

2441

2011-2012 Regular Sessions

I N S E N A T E

January 21, 2011

Introduced by Sen. ALESI -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, the family court act and the criminal procedure law, in relation to requiring mandatory prison sentences for repeat violators of orders of protection

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The closing paragraph of subdivision 3 of section 240 of
2 the domestic relations law, as added by chapter 606 of the laws of 1999,
3 is amended to read as follows:
4 Upon issuance of an order of protection or temporary order of
5 protection or upon a violation of such order, the court may make an
6 order in accordance with section eight hundred forty-two-a of the family
7 court act directing the surrender of firearms, revoking or suspending a
8 party's firearms license, and/or directing that such party be ineligible
9 to receive a firearms license. Upon issuance of an order of protection
10 pursuant to this section or upon a finding of a violation thereof, the
11 court also may direct payment of restitution in an amount not to exceed
12 ten thousand dollars in accordance with subdivision (e) of section eight
13 hundred forty-one of such act; provided, however, that in no case shall
14 an order of restitution be issued where the court determines that the
15 party against whom the order would be issued has already compensated the
16 injured party or where such compensation is incorporated in a final
17 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE
18 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-
19 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS
20 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
21 COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIMINAL PROCEDURE
22 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO
23 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS
24 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

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

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1 S 2. Subdivision 9 of section 252 of the domestic relations law, as
2 added by chapter 606 of the laws of 1999, is amended to read as
3 follows:

4 9. Upon issuance of an order of protection or temporary order of
5 protection or upon a violation of such order, the court may [take] MAKE
6 an order in accordance with section eight hundred forty-two-a of the
7 family court act directing the surrender of firearms, revoking or
8 suspending a party's firearms license, and/or directing that such party
9 be ineligible to receive a firearms license. Upon issuance of an order
10 of protection pursuant to this section or upon a finding of a violation
11 thereof, the court also may direct payment of restitution in an amount
12 not to exceed ten thousand dollars in accordance with subdivision (e) of
13 section eight hundred forty-one of such act; provided, however, that in
14 no case shall an order of restitution be issued where the court deter-
15 mines that the party against whom the order would be issued has already
16 compensated the injured party or where such compensation is incorporated
17 in a final [judgement] JUDGMENT or settlement of the action. IF THE
18 PERSON SO VIOLATING THE ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER
19 ON MORE THAN ONE OCCASION, AND THIS VIOLATION CONSISTED OF COMMITTING A
20 FAMILY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED
21 TWELVE OF THE FAMILY COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF
22 THE CRIMINAL PROCEDURE LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM
23 OF IMPRISONMENT OF NO LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON
24 CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE COURT MAY DIRECT.

25 S 3. Section 846-a of the family court act, as amended by chapter 597
26 of the laws of 1998, is amended to read as follows:

27 S 846-a. Powers on failure to obey order. If a respondent is brought
28 before the court for failure to obey any lawful order issued under this
29 article or an order of protection issued by a court of competent juris-
30 diction of another state, territorial or tribal jurisdiction in a
31 proceeding and if, after hearing, the court is satisfied by competent
32 proof that the respondent has willfully failed to obey any such order,
33 the court may modify an existing order to add reasonable conditions of
34 behavior to the existing order of protection, make a new order of
35 protection in accordance with section eight hundred forty-two OF THIS
36 PART, may order the forfeiture of bail in a manner consistent with arti-
37 cle five hundred forty of the criminal procedure law if bail has been
38 ordered pursuant to this act, may order the respondent to pay the
39 petitioner's reasonable and necessary counsel fees in connection with
40 the violation petition where the court finds that the violation of its
41 order was willful, and may commit the respondent to jail for a term not
42 to exceed six months. IF THE RESPONDENT HAS BEEN FOUND BY COMPETENT
43 PROOF TO HAVE WILLFULLY FAILED TO OBEY SUCH ORDER OF PROTECTION ON MORE
44 THAN ONE OCCASION, AND THIS WILLFUL FAILURE CONSISTED OF COMMITTING A
45 FAMILY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED
46 TWELVE OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIM-
47 INAL PROCEDURE LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF
48 IMPRISONMENT OF NOT LESS THAN THIRTY DAYS. Such commitment may be served
49 upon certain specified days or parts of days as the court may direct,
50 and the court may, at any time within the term of such sentence, revoke
51 such suspension and commit the respondent for the remainder of the
52 original sentence, or suspend the remainder of such sentence. If the
53 court determines that the willful failure to obey such order involves
54 violent behavior constituting the crimes of menacing, reckless endanger-
55 ment, assault or attempted assault and if such a respondent is licensed
56 to carry, possess, repair and dispose of firearms pursuant to section

1 400.00 of the penal law, the court may also immediately revoke such
2 license and may arrange for the immediate surrender and disposal of any
3 firearm such respondent owns or possesses. If the willful failure to
4 obey such order involves the infliction of serious physical injury as
5 defined in subdivision ten of section 10.00 of the penal law or the use
6 or threatened use of a deadly weapon or dangerous instrument, as those
7 terms are defined in subdivisions twelve and thirteen of section 10.00
8 of the penal law, such revocation and immediate surrender and disposal
9 of any firearm owned or possessed by respondent shall be mandatory,
10 pursuant to subdivision eleven of section 400.00 of the penal law.

11 S 4. Subdivision 11 of section 530.12 of the criminal procedure law,
12 as amended by chapter 498 of the laws of 1993, the opening paragraph as
13 amended by chapter 597 of the laws of 1998, paragraph (a) as amended by
14 chapter 222 of the laws of 1994 and paragraph (d) as amended by chapter
15 644 of the laws of 1996, is amended to read as follows:

16 11. If a defendant is brought before the court for failure to obey
17 any lawful order issued under this section, or an order of protection
18 issued by a court of competent jurisdiction in another state, territo-
19 rial or tribal jurisdiction, and if, after hearing, the court is satis-
20 fied by competent proof that the defendant has willfully failed to obey
21 any such order, (A) the court may:

22 [(a)] (I) revoke an order of recognizance or revoke an order of bail
23 or order forfeiture of such bail and commit the defendant to custody; or

24 [(b)] (II) restore the case to the calendar when there has been an
25 adjournment in contemplation of dismissal and commit the defendant to
26 custody; or

27 [(c)] (III) revoke a conditional discharge in accordance with section
28 410.70 of this chapter and impose probation supervision or impose a
29 sentence of imprisonment in accordance with the penal law based on the
30 original conviction; or

31 [(d)] (IV) revoke probation in accordance with section 410.70 of this
32 chapter and impose a sentence of imprisonment in accordance with the
33 penal law based on the original conviction. In addition, if the act
34 which constitutes the violation of the order of protection or temporary
35 order of protection is a crime or a violation the defendant may be
36 charged with and tried for that crime or violation; AND

37 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY
38 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL
39 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-
40 SION ONE OF THIS SECTION OR SUBDIVISION ONE OF SECTION EIGHT HUNDRED
41 TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT SUCH PERSON TO A
42 TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS, WHICH MAY BE SERVED
43 UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE COURT MAY DIRECT.

44 S 5. Subdivision 8 of section 530.13 of the criminal procedure law, as
45 added by chapter 388 of the laws of 1984, is amended to read as follows:

46 8. If a defendant is brought before the court for failure to obey any
47 lawful order issued under this section and if, after hearing, the court
48 is satisfied by competent proof that the defendant has willfully failed
49 to obey any such order, (A) the court may:

50 [(a)] (I) revoke an order of recognizance or bail and commit the
51 defendant to custody; or

52 [(b)] (II) restore the case to the calendar when there has been an
53 adjournment in contemplation of dismissal and commit the defendant to
54 custody or impose or increase bail pending a trial of the original crime
55 or violation; or

1 [(c)] (III) revoke a conditional discharge in accordance with section
2 410.70 of this chapter and impose probation supervision or impose a
3 sentence of imprisonment in accordance with the penal law based on the
4 original conviction; or
5 [(d)] (IV) revoke probation in accordance with section 410.70 of this
6 chapter and impose a sentence of imprisonment in accordance with the
7 penal law based on the original conviction. In addition, if the act
8 which constitutes the violation of the order of protection or temporary
9 order of protection is a crime or a violation the defendant may be
10 charged with and tried for that crime or violation; AND
11 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY
12 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL
13 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-
14 SION ONE OF SECTION 530.12 OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION
15 EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT
16 SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS,
17 WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE
18 COURT MAY DIRECT.
19 S 6. This act shall take effect on the first of November next succeed-
20 ing the date on which it shall have become a law.