

6439

2013-2014 Regular Sessions

I N A S S E M B L Y

March 27, 2013

Introduced by M. of A. McKEVITT, SKOUFIS, WALTER, MONTESANO, GIGLIO, DUPREY -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, CORWIN, CROUCH, JOHNS, KEARNS, McLAUGHLIN, OAKS, RA, TENNEY, THIELE -- 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. Paragraph h of subdivision 3 of section 240 of the domestic
2 relations law, as amended by chapter 1 of the laws of 2013, is amended
3 to read as follows:
4 h. Upon issuance of an order of protection or temporary order of
5 protection or upon a violation of such order, the court shall make a
6 determination regarding the suspension and revocation of a license to
7 carry, possess, repair or dispose of a firearm or firearms, ineligibil-
8 ity for such a license and the surrender of firearms in accordance with
9 sections eight hundred forty-two-a and eight hundred forty-six-a of the
10 family court act, as applicable. Upon issuance of an order of protection
11 pursuant to this section or upon a finding of a violation thereof, the
12 court also may direct payment of restitution in an amount not to exceed
13 ten thousand dollars in accordance with subdivision (e) of section eight
14 hundred forty-one of such act; provided, however, that in no case shall
15 an order of restitution be issued where the court determines that the
16 party against whom the order would be issued has already compensated the
17 injured party or where such compensation is incorporated in a final
18 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE
19 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-
20 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS
21 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
22 COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIMINAL PROCEDURE

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

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1 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO
2 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS
3 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

4 S 2. Subdivision 9 of section 252 of the domestic relations law, as
5 amended by chapter 1 of the laws of 2013, is amended to read as follows:

6 9. Upon issuance of an order of protection or temporary order of
7 protection or upon a violation of such order, the court shall make a
8 determination regarding the suspension and revocation of a license to
9 carry, possess, repair or dispose of a firearm or firearms, ineligibil-
10 ity for such a license and the surrender of firearms in accordance with
11 sections eight hundred forty-two-a and eight hundred forty-six-a of the
12 family court act, as applicable. Upon issuance of an order of protection
13 pursuant to this section or upon a finding of a violation thereof, the
14 court also may direct payment of restitution in an amount not to exceed
15 ten thousand dollars in accordance with subdivision (e) of section eight
16 hundred forty-one of such act; provided, however, that in no case shall
17 an order of restitution be issued where the court determines that the
18 party against whom the order would be issued has already compensated the
19 injured party or where such compensation is incorporated in a final
20 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE
21 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-
22 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS
23 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
24 COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIMINAL PROCEDURE
25 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO
26 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS
27 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

28 S 3. Section 846-a of the family court act, as amended by chapter 1 of
29 the laws of 2013, is amended to read as follows:

30 S 846-a. Powers on failure to obey order. If a respondent is brought
31 before the court for failure to obey any lawful order issued under this
32 article or an order of protection or temporary order of protection
33 issued pursuant to this act or issued by a court of competent jurisdic-
34 tion of another state, territorial or tribal jurisdiction and if, after
35 hearing, the court is satisfied by competent proof that the respondent
36 has willfully failed to obey any such order, the court may modify an
37 existing order or temporary order of protection to add reasonable condi-
38 tions of behavior to the existing order, make a new order of protection
39 in accordance with section eight hundred forty-two of this part, may
40 order the forfeiture of bail in a manner consistent with article five
41 hundred forty of the criminal procedure law if bail has been ordered
42 pursuant to this act, may order the respondent to pay the petitioner's
43 reasonable and necessary counsel fees in connection with the violation
44 petition where the court finds that the violation of its order was will-
45 ful, and may commit the respondent to jail for a term not to exceed six
46 months. IF THE RESPONDENT HAS BEEN FOUND BY COMPETENT PROOF TO HAVE
47 WILLFULLY FAILED TO OBEY SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCA-
48 SION, AND THIS WILLFUL FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE
49 AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THIS
50 ARTICLE OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIMINAL PROCEDURE
51 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT
52 LESS THAN THIRTY DAYS. Such commitment may be served upon certain speci-
53 fied days or parts of days as the court may direct, and the court may,
54 at any time within the term of such sentence, revoke such suspension and
55 commit the respondent for the remainder of the original sentence, or
56 suspend the remainder of such sentence. If the court determines that the

1 willful failure to obey such order involves violent behavior constitut-
2 ing the crimes of menacing, reckless endangerment, assault or attempted
3 assault and if such a respondent is licensed to carry, possess, repair
4 and dispose of firearms pursuant to section 400.00 of the penal law, the
5 court may also immediately revoke such license and may arrange for the
6 immediate surrender pursuant to subparagraph (f) of paragraph one of
7 subdivision a of section 265.20 and subdivision six of section 400.05 of
8 the penal law, and disposal of any firearm such respondent owns or
9 possesses. If the willful failure to obey such order involves the
10 infliction of physical injury as defined in subdivision nine of section
11 10.00 of the penal law or the use or threatened use of a deadly weapon
12 or dangerous instrument, as those terms are defined in subdivisions
13 twelve and thirteen of section 10.00 of the penal law, such revocation
14 and immediate surrender pursuant to subparagraph (f) of paragraph one of
15 subdivision a of section 265.20 and subdivision six of section 400.05 of
16 the penal law [six] and disposal of any firearm owned or possessed by
17 respondent shall be mandatory, pursuant to subdivision eleven of section
18 400.00 of the penal law.

19 S 4. The closing paragraph of subdivision 3 of section 240 of the
20 domestic relations law, as added by chapter 606 of the laws of 1999, is
21 amended to read as follows:

22 Upon issuance of an order of protection or temporary order of
23 protection or upon a violation of such order, the court may make an
24 order in accordance with section eight hundred forty-two-a of the family
25 court act directing the surrender of firearms, revoking or suspending a
26 party's firearms license, and/or directing that such party be ineligible
27 to receive a firearms license. Upon issuance of an order of protection
28 pursuant to this section or upon a finding of a violation thereof, the
29 court also may direct payment of restitution in an amount not to exceed
30 ten thousand dollars in accordance with subdivision (e) of section eight
31 hundred forty-one of such act; provided, however, that in no case shall
32 an order of restitution be issued where the court determines that the
33 party against whom the order would be issued has already compensated the
34 injured party or where such compensation is incorporated in a final
35 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE
36 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-
37 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS
38 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
39 COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIMINAL PROCEDURE
40 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO
41 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS
42 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

43 S 5. Subdivision 9 of section 252 of the domestic relations law, as
44 added by chapter 606 of the laws of 1999, is amended to read as follows:

45 9. Upon issuance of an order of protection or temporary order of
46 protection or upon a violation of such order, the court may [take] MAKE
47 an order in accordance with section eight hundred forty-two-a of the
48 family court act directing the surrender of firearms, revoking or
49 suspending a party's firearms license, and/or directing that such party
50 be ineligible to receive a firearms license. Upon issuance of an order
51 of protection pursuant to this section or upon a finding of a violation
52 thereof, the court also may direct payment of restitution in an amount
53 not to exceed ten thousand dollars in accordance with subdivision (e) of
54 section eight hundred forty-one of such act; provided, however, that in
55 no case shall an order of restitution be issued where the court deter-
56 mines that the party against whom the order would be issued has already

1 compensated the injured party or where such compensation is incorporated
2 in a final [judgement] JUDGMENT or settlement of the action. IF THE
3 PERSON SO VIOLATING THE ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER
4 ON MORE THAN ONE OCCASION, AND THIS VIOLATION CONSISTED OF COMMITTING A
5 FAMILY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED
6 TWELVE OF THE FAMILY COURT ACT OR SUBDIVISION ONE OF SECTION 530.12 OF
7 THE CRIMINAL PROCEDURE LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM
8 OF IMPRISONMENT OF NO LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON
9 CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE COURT MAY DIRECT.

10 S 6. Section 846-a of the family court act, as amended by chapter 597
11 of the laws of 1998, is amended to read as follows:

12 S 846-a. Powers on failure to obey order. If a respondent is brought
13 before the court for failure to obey any lawful order issued under this
14 article or an order of protection issued by a court of competent juris-
15 diction of another state, territorial or tribal jurisdiction in a
16 proceeding and if, after hearing, the court is satisfied by competent
17 proof that the respondent has willfully failed to obey any such order,
18 the court may modify an existing order to add reasonable conditions of
19 behavior to the existing order of protection, make a new order of
20 protection in accordance with section eight hundred forty-two OF THIS
21 PART, may order the forfeiture of bail in a manner consistent with arti-
22 cle five hundred forty of the criminal procedure law if bail has been
23 ordered pursuant to this act, may order the respondent to pay the
24 petitioner's reasonable and necessary counsel fees in connection with
25 the violation petition where the court finds that the violation of its
26 order was willful, and may commit the respondent to jail for a term not
27 to exceed six months. IF THE RESPONDENT HAS BEEN FOUND BY COMPETENT
28 PROOF TO HAVE WILLFULLY FAILED TO OBEY SUCH ORDER OF PROTECTION ON MORE
29 THAN ONE OCCASION, AND THIS WILLFUL FAILURE CONSISTED OF COMMITTING A
30 FAMILY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED
31 TWELVE OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION 530.12 OF THE CRIM-
32 INAL PROCEDURE LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF
33 IMPRISONMENT OF NOT LESS THAN THIRTY DAYS. Such commitment may be served
34 upon certain specified days or parts of days as the court may direct,
35 and the court may, at any time within the term of such sentence, revoke
36 such suspension and commit the respondent for the remainder of the
37 original sentence, or suspend the remainder of such sentence. If the
38 court determines that the willful failure to obey such order involves
39 violent behavior constituting the crimes of menacing, reckless endanger-
40 ment, assault or attempted assault and if such a respondent is licensed
41 to carry, possess, repair and dispose of firearms pursuant to section
42 400.00 of the penal law, the court may also immediately revoke such
43 license and may arrange for the immediate surrender and disposal of any
44 firearm such respondent owns or possesses. If the willful failure to
45 obey such order involves the infliction of serious physical injury as
46 defined in subdivision [ten] NINE of section 10.00 of the penal law or
47 the use or threatened use of a deadly weapon or dangerous instrument, as
48 those terms are defined in subdivisions twelve and thirteen of section
49 10.00 of the penal law, such revocation and immediate surrender and
50 disposal of any firearm owned or possessed by respondent shall be manda-
51 tory, pursuant to subdivision eleven of section 400.00 of the penal law.

52 S 7. Subdivision 11 of section 530.12 of the criminal procedure law,
53 as amended by chapter 498 of the laws of 1993, the opening paragraph as
54 amended by chapter 597 of the laws of 1998, paragraph (a) as amended by
55 chapter 222 of the laws of 1994 and paragraph (d) as amended by chapter
56 644 of the laws of 1996, is amended to read as follows:

11. If a defendant is brought before the court for failure to obey any lawful order issued under this section, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, (A) the court may:

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

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

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

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

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

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

8. If a defendant is brought before the court for failure to obey any lawful order issued under this section and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, (A) the court may:

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

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

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

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

(B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVISION ONE OF SECTION 530.12 OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS,

1 WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE
2 COURT MAY DIRECT.
3 S 9. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law; provided, however,
5 that if section 11 of chapter 1 of the laws of 2013 is not in effect on
6 such date then section four of this act is in effect only until section
7 11 of chapter 1 of the laws of 2013 takes effect when upon such date
8 section one of this act shall take effect; provided, however, that if
9 section 12 of chapter 1 of the laws of 2013 is not in effect on such
10 date then section five of this act is in effect only until section 12 of
11 chapter 1 of the laws of 2013 takes effect when upon such date section
12 two of this act shall take effect; provided, however, that if section 5
13 of chapter 1 of the laws of 2013 is not in effect on such date then
14 section six of this act is in effect only until section 5 of chapter 1
15 of the laws of 2013 takes effect when upon such date section three of
16 this act shall take effect.