effect for such period of time as shall be fixed by the court but not longer than the maximum terms of imprisonment or incarceration allowed by law for the underlying offense or offenses. When the court issues a restraining order pursuant to subdivision four of this section and the person is also sentenced to any form of probationary supervision, the court shall make continuing compliance with the order an express condition of probation. When the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order shall be made an express condition of the person's release from confinement or incarceration on parole. At the time of sentencing or, in the case of a juvenile, at the time of disposition of the juvenile case, the court shall advise the defendant that the restraining order shall include a fixed time period in accordance with this subdivision and shall include that provision in the judgment of conviction, dispositional order, separate order or order vacating an existing restraining order, to the law enforcement agency that made the arrest and to the county district attorney.

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

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

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

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

§ 740.15 Certification of offense location.

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

§ 740.20 Discretion to not seek restraining order.

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

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