

7142--A

Cal. No. 337

I N S E N A T E

March 16, 2010

Introduced by Sens. SCHNEIDERMAN, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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1 the immediate surrender of any or all firearms owned or possessed where
2 such action is required by section 400.00 of the penal law; and

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

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

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

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

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

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

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

conviction for 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 temporary order of protection is issued, 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 5. Subdivision 2 of section 842-a of the family court act, as added by chapter 644 of the laws of 1996, is amended to read as follows:

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

(a) the court shall revoke 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 where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of [serious] physical injury, as defined in subdivision [ten] NINE of section 10.00 of the penal law, (ii) 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, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal 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 is issued, (i) revoke 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 or (ii) suspend or continue to 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 6. Subdivision 3 of section 842-a of the family court act, as added by chapter 644 of the laws of 1996, the opening paragraph as amended by chapter 597 of the laws of 1998 and paragraph (a) as amended by chapter 635 of the laws of 1999, is amended to read as follows:

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

(a) the court shall revoke 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 where the willful failure to obey such order involves (i) the infliction of [serious] physical injury, as defined in subdivision [ten] NINE of

1 section 10.00 of the penal law, (ii) the use or threatened use of a
2 deadly weapon or dangerous instrument as those terms are defined in
3 subdivisions twelve and thirteen of section 10.00 of the penal law, or
4 (iii) behavior constituting any violent felony offense as defined in
5 section 70.02 of the penal law; or (iv) behavior constituting stalking
6 in the first degree as defined in section 120.60 of the penal law,
7 stalking in the second degree as defined in section 120.55 of the penal
8 law, stalking in the third degree as defined in section 120.50 of the
9 penal law or stalking in the fourth degree as defined in section 120.45
10 of such law; and

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

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

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

1 S 8. This act shall take effect immediately.