STATE OF NEW YORK

1909

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. CAHILL, SCHMITT -- Multi-Sponsored by -- M. of A. ABBATE, AUBRY, COOK, ENGLEBRIGHT, GUNTHER, MAGNARELLI, PERRY, RA, WEPRIN, ZEBROWSKI -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, the domestic relations law and the criminal procedure law, in relation to orders of protection in cases involving domestic violence

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

Section 1. The opening paragraph of section 842 of the family court act, as amended by chapter 335 of the laws of 2019, is amended to read as follows:

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. **In cases involving domestic violence, an order of protection shall be observed by the petitioner or respondent for a period of no less than five years.** Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determin-

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

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ing the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

§ 2. The opening paragraph of subdivision 1 of section 1056 of the family court act, as amended by chapter 526 of the laws of 2013, is amended to read as follows:

The court may make an order of protection in assistance or as a condition of any other order made under this part. Such order of protection shall remain in effect concurrently with, shall expire no later than the expiration date of, and may be extended concurrently with, such other order made under this part, except as provided in subdivision four of this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent or a person legally responsible for the child's care or the spouse of the parent or other person legally responsible for the child's care, or both. **In cases involving domestic violence, an order of protection shall be observed by the petitioner or respondent for a period of no less than five years.** Such an order may require any such person

§ 3. The opening paragraph of paragraph a of subdivision 3 of section 240 of the domestic relations law, as amended by chapter 526 of the laws of 2013, is amended to read as follows:

The court may make an order of protection in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified time by any party. **In cases involving domestic violence, an order of protection shall be observed for a period of no less than five years.** Such an order may require any party:

§ 4. 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 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~~] **be no less than**: (i) [~~eight~~] **ten** years from the date of such sentencing, [~~except~~] **including** 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~~] **ten** 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. In addition to any other conditions, such an order may require the defendant:

§ 5. The opening paragraph of subdivision 5 of section 530.12 of the criminal procedure law, as amended by 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~~] **be no less than**: (i) [~~five~~] **ten** years from the date of such sentencing, or (ii) [~~three~~] **ten** 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. In addition to any other conditions, such an order may require the defendant:

§ 6. 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 four of this act shall be subject to the expiration and reversion of such opening paragraph pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section five of this act shall take effect.