

844--B

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sens. PARKER, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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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 530.11 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 amended by chapter 1 of the laws of 2013, 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 shall make a  
14 determination regarding the suspension and revocation of a license to  
15 carry, possess, repair or dispose of a firearm or firearms, ineligibil-  
16 ity for such a license and the surrender of firearms in accordance with  
17 sections eight hundred forty-two-a and eight hundred forty-six-a of the  
18 family court act, as applicable. Upon issuance of an order of protection  
19 pursuant to this section or upon a finding of a violation thereof, the  
20 court also may direct payment of restitution in an amount not to exceed  
21 ten thousand dollars in accordance with subdivision (e) of section eight  
22 hundred forty-one of such act; provided, however, that in no case shall  
23 an order of restitution be issued where the court determines that the  
24 party against whom the order would be issued has already compensated the  
25 injured party or where such compensation is incorporated in a final  
26 judgment or settlement of the action. IF THE PERSON SO VIOLATING THE  
27 ORDER HAS BEEN FOUND TO HAVE VIOLATED SUCH ORDER ON MORE THAN ONE OCCA-  
28 SION, AND THIS VIOLATION CONSISTED OF COMMITTING A FAMILY OFFENSE AS  
29 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY  
30 COURT ACT OR SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE  
31 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NO  
32 LESS THAN THIRTY DAYS, WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS  
33 OR PARTS OF DAYS AS THE COURT MAY DIRECT.

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

36 S 846-a. Powers on failure to obey order. If a respondent is brought  
37 before the court for failure to obey any lawful order issued under this  
38 article or an order of protection or temporary order of protection  
39 issued pursuant to this act or issued by a court of competent jurisdic-  
40 tion of another state, territorial or tribal jurisdiction and if, after  
41 hearing, the court is satisfied by competent proof that the respondent  
42 has willfully failed to obey any such order, the court may modify an  
43 existing order or temporary order of protection to add reasonable condi-  
44 tions of behavior to the existing order, make a new order of protection  
45 in accordance with section eight hundred forty-two of this part, may  
46 order the forfeiture of bail in a manner consistent with article five  
47 hundred forty of the criminal procedure law if bail has been ordered  
48 pursuant to this act, may order the respondent to pay the petitioner's  
49 reasonable and necessary counsel fees in connection with the violation  
50 petition where the court finds that the violation of its order was will-  
51 ful, and may commit the respondent to jail for a term not to exceed six  
52 months. IF THE RESPONDENT HAS BEEN FOUND BY COMPETENT PROOF TO HAVE  
53 WILLFULLY FAILED TO OBEY SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCA-  
54 SION, AND THIS WILLFUL FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE  
55 AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THIS  
56 ARTICLE OR SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE

1 LAW, THE COURT SHALL COMMIT SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT  
2 LESS THAN THIRTY DAYS. Such commitment may be served upon certain speci-  
3 fied days or parts of days as the court may direct, and the court may,  
4 at any time within the term of such sentence, revoke such suspension and  
5 commit the respondent for the remainder of the original sentence, or  
6 suspend the remainder of such sentence. If the court determines that the  
7 willful failure to obey such order involves violent behavior constitut-  
8 ing the crimes of menacing, reckless endangerment, assault or attempted  
9 assault and if such a respondent is licensed to carry, possess, repair  
10 and dispose of firearms pursuant to section 400.00 of the penal law, the  
11 court may also immediately revoke such license and may arrange for the  
12 immediate surrender pursuant to subparagraph (f) of paragraph one of  
13 subdivision a of section 265.20 and subdivision six of section 400.05 of  
14 the penal law, and disposal of any firearm such respondent owns or  
15 possesses. If the willful failure to obey such order involves the  
16 infliction of physical injury as defined in subdivision nine of section  
17 10.00 of the penal law or the use or threatened use of a deadly weapon  
18 or dangerous instrument, as those terms are defined in subdivisions  
19 twelve and thirteen of section 10.00 of the penal law, such revocation  
20 and immediate surrender pursuant to subparagraph (f) of paragraph one of  
21 subdivision a of section 265.20 and subdivision six of section 400.05 of  
22 the penal law [six] and disposal of any firearm owned or possessed by  
23 respondent shall be mandatory, pursuant to subdivision eleven of section  
24 400.00 of the penal law.

25 S 4. Subdivision 11 of section 530.12 of the criminal procedure law,  
26 as amended by chapter 498 of the laws of 1993, the opening paragraph as  
27 amended by chapter 597 of the laws of 1998, paragraph (a) as amended by  
28 chapter 222 of the laws of 1994 and paragraph (d) as amended by chapter  
29 644 of the laws of 1996, is amended to read as follows:

30 11. If a defendant is brought before the court for failure to obey  
31 any lawful order issued under this section, or an order of protection  
32 issued by a court of competent jurisdiction in another state, territo-  
33 rial or tribal jurisdiction, and if, after hearing, the court is satis-  
34 fied by competent proof that the defendant has willfully failed to obey  
35 any such order, (A) the court may:

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

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

41 [(c)] (III) revoke a conditional discharge in accordance with section  
42 410.70 of this chapter and impose probation supervision or impose a  
43 sentence of imprisonment in accordance with the penal law based on the  
44 original conviction; or

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

51 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY  
52 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL  
53 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-  
54 SION ONE OF THIS SECTION OR SUBDIVISION ONE OF SECTION EIGHT HUNDRED  
55 TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT SUCH PERSON TO A

1 TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS, WHICH MAY BE SERVED  
2 UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE COURT MAY DIRECT.

3 S 5. Subdivision 8 of section 530.13 of the criminal procedure law, as  
4 added by chapter 388 of the laws of 1984, is amended to read as follows:

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

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

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

15 [(c)] (III) revoke a conditional discharge in accordance with section  
16 410.70 of this chapter and impose probation supervision or impose a  
17 sentence of imprisonment in accordance with the penal law based on the  
18 original conviction; or

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

25 (B) IF THE COURT FINDS THAT THE DEFENDANT HAS WILLFULLY FAILED TO OBEY  
26 SUCH ORDER OF PROTECTION ON MORE THAN ONE OCCASION AND THIS WILLFUL  
27 FAILURE CONSISTED OF COMMITTING A FAMILY OFFENSE AS DEFINED IN SUBDIVI-  
28 SION ONE OF SECTION 530.11 OF THIS ARTICLE OR SUBDIVISION ONE OF SECTION  
29 EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, THE COURT SHALL COMMIT  
30 SUCH PERSON TO A TERM OF IMPRISONMENT OF NOT LESS THAN THIRTY DAYS,  
31 WHICH MAY BE SERVED UPON CERTAIN SPECIFIED DAYS OR PARTS OF DAYS AS THE  
32 COURT MAY DIRECT.

33 S 6. This act shall take effect on the first of November next succeed-  
34 ing the date on which it shall have become a law.