

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the family court act, in relation to the mandatory suspension and revocation of firearms licenses upon issuance 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 opening paragraph and paragraph (b) of subdivision 1  
2     of section 530.14 of the criminal procedure law, as added by chapter 644  
3     of the laws of 1996, are amended to read as follows:  
4     Mandatory [and permissive] suspension of firearms license and ineligi-  
5     bility for such a license upon issuance of temporary order of  
6     protection. Whenever a temporary order of protection is issued pursuant  
7     to subdivision one of section 530.12 or subdivision one of section  
8     530.13 of this article:  
9     (b) the court [may] SHALL where the court finds a substantial risk  
10    that the defendant may use or threaten to use a firearm unlawfully  
11    against the person or persons for whose protection the temporary order  
12    of protection is issued, suspend any such existing license possessed by  
13    the defendant, order the defendant ineligible for such a license and  
14    order the immediate surrender of any or all firearms owned or possessed.  
15    S 2.    Subdivision 2 of section 530.14 of the criminal procedure law,  
16    as added by chapter 644 of the laws of 1996, is amended to read as  
17    follows:  
18    2.    Mandatory [and permissive] revocation or suspension of firearms  
19    license and ineligibility for such a license upon issuance of an order  
20    of protection. Whenever an order of protection is issued pursuant to  
21    subdivision five of section 530.12 or subdivision four of section 530.13  
22    of this article:  
23    (a) the court shall revoke any such existing license possessed by the  
24    defendant, order the defendant ineligible for such a license and order  
25    the immediate surrender of any or all firearms owned or possessed where  
26    such action is required by section 400.00 of the penal law; and

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

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1 (b) the court [may] SHALL where the court finds a substantial risk  
2 that the defendant may use or threaten to use a firearm unlawfully  
3 against the person or persons for whose protection the order of  
4 protection is issued, (i) revoke any such existing license possessed by  
5 the defendant, order the defendant ineligible for such a license and  
6 order the immediate surrender of any or all firearms owned or possessed  
7 or (ii) suspend or continue to suspend any such existing license  
8 possessed by the defendant, order the defendant ineligible for such a  
9 license and order the immediate surrender of any or all firearms owned  
10 or possessed.

11 S 3. The opening paragraph and paragraph (b) of subdivision 3 of  
12 section 530.14 of the criminal procedure law, the opening paragraph as  
13 amended by chapter 597 of the laws of 1998 and paragraph (b) as added by  
14 chapter 644 of the laws of 1996, are amended to read as follows:

15 Mandatory [and permissive] revocation or suspension of firearms  
16 license and ineligibility for such a license upon a finding of a willful  
17 failure to obey an order of protection. Whenever a defendant has been  
18 found pursuant to subdivision eleven of section 530.12 or subdivision  
19 eight of section 530.13 of this article to have willfully failed to obey  
20 an order of protection issued by a court of competent jurisdiction in  
21 this state or another state, territorial or tribal jurisdiction, in  
22 addition to any other remedies available pursuant to subdivision eleven  
23 of section 530.12 or subdivision eight of section 530.13 of this arti-  
24 cle:

25 (b) the court [may] SHALL where the court finds a substantial risk  
26 that the defendant may use or threaten to use a firearm unlawfully  
27 against the person or persons for whose protection the order of  
28 protection was issued, (i) revoke any such existing license possessed by  
29 the defendant, order the defendant ineligible for such a license and  
30 order the immediate surrender of any or all firearms owned or possessed  
31 or (ii) suspend any such existing license possessed by the defendant,  
32 order the defendant ineligible for such a license and order the immedi-  
33 ate surrender of any or all firearms owned or possessed.

34 S 4. Subdivision 1 of section 842-a of the family court act, as added  
35 by chapter 644 of the laws of 1996 and paragraph (a) as amended by chap-  
36 ter 434 of the laws of 2000, is amended to read as follows:

37 1. Mandatory [and permissive] suspension of firearms license and inel-  
38 igibility for such a license upon the issuance of a temporary order of  
39 protection. Whenever a temporary order of protection is issued pursuant  
40 to section eight hundred twenty-eight of this article:

41 (a) the court shall suspend any such existing license possessed by the  
42 respondent, order the respondent ineligible for such a license, and  
43 order the immediate surrender of any or all firearms owned or possessed  
44 where the court receives information that gives the court good cause to  
45 believe that: (i) the respondent has a prior conviction of any violent  
46 felony offense as defined in section 70.02 of the penal law; (ii) the  
47 respondent has previously been found to have willfully failed to obey a  
48 prior order of protection and such willful failure involved (A) the  
49 infliction of [serious] physical injury, as defined in subdivision [ten]  
50 NINE of section 10.00 of the penal law, (B) the use or threatened use of  
51 a deadly weapon or dangerous instrument as those terms are defined in  
52 subdivisions twelve and thirteen of section 10.00 of the penal law, or  
53 (C) behavior constituting any violent felony offense as defined in  
54 section 70.02 of the penal law; or (iii) the respondent has a prior  
55 conviction for stalking in the first degree as defined in section 120.60  
56 of the penal law, stalking in the second degree as defined in section

1 120.55 of the penal law, stalking in the third degree as defined in  
2 section 120.50 of the penal law or stalking in the fourth degree as  
3 defined in section 120.45 of such law; and

4 (b) the court [may] SHALL where the court finds a substantial risk  
5 that the respondent may use or threaten to use a firearm unlawfully  
6 against the person or persons for whose protection the temporary order  
7 of protection is issued, suspend any such existing license possessed by  
8 the respondent, order the respondent ineligible for such a license, and  
9 order the immediate surrender of any or all firearms owned or possessed.

10 S 5. Subdivision 2 of section 842-a of the family court act, as added  
11 by chapter 644 of the laws of 1996, is amended to read as follows:

12 2. Mandatory [and permissive] revocation or suspension of firearms  
13 license and ineligibility for such a license upon the issuance of an  
14 order of protection. Whenever an order of protection is issued pursuant  
15 to section eight hundred forty-one of this part:

16 (a) the court shall revoke any such existing license possessed by the  
17 respondent, order the respondent ineligible for such a license, and  
18 order the immediate surrender of any or all firearms owned or possessed  
19 where the court finds that the conduct which resulted in the issuance of  
20 the order of protection involved (i) the infliction of [serious] phys-  
21 ical injury, as defined in subdivision [ten] NINE of section 10.00 of  
22 the penal law, (ii) the use or threatened use of a deadly weapon or  
23 dangerous instrument as those terms are defined in subdivisions twelve  
24 and thirteen of section 10.00 of the penal law, or (iii) behavior  
25 constituting any violent felony offense as defined in section 70.02 of  
26 the penal law; and

27 (b) the court [may] SHALL, where the court finds a substantial risk  
28 that the respondent may use or threaten to use a firearm unlawfully  
29 against the person or persons for whose protection the order of  
30 protection is issued, (i) revoke any such existing license possessed by  
31 the respondent, order the respondent ineligible for such a license and  
32 order the immediate surrender of any or all firearms owned or possessed  
33 or (ii) suspend or continue to suspend any such existing license  
34 possessed by the respondent, order the respondent ineligible for such a  
35 license, and order the immediate surrender of any or all firearms owned  
36 or possessed.

37 S 6. Subdivision 3 of section 842-a of the family court act, as added  
38 by chapter 644 of the laws of 1996, the opening paragraph as amended by  
39 chapter 597 of the laws of 1998 and paragraph (a) as amended by chapter  
40 635 of the laws of 1999, is amended to read as follows:

41 3. Mandatory [and permissive] revocation or suspension of firearms  
42 license and ineligibility for such a license upon a finding of a willful  
43 failure to obey an order of protection. Whenever a respondent has been  
44 found, pursuant to section eight hundred forty-six-a of this part to  
45 have willfully failed to obey an order of protection issued by this  
46 court or an order of protection issued by a court of competent jurisdic-  
47 tion in another state, territorial or tribal jurisdiction, in addition  
48 to any other remedies available pursuant to section eight hundred  
49 forty-six-a of this part:

50 (a) the court shall revoke any such existing license possessed by the  
51 respondent, order the respondent ineligible for such a license, and  
52 order the immediate surrender of any or all firearms owned or possessed  
53 where the willful failure to obey such order involves (i) the infliction  
54 of [serious] physical injury, as defined in subdivision [ten] NINE of  
55 section 10.00 of the penal law, (ii) the use or threatened use of a  
56 deadly weapon or dangerous instrument as those terms are defined in

subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court [may] SHALL where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

S 7. Section 846-a of the family court act, as amended by chapter 597 of the laws of 1998, is amended to read as follows:

S 846-a. Powers on failure to obey order. If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction in a proceeding and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order to add reasonable conditions of behavior to the existing order of protection, make a new order of protection in accordance with section eight hundred forty-two OF THIS PART, may order the forfeiture of bail in a manner consistent with article five hundred forty of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for a term not to exceed six months. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. If the court determines that the willful failure to obey such order involves violent behavior constituting the crimes of menacing, reckless endangerment, assault or attempted assault and if such a respondent is licensed to carry, possess, repair and dispose of firearms pursuant to section 400.00 of the penal law, the court [may] SHALL also immediately revoke such license and [may] SHALL arrange for the immediate surrender and disposal of any firearm such respondent owns or possesses. If the willful failure to obey such order involves the infliction of [serious] physical injury as defined in subdivision [ten] NINE of section 10.00 of the penal law or the use or threatened use of a deadly weapon or dangerous instrument, as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, such revocation and immediate surrender and disposal of any firearm owned or possessed by respondent shall be mandatory, pursuant to subdivision eleven of section 400.00 of the penal law.

S 8. This act shall take effect immediately.