

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 24, 2009

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

IN ASSEMBLY -- Introduced by M. of A. ERRIGO, BARRA, BURLING, CROUCH, FINCH, GIGLIO, HAWLEY, HAYES, KOLB, TOBACCO, WALKER -- Multi-Sponsored by -- M. of A. BARCLAY, CORWIN, DUPREY, JORDAN, McDONOUGH, McKEVITT, QUINN, RABBITT, RAIA, SAYWARD, SCOZZAFAVA, SEMINERIO, THIELE, TOWNSEND, WEISENBERG -- read once and referred to the Committee on Judiciary

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

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 530.12 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 added by chapter 606 of the laws of 1999, 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 may [take] MAKE
14 an order in accordance with section eight hundred forty-two-a of the
15 family court act directing the surrender of firearms, revoking or
16 suspending a party's firearms license, and/or directing that such party
17 be ineligible to receive a firearms license. Upon issuance of an order
18 of protection pursuant to this section or upon a finding of a violation
19 thereof, the court also may direct payment of restitution in an amount
20 not to exceed ten thousand dollars in accordance with subdivision (e) of
21 section eight hundred forty-one of such act; provided, however, that in
22 no case shall an order of restitution be issued where the court deter-
23 mines that the party against whom the order would be issued has already
24 compensated the injured party or where such compensation is incorporated
25 in a final [judgement] JUDGMENT or settlement of the action. IF THE
26 PERSON SO VIOLATING THE ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER
27 ON MORE THAN ONE OCCASION, AND THIS VIOLATION CONSISTED OF COMMITTING A
28 FAMILY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED
29 TWELVE OF THE FAMILY COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF
30 THE CRIMINAL PROCEDURE LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM
31 OF IMPRISONMENT OF NO LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON
32 CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE COURT MAY DIRECT.

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

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

1 upon certain specified days or parts of days as the court may direct,
2 and the court may, at any time within the term of such sentence, revoke
3 such suspension and commit the respondent for the remainder of the
4 original sentence, or suspend the remainder of such sentence. If the
5 court determines that the willful failure to obey such order involves
6 violent behavior constituting the crimes of menacing, reckless endanger-
7 ment, assault or attempted assault and if such a respondent is licensed
8 to carry, possess, repair and dispose of firearms pursuant to section
9 400.00 of the penal law, the court may also immediately revoke such
10 license and may arrange for the immediate surrender and disposal of any
11 firearm such respondent owns or possesses. If the willful failure to
12 obey such order involves the infliction of serious physical injury as
13 defined in subdivision ten of section 10.00 of the penal law or the use
14 or threatened use of a deadly weapon or dangerous instrument, as those
15 terms are defined in subdivisions twelve and thirteen of section 10.00
16 of the penal law, such revocation and immediate surrender and disposal
17 of any firearm owned or possessed by respondent shall be mandatory,
18 pursuant to subdivision eleven of section 400.00 of the penal law.

19 S 4. Subdivision 11 of section 530.12 of the criminal procedure law,
20 as amended by chapter 498 of the laws of 1993, the opening paragraph as
21 amended by chapter 597 of the laws of 1998, paragraph (a) as amended by
22 chapter 222 of the laws of 1994 and paragraph (d) as amended by chapter
23 644 of the laws of 1996, is amended to read as follows:

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

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

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

35 [(c)] (III) revoke a conditional discharge in accordance with section
36 410.70 of this chapter and impose probation supervision or impose a
37 sentence of imprisonment in accordance with the penal law based on the
38 original conviction; or

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

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

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

54 8. If a defendant is brought before the court for failure to obey any
55 lawful order issued under this section and if, after hearing, the court

1 is satisfied by competent proof that the defendant has willfully failed
2 to obey any such order, (A) the court may:

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

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

9 [(c)] (III) revoke a conditional discharge in accordance with section
10 410.70 of this chapter and impose probation supervision or impose a
11 sentence of imprisonment in accordance with the penal law based on the
12 original conviction; or

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

19 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY
20 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL
21 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-
22 SION ONE OF SECTION 530.12 OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION
23 EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT
24 SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS,
25 WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE
26 COURT MAY DIRECT.

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