

# STATE OF NEW YORK

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3430--A

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

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Introduced by M. of A. McKEVITT, SKOUFIS, WALTER, MONTESANO, GIGLIO, RAIA, LUPINACCI, CROUCH, MORINELLO, B. MILLER -- Multi-Sponsored by -- M. of A. ARROYO, BARCLAY, HAWLEY, JOHNS, KEARNS, McDONOUGH, McLAUGHLIN, OAKS, RA, THIELE -- read once and referred to the Committee on Judiciary -- 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 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 one occasion, and  
20 this violation consisted of committing a family offense as defined in

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

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1 subdivision one of section eight hundred twelve of the family court act  
2 or subdivision one of section 530.11 of the criminal procedure law, the  
3 court shall commit such person to a term of imprisonment of no less than  
4 five days, which may be served upon certain specified days or parts of  
5 days as the court may direct. If the person so violating the order has  
6 been found to have violated such order on two occasions, and this  
7 violation consisted of committing a family offense as defined in subdi-  
8 vision one of section eight hundred twelve of the family court act or  
9 subdivision one of section 530.11 of the criminal procedure law, the  
10 court shall commit such person to a term of imprisonment of no less than  
11 fifteen days, which may be served upon certain specified days or parts  
12 of days as the court may direct. If the person so violating the order  
13 has been found to have violated such order on three or more occasions,  
14 and this violation consisted of committing a family offense as defined  
15 in subdivision one of section eight hundred twelve of the family court  
16 act or subdivision one of section 530.11 of the criminal procedure law,  
17 the court shall commit such person to a term of imprisonment of no less  
18 than thirty days, which may be served upon certain specified days or  
19 parts of days as the court may direct.

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

22 9. Upon issuance of an order of protection or temporary order of  
23 protection or upon a violation of such order, the court shall make a  
24 determination regarding the suspension and revocation of a license to  
25 carry, possess, repair or dispose of a firearm or firearms, ineligibil-  
26 ity for such a license and the surrender of firearms in accordance with  
27 sections eight hundred forty-two-a and eight hundred forty-six-a of the  
28 family court act, as applicable. Upon issuance of an order of protection  
29 pursuant to this section or upon a finding of a violation thereof, the  
30 court also may direct payment of restitution in an amount not to exceed  
31 ten thousand dollars in accordance with subdivision (e) of section eight  
32 hundred forty-one of such act; provided, however, that in no case shall  
33 an order of restitution be issued where the court determines that the  
34 party against whom the order would be issued has already compensated the  
35 injured party or where such compensation is incorporated in a final  
36 judgment or settlement of the action. If the person so violating the  
37 order has been found to have violated such order on one occasion, and  
38 this violation consisted of committing a family offense as defined in  
39 subdivision one of section eight hundred twelve of the family court act  
40 or subdivision one of section 530.11 of the criminal procedure law, the  
41 court shall commit such person to a term of imprisonment of no less than  
42 five days, which may be served upon certain specified days or parts of  
43 days as the court may direct. If the person so violating the order has  
44 been found to have violated such order on two occasions, and this  
45 violation consisted of committing a family offense as defined in subdi-  
46 vision one of section eight hundred twelve of the family court act or  
47 subdivision one of section 530.11 of the criminal procedure law, the  
48 court shall commit such person to a term of imprisonment of no less than  
49 fifteen days, which may be served upon certain specified days or parts  
50 of days as the court may direct. If the person so violating the order  
51 has been found to have violated such order on three or more occasions,  
52 and this violation consisted of committing a family offense as defined  
53 in subdivision one of section eight hundred twelve of the family court  
54 act or subdivision one of section 530.11 of the criminal procedure law,  
55 the court shall commit such person to a term of imprisonment of no less

1 than thirty days, which may be served upon certain specified days or  
2 parts of days as the court may direct.

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

5 § 846-a. Powers on failure to obey order. If a respondent is brought  
6 before the court for failure to obey any lawful order issued under this  
7 article or an order of protection or temporary order of protection  
8 issued pursuant to this act or issued by a court of competent jurisdic-  
9 tion of another state, territorial or tribal jurisdiction and if, after  
10 hearing, the court is satisfied by competent proof that the respondent  
11 has willfully failed to obey any such order, the court may modify an  
12 existing order or temporary order of protection to add reasonable condi-  
13 tions of behavior to the existing order, make a new order of protection  
14 in accordance with section eight hundred forty-two of this part, may  
15 order the forfeiture of bail in a manner consistent with article five  
16 hundred forty of the criminal procedure law if bail has been ordered  
17 pursuant to this act, may order the respondent to pay the petitioner's  
18 reasonable and necessary counsel fees in connection with the violation  
19 petition where the court finds that the violation of its order was will-  
20 ful, and may commit the respondent to jail for a term not to exceed six  
21 months.

22 If the respondent has been found by competent proof to have  
23 willfully failed to obey such order of protection on one occasion, and  
24 this willful failure consisted of committing a family offense as defined  
25 in subdivision one of section eight hundred twelve of this article or  
26 subdivision one of section 530.11 of the criminal procedure law, the  
27 court shall commit such person to a term of imprisonment of no less than  
28 five days. If the respondent has been found by competent proof to have  
29 willfully failed to obey such order of protection on two occasions, and  
30 this willful failure consisted of committing a family offense as defined  
31 in subdivision one of section eight hundred twelve of this article or  
32 subdivision one of section 530.11 of the criminal procedure law, the  
33 court shall commit such person to a term of imprisonment of no less than  
34 fifteen days. If the respondent has been found by competent proof to  
35 have willfully failed to obey such order of protection on three or more  
36 occasions, and this willful failure consisted of committing a family  
37 offense as defined in subdivision one of section eight hundred twelve of  
38 this article or subdivision one of section 530.11 of the criminal proce-  
39 dure law, the court shall commit such person to a term of imprisonment  
40 of no less than thirty days.

Such commitment may be served upon certain  
41 specified days or parts of days as the court may direct, and the court  
42 may, at any time within the term of such sentence, revoke such suspen-  
43 sion and commit the respondent for the remainder of the original  
44 sentence, or suspend the remainder of such sentence. If the court deter-  
45 mines that the willful failure to obey such order involves violent  
46 behavior constituting the crimes of menacing, reckless endangerment,  
47 assault or attempted assault and if such a respondent is licensed to  
48 carry, possess, repair and dispose of firearms pursuant to section  
49 400.00 of the penal law, the court may also immediately revoke such  
50 license and may arrange for the immediate surrender pursuant to subpara-  
51 graph (f) of paragraph one of subdivision a of section 265.20 and subdivi-  
52 sion six of section 400.05 of the penal law, and disposal of any  
53 firearm such respondent owns or possesses. If the willful failure to  
54 obey such order involves the infliction of physical injury as defined in  
55 subdivision nine of section 10.00 of the penal law or the use or threat-  
56 ened use of a deadly weapon or dangerous instrument, as those terms are  
defined in subdivisions twelve and thirteen of section 10.00 of the

1 penal law, such revocation and immediate surrender pursuant to subpara-  
2 graph (f) of paragraph one of subdivision a of section 265.20 and subdi-  
3 vision six of section 400.05 of the penal law ~~[six]~~ and disposal of any  
4 firearm owned or possessed by respondent shall be mandatory, pursuant to  
5 subdivision eleven of section 400.00 of the penal law.

6 § 4. Subdivision 11 of section 530.12 of the criminal procedure law,  
7 as amended by chapter 498 of the laws of 1993, the opening paragraph as  
8 amended by chapter 597 of the laws of 1998, paragraph (a) as amended by  
9 chapter 222 of the laws of 1994 and paragraph (d) as amended by chapter  
10 644 of the laws of 1996, is amended to read as follows:

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

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

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

22 ~~[(c)]~~ (iii) revoke a conditional discharge in accordance with section  
23 410.70 of this chapter and impose probation supervision or impose a  
24 sentence of imprisonment in accordance with the penal law based on the  
25 original conviction; or

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

32 (b) If the court finds that the defendant has willfully failed to obey  
33 such order of protection on one occasion, and this willful failure  
34 consisted of committing a family offense as defined in subdivision one  
35 of this section or subdivision one of section eight hundred twelve of  
36 the family court act, the court shall commit such person to a term of  
37 imprisonment of no less than five days, which may be served upon certain  
38 specified days or parts of days as the court may direct. If the court  
39 finds that the defendant has willfully failed to obey such order of  
40 protection on two occasions, and this willful failure consisted of  
41 committing a family offense as defined in subdivision one of this  
42 section or subdivision one of section eight hundred twelve of the family  
43 court act, the court shall commit such person to a term of imprisonment  
44 of no less than fifteen days, which may be served upon certain specified  
45 days or parts of days as the court may direct. If the court finds that  
46 the defendant has willfully failed to obey such order of protection on  
47 three or more occasions, and this willful failure consisted of commit-  
48 ting a family offense as defined in subdivision one of this section or  
49 subdivision one of section eight hundred twelve of the family court act,  
50 the court shall commit such person to a term of imprisonment of no less  
51 than thirty days, which may be served upon certain specified days or  
52 parts of days as the court may direct.

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

55 8. If a defendant is brought before the court for failure to obey any  
56 lawful order issued under this section and if, after hearing, the court

1 is satisfied by competent proof that the defendant has willfully failed  
2 to obey any such order, (a) the court may:

3 [~~(a)~~] (i) revoke an order of recognizance or bail and commit the  
4 defendant to custody; or

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

9 [~~(c)~~] (iii) revoke a conditional discharge in accordance with section  
10 410.70 of this chapter and impose probation supervision or impose a  
11 sentence of imprisonment in accordance with the penal law based on the  
12 original conviction; or

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

19 (b) If the court finds that the defendant has willfully failed to obey  
20 such order of protection on one occasion, and this willful failure  
21 consisted of committing a family offense as defined in subdivision one  
22 of section 530.11 of this article or subdivision one of section eight  
23 hundred twelve of the family court act, the court shall commit such  
24 person to a term of imprisonment of no less than five days, which may be  
25 served upon certain specified days or parts of days as the court may  
26 direct. If the court finds that the defendant has willfully failed to  
27 obey such order of protection on two occasions, and this willful failure  
28 consisted of committing a family offense as defined in subdivision one  
29 of section 530.11 of this article or subdivision one of section eight  
30 hundred twelve of the family court act, the court shall commit such  
31 person to a term of imprisonment of no less than fifteen days, which may  
32 be served upon certain specified days or parts of days as the court may  
33 direct. If the court finds that the defendant has willfully failed to  
34 obey such order of protection on three or more occasions, and this will-  
35 ful failure consisted of committing a family offense as defined in  
36 subdivision one of section 530.11 of this article or subdivision one of  
37 section eight hundred twelve of the family court act, the court shall  
38 commit such person to a term of imprisonment of no less than thirty  
39 days, which may be served upon certain specified days or parts of days  
40 as the court may direct.

41 § 6. This act shall take effect on the first of November next succeed-  
42 ing the date on which it shall have become a law.