S T A T E O F N E W Y O R K

6406--A

2011-2012 Regular Sessions

I N A S S E M B L Y

March 16, 2011

Introduced by M. of A. WEINSTEIN, ROSENTHAL, JAFFEE, P. RIVERA, SCHIMEL, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. CROUCH, PHEFFER -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, the domestic relations law and the criminal procedure law, in relation to providing for the mandatory suspension or revocation of the firearms license of a person against whom an order of protection or a temporary order of protection has been issued under certain circumstances, or upon violation of any such order

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 1, 2 and 3 of section 842-a of the family court act, as added by chapter 644 of the laws of 1996, paragraph (a) of subdivision 1 as amended by chapter 434 of the laws of 2000, the opening paragraph of subdivision 3 as amended by chapter 597 of the laws of 1998, paragraph (a) of subdivision 3 as amended by chapter 635 of the laws of 1999, are amended to read as follows:

1. [Mandatory and permissive suspension] SUSPENSION of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article, OR PURSUANT TO ARTICLE FOUR, FIVE, SIX, SEVEN OR TEN OF THIS ACT:

(a) the court shall 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 where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the

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

LBD09906-03-1

respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of [serious] physical injury, as defined in subdivision [ten] NINE of section 10.00 of the penal law, (B) 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 (C) behavior constituting any violent felony offense as defined in 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.

2. [Mandatory and permissive revocation] 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, OR PURSUANT TO ARTICLE FOUR, FIVE, SIX, SEVEN OR TEN OF THIS ACT:

(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.

3. [Mandatory and permissive revocation] 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 OR TEMPORARY 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 OR TEMPORARY ORDER OF PROTECTION issued PURSUANT TO THIS ACT OR THE DOMESTIC RELATIONS LAW, OR 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 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; or (iv) behavior constituting 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 order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender of any or all firearms owned or possessed or (ii) 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 2. Section 846-a of the family court act, as amended by chapter 597 of the laws of 1998, is amended to read as follows:

S 846-a. Powers on failure to obey order. If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection OR TEMPORARY ORDER OF PROTECTION issued PURSUANT TO THIS ACT OR ISSUED by a court of competent jurisdiction of another state, territorial or tribal jurisdiction [in a proceeding] and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order OR TEMPORARY ORDER OF PROTECTION to add reasonable conditions of behavior to the existing order [of protection], make a new order of protection in accordance with section eight hundred forty-two OF THIS PART, may order the forfeiture of bail in a manner consistent with article five hundred forty of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for a term not to exceed six months. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. If the court determines that the willful failure to obey such order involves violent behavior constituting the crimes of menacing, reckless endangerment, assault or attempted assault and if such a respondent is licensed to carry, possess, repair and dispose of firearms pursuant to section 400.00 of the penal law, the court may also immediately revoke such license and may arrange for the immediate surrender and disposal of any firearm such respondent owns or possesses. If the willful failure to obey such order involves the infliction of [serious] physical injury as

defined in subdivision [ten] NINE of section 10.00 of the penal law or 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, such revocation and immediate surrender and disposal of any firearm owned or possessed by respondent shall be mandatory, pursuant to subdivision eleven of section 400.00 of the penal law.

S 3. The family court act is amended by adding a new section 446-a to read as follows:

S 446-A. FIREARMS; SURRENDER AND LICENSE SUSPENSION, REVOCATION AND INELIGIBILITY. UPON THE ISSUANCE OF AN ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION, OR UPON A VIOLATION OF SUCH ORDER, THE COURT SHALL MAKE A DETERMINATION REGARDING THE SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS, INELIGIBILITY FOR SUCH A LICENSE AND THE SURRENDER OF FIREARMS IN ACCORDANCE WITH SECTION EIGHT HUNDRED FORTY-TWO-A OF THIS ACT.

S 4. The family court act is amended by adding a new section 552 to read as follows:

S 552. FIREARMS; SURRENDER AND LICENSE SUSPENSION, REVOCATION AND INELIGIBILITY. UPON THE ISSUANCE OF AN ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION, OR UPON A VIOLATION OF SUCH ORDER, THE COURT SHALL MAKE A DETERMINATION REGARDING THE SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS, INELIGIBILITY FOR SUCH A LICENSE AND THE SURRENDER OF FIREARMS IN ACCORDANCE WITH SECTION EIGHT HUNDRED FORTY-TWO-A OF THIS ACT.

S 5. The family court act is amended by adding a new section 656-a to read as follows:

S 656-A. FIREARMS; SURRENDER AND LICENSE SUSPENSION, REVOCATION AND INELIGIBILITY. UPON THE ISSUANCE OF AN ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION, OR UPON A VIOLATION OF SUCH ORDER, THE COURT SHALL MAKE A DETERMINATION REGARDING THE SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS, INELIGIBILITY FOR SUCH A LICENSE AND THE SURRENDER OF FIREARMS IN ACCORDANCE WITH SECTION EIGHT HUNDRED FORTY-TWO-A OF THIS ACT.

S 6. Part 7 of article 7 of the family court act is amended by adding a new section 780-a to read as follows:

S 780-A. FIREARMS; SURRENDER AND LICENSE SUSPENSION, REVOCATION AND INELIGIBILITY. UPON THE ISSUANCE OF AN ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION, OR UPON A VIOLATION OF SUCH ORDER, THE COURT SHALL MAKE A DETERMINATION REGARDING THE SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS, INELIGIBILITY FOR SUCH A LICENSE AND THE SURRENDER OF FIREARMS IN ACCORDANCE WITH SECTION EIGHT HUNDRED FORTY-TWO-A OF THIS ACT.

S 7. The family court act is amended by adding a new section 1056-a to read as follows:

S 1056-A. FIREARMS; SURRENDER AND LICENSE SUSPENSION, REVOCATION AND INELIGIBILITY. UPON THE ISSUANCE OF AN ORDER OF PROTECTION OR TEMPORARY ORDER OF PROTECTION, OR UPON A VIOLATION OF SUCH ORDER, THE COURT SHALL MAKE AN ORDER IN ACCORDANCE WITH SECTION EIGHT HUNDRED FORTY-TWO-A OF THIS ACT.

S 8. The first undesignated and closing paragraphs of subdivision 3 of section 240 of the domestic relations law, as added by chapter 606 of the laws of 1999, are amended to read as follows:

G. Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and

a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

H. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court [may] SHALL make [an order] A DETERMINATION REGARDING THE SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS, INELIGIBILITY FOR SUCH A LICENSE AND THE SURRENDER OF FIREARMS in accordance with [section] SECTIONS eight hundred forty-two-a AND EIGHT HUNDRED FORTY-SIX-A of the family court act [directing the surrender of firearms, revoking or suspending a party's firearms license, and/or directing that such party be ineligible to receive a firearms license], AS APPLICABLE. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action.

S 9. Subdivision 9 of section 252 of the domestic relations law, as added by chapter 606 of the laws of 1999, is amended to read as follows:

9. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court [may take an order] SHALL MAKE A DETERMINATION REGARDING THE SUSPENSION AND REVOCATION OF A LICENSE TO CARRY, POSSESS, REPAIR OR DISPOSE OF A FIREARM OR FIREARMS, INELIGIBILITY FOR SUCH A LICENSE AND THE SURRENDER OF FIREARMS in accordance with [section] SECTIONS eight hundred forty-two-a AND EIGHT HUNDRED FORTY-SIX-A of the family court act [directing the surrender of firearms, revoking or suspending a party's firearms license, and/or directing that such party be ineligible to receive a firearms license], AS APPLICABLE. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final [judgement] JUDGMENT or settlement of the action.

S 10. The opening paragraph and paragraph (b) of subdivision 1 of section 530.14 of the criminal procedure law, as added by chapter 644 of the laws of 1996, are amended to read as follows:

[Mandatory and permissive suspension] SUSPENSION of firearms license and ineligibility for such a license upon issuance of temporary order of protection. Whenever a temporary order of protection is issued pursuant to subdivision one of section 530.12 or subdivision one of section 530.13 of this article:

(b) the court [may] SHALL where the court finds a substantial risk that the defendant 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 defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed.

S 11. The opening paragraph and paragraph (b) of subdivision 2 of section 530.14 of the criminal procedure law, as added by chapter 644 of the laws of 1996, are amended to read as follows:

[Mandatory and permissive revocation] REVOCATION or suspension of firearms license and ineligibility for such a license upon issuance of an order of protection. Whenever an order of protection is issued pursuant to subdivision five of section 530.12 or subdivision four of section 530.13 of this article:

(b) the court [may] SHALL where the court finds a substantial risk that the defendant 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 defendant, order the defendant 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 defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed.

S 12. The opening paragraph and paragraph (b) of subdivision 3 of section 530.14 of the criminal procedure law, the opening paragraph as amended by chapter 597 of the laws of 1998 and paragraph (b) as added by chapter 644 of the laws of 1996, are amended to read as follows:

[Mandatory and permissive revocation] 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 defendant has been found pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article to have willfully failed to obey an order of protection issued by a court of competent jurisdiction in this state or another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article:

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

S 13. This act shall take effect immediately.