STATE OF NEW YORK

2275

2023-2024 Regular Sessions

IN SENATE

January 19, 2023

Introduced by Sens. PALUMBO, BORRELLO, MATTERA, OBERACKER, ORTT, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the criminal procedure law, in relation to allowing lifetime orders of protection in certain cases

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 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 of an indeterminate or the term of a determinate sentence of imprisonment actually imposed**, or (iii) the lifetime of the defendant or the victim, whichever is shorter, in the case of a conviction for any felony under article one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five or two hundred sixty-three or section 255.25, 255.26 or 255.27 of the penal law, or an attempt to**

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

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commit any felony under such articles or sections; 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:

§ 2. 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: (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 (iii) the lifetime of the defendant or the victim, whichever is shorter, in the case of a conviction for any felony under article one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five or two hundred sixty-three or section 255.25, 255.26 or 255.27 of the penal law, or an attempt to commit any felony under such articles or sections; 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:

§ 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, 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 (iii) the lifetime of the defendant or the victim, whichever is shorter, in the case of a conviction for any felony under article one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five or two hundred sixty-three or section 255.25, 255.26 or 255.27 of the penal law, or an attempt to commit any felony under such articles or sections**; 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 that the defendant:

§ 4. The opening paragraph of subdivision 4 of section 530.13 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 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 (iii) the lifetime of the defendant or the victim, whichever is shorter, in the case of a conviction for any felony under article one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five or two hundred sixty-three or section 255.25, 255.26 or 255.27 of the penal law, or an attempt to commit any felony under such articles or sections**; 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 that the defendant:

§ 5. The criminal procedure law is amended by adding a new section 530.13-a to read as follows:

§ 530.13-a Lifetime orders of protection in certain cases.

1. (a) Notwithstanding any provision of law to the contrary, a victim of any felony under article one hundred twenty, one hundred twenty-five, one hundred thirty, or one hundred thirty-five or section 255.25, 255.26 or 255.27 of the penal law, or any attempt to commit any such felony offense, may file a petition for a lifetime order of protection against the offender who was convicted of such crime in accordance with the procedures set forth in this section.

(b) A petition for a lifetime order of protection pursuant to this section may be filed by an unemancipated person under eighteen years of age. Such petition shall be signed by one of the unemancipated person's parents or guardians. The petition may also be signed by a caseworker at a not-for-profit organization that receives funds from the office of children and family services for family violence and child abuse prevention and shelters; provided, however, that a petition signed by a caseworker may not be filed against the unemancipated minor's parent or legal guardian. In such case, unless the court finds that the action would create a threat of serious harm to the minor, a copy of the petition and notice of hearing shall also be served on the parents of the minor child, or if the parents are not living together and jointly caring for the child, upon the primary custodial parent. In cases before the family court where the office of children and family services is a party or where a guardian ad litem has been appointed for the child by the family court, the petition may be filed by the office or the guardian ad litem.

2. Venue for a petition for a lifetime order of protection under this section is in the county where the respondent resides or the county in which the offense occurred. If the respondent is not a resident of this state, the petition may be filed in the county where the petitioner resides.

3. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition to be served upon the respondent at least five days prior to the hearing. The notice shall advise the respondent that he or she may be represented by counsel. In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under eighteen years of age, a copy of the petition, and notice of hearing shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent, pursuant to the requirements of this section.

4. At the hearing on the petition, the court shall, if the petitioner has proved the respondent was convicted of any felony under article one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law, or an attempt to commit a felony under such articles and that the petitioner was the victim of the offense, issue a lifetime order of protection that remains in effect for the lifetime of the petitioner or the respondent whichever is shorter. If the petitioner has not provided proof that respondent was convicted of such an offense and that the petitioner was the victim of the offense, the court shall dismiss the petition.

5. A lifetime order of protection granted under this section shall:

(a) prohibit the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(b) include a statement of the maximum penalty that may be imposed pursuant to subdivision seven of this section for violating such order; and

(c) be valid and enforceable in any county of this state.

6. A lifetime order of protection is effective upon the date of issuance and shall be served within one year of such date.

7. (a) Upon violation of a lifetime order of protection, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law.

(b) In addition to the authorized punishments for contempt of court, a judge may assess any person who violates a lifetime order of protection a civil penalty of fifty dollars. The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court. Upon collecting the civil penalty imposed by this subdivision, the clerk shall, on a monthly basis, send the money to the state comptroller who shall deposit it in the domestic violence awareness fund pursuant to section ninety-seven-yyy of the state finance law as added by chapter 634 of the laws of 2002.

8. An arrest for violation of a lifetime order of protection issued pursuant to this section may be with or without warrant. A law enforcement officer shall arrest the respondent without a warrant if:

(a) the police officer or peace officer has proper jurisdiction over the area in which the violation occurred;

(b) the police officer or peace officer has reasonable cause to believe the respondent has violated or is in violation of a lifetime order of protection; and

(c) the police officer or peace officer has verified whether a lifetime order of protection is in effect against the respondent. If necessary, the officer may verify the existence of a lifetime order of protection by telephone or radio communication with the appropriate law enforcement agency.

§ 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 one of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; and provided further that 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 paragraph pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section four of this act shall take effect.