

844--B

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. PARKER, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Paragraph h of subdivision 3 of section 240 of the domestic
2 relations law, as amended by chapter 1 of the laws of 2013, is amended
3 to read as follows:
4 h. Upon issuance of an order of protection or temporary order of
5 protection or upon a violation of such order, the court shall make a
6 determination regarding the suspension and revocation of a license to
7 carry, possess, repair or dispose of a firearm or firearms, ineligibil-
8 ity for such a license and the surrender of firearms in accordance with
9 sections eight hundred forty-two-a and eight hundred forty-six-a of the
10 family court act, as applicable. Upon issuance of an order of protection
11 pursuant to this section or upon a finding of a violation thereof, the
12 court also may direct payment of restitution in an amount not to exceed
13 ten thousand dollars in accordance with subdivision (e) of section eight
14 hundred forty-one of such act; provided, however, that in no case shall
15 an order of restitution be issued where the court determines that the
16 party against whom the order would be issued has already compensated the
17 injured party or where such compensation is incorporated in a final

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

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1 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE
2 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-
3 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS
4 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
5 COURT ACT OR SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE
6 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO
7 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS
8 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

9 S 2. Subdivision 9 of section 252 of the domestic relations law, as
10 amended by chapter 1 of the laws of 2013, is amended to read as
11 follows:

12 9. Upon issuance of an order of protection or temporary order of
13 protection or upon a violation of such order, the court shall make a
14 determination regarding the suspension and revocation of a license to
15 carry, possess, repair or dispose of a firearm or firearms, ineligibil-
16 ity for such a license and the surrender of firearms in accordance with
17 sections eight hundred forty-two-a and eight hundred forty-six-a of the
18 family court act, as applicable. Upon issuance of an order of protection
19 pursuant to this section or upon a finding of a violation thereof, the
20 court also may direct payment of restitution in an amount not to exceed
21 ten thousand dollars in accordance with subdivision (e) of section eight
22 hundred forty-one of such act; provided, however, that in no case shall
23 an order of restitution be issued where the court determines that the
24 party against whom the order would be issued has already compensated the
25 injured party or where such compensation is incorporated in a final
26 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE
27 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-
28 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS
29 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
30 COURT ACT OR SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE
31 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO
32 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS
33 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

34 S 3. Section 846-a of the family court act, as amended by chapter 1 of
35 the laws of 2013, is amended to read as follows:

36 S 846-a. Powers on failure to obey order. If a respondent is brought
37 before the court for failure to obey any lawful order issued under this
38 article or an order of protection or temporary order of protection
39 issued pursuant to this act or issued by a court of competent jurisdic-
40 tion of another state, territorial or tribal jurisdiction and if, after
41 hearing, the court is satisfied by competent proof that the respondent
42 has willfully failed to obey any such order, the court may modify an
43 existing order or temporary order of protection to add reasonable condi-
44 tions of behavior to the existing order, make a new order of protection
45 in accordance with section eight hundred forty-two of this part, may
46 order the forfeiture of bail in a manner consistent with article five
47 hundred forty of the criminal procedure law if bail has been ordered
48 pursuant to this act, may order the respondent to pay the petitioner's
49 reasonable and necessary counsel fees in connection with the violation
50 petition where the court finds that the violation of its order was will-
51 ful, and may commit the respondent to jail for a term not to exceed six
52 months. IF THE RESPONDENT HAS BEEN FOUND BY COMPETENT PROOF TO HAVE
53 WILLFULLY FAILED TO OBEY SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCA-
54 SION, AND THIS WILLFUL FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE
55 AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THIS
56 ARTICLE OR SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE

1 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT
2 LESS THAN THIRTY DAYS. Such commitment may be served upon certain speci-
3 fied days or parts of days as the court may direct, and the court may,
4 at any time within the term of such sentence, revoke such suspension and
5 commit the respondent for the remainder of the original sentence, or
6 suspend the remainder of such sentence. If the court determines that the
7 willful failure to obey such order involves violent behavior constitut-
8 ing the crimes of menacing, reckless endangerment, assault or attempted
9 assault and if such a respondent is licensed to carry, possess, repair
10 and dispose of firearms pursuant to section 400.00 of the penal law, the
11 court may also immediately revoke such license and may arrange for the
12 immediate surrender pursuant to subparagraph (f) of paragraph one of
13 subdivision a of section 265.20 and subdivision six of section 400.05 of
14 the penal law, and disposal of any firearm such respondent owns or
15 possesses. If the willful failure to obey such order involves the
16 infliction of physical injury as defined in subdivision nine of section
17 10.00 of the penal law or the use or threatened use of a deadly weapon
18 or dangerous instrument, as those terms are defined in subdivisions
19 twelve and thirteen of section 10.00 of the penal law, such revocation
20 and immediate surrender pursuant to subparagraph (f) of paragraph one of
21 subdivision a of section 265.20 and subdivision six of section 400.05 of
22 the penal law [six] and disposal of any firearm owned or possessed by
23 respondent shall be mandatory, pursuant to subdivision eleven of section
24 400.00 of the penal law.

25 S 4. Subdivision 11 of section 530.12 of the criminal procedure law,
26 as amended by chapter 498 of the laws of 1993, the opening paragraph as
27 amended by chapter 597 of the laws of 1998, paragraph (a) as amended by
28 chapter 222 of the laws of 1994 and paragraph (d) as amended by chapter
29 644 of the laws of 1996, is amended to read as follows:

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

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

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

41 [(c)] (III) revoke a conditional discharge in accordance with section
42 410.70 of this chapter and impose probation supervision or impose a
43 sentence of imprisonment in accordance with the penal law based on the
44 original conviction; or

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

51 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY
52 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL
53 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-
54 SION ONE OF THIS SECTION OR SUBDIVISION ONE OF SECTION EIGHT HUNDRED
55 TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT SUCH PERSON TO A

1 TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS, WHICH MAY BE SERVED
2 UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE COURT MAY DIRECT.

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

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

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

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

15 [(c)] (III) revoke a conditional discharge in accordance with section
16 410.70 of this chapter and impose probation supervision or impose a
17 sentence of imprisonment in accordance with the penal law based on the
18 original conviction; or

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

25 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY
26 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL
27 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-
28 SION ONE OF SECTION 530.11 OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION
29 EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT
30 SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS,
31 WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE
32 COURT MAY DIRECT.

33 S 6. This act shall take effect on the first of November next succeed-
34 ing the date on which it shall have become a law.