

S. 2580

A. 6084

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, TOWN-  
SEND, WEISENBERG -- read once and referred to the Committee on Judici-  
ary

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 ASSEM-  
BLY, 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.

LBD05846-01-9

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.