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2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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

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

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

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

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

55 S 8. This act shall take effect immediately.