

STATE OF NEW YORK

10773

IN ASSEMBLY

May 17, 2018

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offenses of unlawful possession of ammunition by a domestic violence offender and unlawful purchase of ammunition by a domestic violence offender; and to amend the penal law, the criminal procedure law and the family court act, in relation to the surrender of ammunition

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 265.07 to
2 read as follows:

3 § 265.07 Unlawful possession of ammunition by a domestic violence offen-
4 der.

5 A person is guilty of unlawful possession of ammunition by a domestic
6 violence offender when he or she possesses firearm, rifle or shotgun
7 ammunition knowing that he or she, pursuant to section 530.14 of the
8 criminal procedure law or section eight hundred forty-two-a of the fami-
9 ly court act, has had his or her license to carry, possess, repair or
10 dispose of a firearm or firearms issued pursuant to section 400.00 of
11 this chapter suspended or revoked, was ordered ineligible for such a
12 license or was ordered to surrender his or her firearms, rifles or shot-
13 guns and any ammunition for such weapons.

14 Unlawful possession of ammunition by a domestic violence offender is a
15 misdemeanor.

16 § 2. The penal law is amended by adding a new section 265.18 to read
17 as follows:

18 § 265.18 Unlawful purchase of ammunition by a domestic violence offen-
19 der.

20 A person is guilty of unlawful purchase of ammunition by a domestic
21 violence offender when he or she purchases firearm, rifle or shotgun
22 ammunition knowing that he or she, pursuant to section 530.14 of the
23 criminal procedure law or section eight hundred forty-two-a of the fami-
24 ly court act, has had his or her license to carry, possess, repair or
25 dispose of a firearm or firearms issued pursuant to section 400.00 of

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

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this chapter suspended or revoked, was ordered ineligible for such a license or was ordered to surrender his or her firearms, rifles or shot-guns and any ammunition for such weapons.

Unlawful purchase of ammunition by a domestic violence offender is a misdemeanor.

§ 3. The opening paragraph of subdivision a and the opening paragraph and subparagraph (f) of paragraph 1 of subdivision a of section 265.20 of the penal law, the opening paragraph of subdivision a as amended by section 1 of part FF of chapter 57 of the laws of 2013, the opening paragraph of paragraph 1 of subdivision a as amended by chapter 1041 of the laws of 1974, and subparagraph (f) of paragraph 1 of subdivision a as amended by chapter 578 of the laws of 2006, are amended to read as follows:

Paragraph (h) of subdivision twenty-two of section 265.00 and sections 265.01, 265.01-a, subdivision one of section 265.01-b, 265.02, 265.03, 265.04, 265.05, 265.07, 265.10, 265.11, 265.12, 265.13, 265.15, 265.36, 265.37 and 270.05 shall not apply to:

Possession of any of the weapons, ammunition, instruments, appliances or substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.07 and 270.05 by the following:

(f) A person voluntarily surrendering such weapon, ammunition, instrument, appliance or substance, provided that such surrender shall be made to the superintendent of the division of state police or a member thereof designated by such superintendent, or to the sheriff of the county in which such person resides, or in the county of Nassau or in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown in the county of Suffolk to the commissioner of police or a member of the police department thereof designated by such commissioner, or if such person resides in a city, town other than one named in this subparagraph, or village to the police commissioner or head of the police force or department thereof or to a member of the force or department designated by such commissioner or head; and provided, further, that the same shall be surrendered by such person in accordance with such terms and conditions as may be established by such superintendent, sheriff, police force or department. Nothing in this paragraph shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such weapons, ammunition, instruments, appliances or substances surrendered as herein provided. A person who possesses any such weapon, ammunition, instrument, appliance or substance as an executor or administrator or any other lawful possessor of such property of a decedent may continue to possess such property for a period not over fifteen days. If such property is not lawfully disposed of within such period the possessor shall deliver it to an appropriate official described in this paragraph or such property may be delivered to the superintendent of state police. Such officer shall hold it and shall thereafter deliver it on the written request of such executor, administrator or other lawful possessor of such property to a named person, provided such named person is licensed to or is otherwise lawfully permitted to possess the same. If no request to deliver the property is received by such official within one year of the delivery of such property, such official shall dispose of it in accordance with the provisions of section 400.05 of this chapter.

§ 4. Subdivision 6 of section 400.05 of the penal law, as amended by chapter 578 of the laws 2006, is amended to read as follows:

6. A firearm or other weapon or ammunition which is surrendered, or is otherwise voluntarily delivered pursuant to section 265.20 of this chap-

ter and which has not been declared a nuisance pursuant to subdivision one of this section, shall be retained by the official to whom it was delivered for a period not to exceed one year. Prior to the expiration of such time period, a person who surrenders a firearm or ammunition shall have the right to arrange for the sale, or transfer, of such firearm or ammunition to a dealer in firearms licensed in accordance with this chapter or for the transfer of such firearm to himself or herself provided that a license therefor has been issued in accordance with this chapter. If no lawful disposition of the firearm or other weapon or ammunition is made within the time provided, the firearm or weapon concerned shall be declared a nuisance and shall be disposed of in accordance with the provisions of this section.

§ 5. Paragraph (c) of subdivision 11 of section 400.00 of the penal law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns and any ammunition owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, ~~[or]~~ rifle or any ammunition is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons and ammunition.

§ 6. Paragraphs (a) and (b) of subdivision 1, paragraphs (a) and (b) of subdivision 2, paragraphs (a) and (b) of subdivision 3, subdivision 5, and paragraphs (a) and (b) of subdivision 6 of section 530.14 of the criminal procedure law, as amended by chapter 60 of the laws of 2018, are amended to read as follows:

(a) the court shall 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, rifles ~~[and]~~, shotguns and ammunition owned or possessed where the court receives information that gives the court good cause to believe that (i) the defendant has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the defendant has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of physical injury, as defined in subdivision 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 defendant 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 shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm, rifle or shotgun 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 pursuant to subparagraph (f)

1 of paragraph one of subdivision a of section 265.20 and subdivision six
2 of section 400.05 of the penal law, of any or all firearms, rifles
3 ~~[and]~~, shotguns and ammunition owned or possessed.

4 (a) the court shall revoke any such existing license possessed by the
5 defendant, order the defendant ineligible for such a license and order
6 the immediate surrender of any or all firearms, rifles ~~[and]~~, shotguns
7 and ammunition owned or possessed where such action is required by
8 section 400.00 of the penal law; and

9 (b) the court shall where the court finds a substantial risk that the
10 defendant may use or threaten to use a firearm, ~~[rifles]~~ rifle or ~~[shot-~~
11 ~~guns]~~ shotgun unlawfully against the person or persons for whose
12 protection the order of protection is issued, (i) revoke any such exist-
13 ing license possessed by the defendant, order the defendant ineligible
14 for such a license and order the immediate surrender of any or all
15 firearms, rifles ~~[and]~~, shotguns and ammunition owned or possessed or
16 (ii) suspend or continue to suspend any such existing license possessed
17 by the defendant, order the defendant ineligible for such a license and
18 order the immediate surrender pursuant to subparagraph (f) of paragraph
19 one of subdivision a of section 265.20 and subdivision six of section
20 400.05 of the penal law, of any or all firearms, rifles ~~[and]~~, shotguns
21 and ammunition owned or possessed.

22 (a) the court shall revoke any such existing license possessed by the
23 defendant, order the defendant ineligible for such a license and order
24 the immediate surrender of any or all firearms, rifles ~~[and]~~, shotguns
25 and ammunition owned or possessed where the willful failure to obey such
26 order involved (i) the infliction of physical injury, as defined in
27 subdivision nine of section 10.00 of the penal law, (ii) the use or
28 threatened use of a deadly weapon or dangerous instrument as those terms
29 are defined in subdivisions twelve and thirteen of section 10.00 of the
30 penal law, (iii) behavior constituting any violent felony offense as
31 defined in section 70.02 of the penal law; or (iv) behavior constituting
32 stalking in the first degree as defined in section 120.60 of the penal
33 law, stalking in the second degree as defined in section 120.55 of the
34 penal law, stalking in the third degree as defined in section 120.50 of
35 the penal law or stalking in the fourth degree as defined in section
36 120.45 of such law; and

37 (b) the court shall where the court finds a substantial risk that the
38 defendant may use or threaten to use a firearm, rifle or shotgun unlaw-
39 fully against the person or persons for whose protection the order of
40 protection was issued, (i) revoke any such existing license possessed by
41 the defendant, order the defendant ineligible for such a license and
42 order the immediate surrender pursuant to subparagraph (f) of paragraph
43 one of subdivision a of section 265.20 and subdivision six of section
44 400.05 of the penal law, of any or all firearms, rifles ~~[and]~~, shotguns
45 and ammunition owned or possessed or (ii) suspend any such existing
46 license possessed by the defendant, order the defendant ineligible for
47 such a license and order the immediate surrender pursuant to subpara-
48 graph (f) of paragraph one of subdivision a of section 265.20 and subdi-
49 vision six of section 400.05 of the penal law, of any or all firearms,
50 rifles ~~[and]~~, shotguns and ammunition owned or possessed.

51 5. Surrender. (a) Where an order to surrender one or more firearms,
52 rifles ~~[and]~~, shotguns and ammunition has been issued, the temporary
53 order of protection or order of protection shall specify the place where
54 such weapons and ammunition shall be surrendered, shall specify a date
55 and time by which the surrender shall be completed and, to the extent
56 possible, shall describe such weapons and ammunition to be surrendered,

1 and shall direct the authority receiving such surrendered weapons and
2 ammunition to immediately notify the court of such surrender.

3 (b) The prompt surrender of one or more firearms, rifles or shotguns
4 and any ammunition pursuant to a court order issued pursuant to this
5 section shall be considered a voluntary surrender for purposes of
6 subparagraph (f) of paragraph one of subdivision a of section 265.20 of
7 the penal law. The disposition of any such weapons and ammunition shall
8 be in accordance with the provisions of subdivision six of section
9 400.05 of the penal law; provided, however, that upon termination of any
10 suspension order issued pursuant to this section or section eight
11 hundred forty-two-a of the family court act, upon written application of
12 the subject of the order, with notice and opportunity to be heard to the
13 district attorney, the county attorney, the protected party, and every
14 licensing officer responsible for issuance of a firearms license to the
15 subject of the order pursuant to article four hundred of the penal law,
16 and upon a written finding that there is no legal impediment to the
17 subject's possession of a surrendered firearm, rifle or shotgun and any
18 ammunition, any court of record exercising criminal jurisdiction may
19 order the return of a firearm, rifle or shotgun and any ammunition not
20 otherwise disposed of in accordance with subdivision six of section
21 400.05 of the penal law. When issuing such order in connection with any
22 firearm subject to a license requirement under article four hundred of
23 the penal law, if the licensing officer informs the court that he or she
24 will seek to revoke the license, the order shall be stayed by the court
25 until the conclusion of any license revocation proceeding.

26 (c) The provisions of this section shall not be deemed to limit,
27 restrict or otherwise impair the authority of the court to order and
28 direct the surrender of any or all firearms, rifles [~~and~~], shotguns and
29 ammunition owned or possessed by a defendant pursuant to sections 530.12
30 or 530.13 of this article.

31 (a) Where an order requiring surrender, revocation, suspension or
32 ineligibility has been issued pursuant to this section, any temporary
33 order of protection or order of protection issued shall state that such
34 firearm license has been suspended or revoked or that the defendant is
35 ineligible for such license, as the case may be, and that the defendant
36 is prohibited from possessing any firearm, rifle or shotgun and any
37 ammunition.

38 (b) The court revoking or suspending the license, ordering the defend-
39 ant ineligible for such a license, or ordering the surrender of any
40 firearm, rifle or shotgun and any ammunition shall immediately notify
41 the duly constituted police authorities of the locality concerning such
42 action and, in the case of orders of protection and temporary orders of
43 protection issued pursuant to section 530.12 of this article, shall
44 immediately notify the statewide registry of orders of protection.

45 § 7. Paragraphs (a) and (b) of subdivision 1, paragraphs (a) and (b)
46 of subdivision 2, paragraphs (a) and (b) of subdivision 3, subdivision
47 5, and paragraphs (a) and (b) of subdivision 6 of section 842-a of the
48 family court act, as amended by chapter 60 of the laws of 2018, are
49 amended to read as follows:

50 (a) the court shall suspend any such existing license possessed by the
51 respondent, order the respondent ineligible for such a license, and
52 order the immediate surrender pursuant to subparagraph (f) of paragraph
53 one of subdivision a of section 265.20 and subdivision six of section
54 400.05 of the penal law, of any or all firearms, rifles [~~and~~], shotguns
55 and ammunition owned or possessed where the court receives information
56 that gives the court good cause to believe that: (i) the respondent has

1 a prior conviction of any violent felony offense as defined in section
2 70.02 of the penal law; (ii) the respondent has previously been found to
3 have willfully failed to obey a prior order of protection and such will-
4 ful failure involved (A) the infliction of physical injury, as defined
5 in subdivision nine of section 10.00 of the penal law, (B) the use or
6 threatened use of a deadly weapon or dangerous instrument as those terms
7 are defined in subdivisions twelve and thirteen of section 10.00 of the
8 penal law, or (C) behavior constituting any violent felony offense as
9 defined in section 70.02 of the penal law; or (iii) the respondent has a
10 prior conviction for stalking in the first degree as defined in section
11 120.60 of the penal law, stalking in the second degree as defined in
12 section 120.55 of the penal law, stalking in the third degree as defined
13 in section 120.50 of the penal law or stalking in the fourth degree as
14 defined in section 120.45 of such law; and

15 (b) the court shall where the court finds a substantial risk that the
16 respondent may use or threaten to use a firearm, rifle or shotgun unlaw-
17 fully against the person or persons for whose protection the temporary
18 order of protection is issued, suspend any such existing license
19 possessed by the respondent, order the respondent ineligible for such a
20 license, and order the immediate surrender pursuant to subparagraph (f)
21 of paragraph one of subdivision a of section 265.20 and subdivision six
22 of section 400.05 of the penal law, of any or all firearms, rifles
23 ~~and~~, shotguns and ammunition owned or possessed.

24 (a) the court shall revoke any such existing license possessed by the
25 respondent, order the respondent ineligible for such a license, and
26 order the immediate surrender pursuant to subparagraph (f) of paragraph
27 one of subdivision a of section 265.20 and subdivision six of section
28 400.05 of the penal law, of any or all firearms, rifles ~~and~~, shotguns
29 and ammunition owned or possessed where the court finds that the conduct
30 which resulted in the issuance of the order of protection involved (i)
31 the infliction of physical injury, as defined in subdivision nine of
32 section 10.00 of the penal law, (ii) the use or threatened use of a
33 deadly weapon or dangerous instrument as those terms are defined in
34 subdivisions twelve and thirteen of section 10.00 of the penal law, or
35 (iii) behavior constituting any violent felony offense as defined in
36 section 70.02 of the penal law; and

37 (b) the court shall, where the court finds a substantial risk that the
38 respondent may use or threaten to use a firearm, rifle or shotgun unlaw-
39 fully against the person or persons for whose protection the order of
40 protection is issued, (i) revoke any such existing license possessed by
41 the respondent, order the respondent ineligible for such a license and
42 order the immediate surrender pursuant to subparagraph (f) of paragraph
43 one of subdivision a of section 265.20 and subdivision six of section
44 400.05 of the penal law, of any or all firearms, rifles ~~and~~, shotguns
45 and ammunition owned or possessed or (ii) suspend or continue to suspend
46 any such existing license possessed by the respondent, order the
47 respondent ineligible for such a license, and order the immediate
48 surrender pursuant to subparagraph (f) of paragraph one of subdivision a
49 of section 265.20 and subdivision six of section 400.05 of the penal
50 law, of any or all firearms, rifles ~~and~~, shotguns and ammunition owned
51 or possessed.

52 (a) the court shall revoke any such existing license possessed by the
53 respondent, order the respondent ineligible for such a license, and
54 order the immediate surrender pursuant to subparagraph (f) of paragraph
55 one of subdivision a of section 265.20 and subdivision six of section
56 400.05 of the penal law, of any or all firearms, rifles ~~and~~, shotguns

1 and ammunition owned or possessed where the willful failure to obey such
2 order involves (i) the infliction of physical injury, as defined in
3 subdivision nine of section 10.00 of the penal law, (ii) the use or
4 threatened use of a deadly weapon or dangerous instrument as those terms
5 are defined in subdivisions twelve and thirteen of section 10.00 of the
6 penal law, or (iii) behavior constituting any violent felony offense as
7 defined in section 70.02 of the penal law; or (iv) behavior constituting
8 stalking in the first degree as defined in section 120.60 of the penal
9 law, stalking in the second degree as defined in section 120.55 of the
10 penal law, stalking in the third degree as defined in section 120.50 of
11 the penal law or stalking in the fourth degree as defined in section
12 120.45 of such law; and

13 (b) the court shall where the court finds a substantial risk that the
14 respondent may use or threaten to use a firearm, rifle or shotgun unlaw-
15 fully against the person or persons for whose protection the order of
16 protection was issued, (i) revoke any such existing license possessed by
17 the respondent, order the respondent ineligible for such a license,
18 whether or not the respondent possesses such a license, and order the
19 immediate surrender pursuant to subparagraph (f) of paragraph one of
20 subdivision a of section 265.20 and subdivision six of section 400.05 of
21 the penal law, of any or all firearms, rifles ~~[and]~~, shotguns and ammu-
22 nition owned or possessed or (ii) suspend any such existing license
23 possessed by the respondent, order the respondent ineligible for such a
24 license, and order the immediate surrender of any or all firearms,
25 rifles ~~[and]~~, shotguns and ammunition owned or possessed.

26 5. Surrender. (a) Where an order to surrender one or more firearms,
27 rifles or shotguns and any ammunition has been issued, the temporary
28 order of protection or order of protection shall specify the place where
29 such weapons and ammunition shall be surrendered, shall specify a date
30 and time by which the surrender shall be completed and, to the extent
31 possible, shall describe such weapons and ammunition to be surrendered
32 and shall direct the authority receiving such surrendered weapons and
33 ammunition to immediately notify the court of such surrender.

34 (b) The prompt surrender of one or more firearms, rifles or shotguns
35 and any ammunition pursuant to a court order issued pursuant to this
36 section shall be considered a voluntary surrender for purposes of
37 subparagraph (f) of paragraph one of subdivision a of section 265.20 of
38 the penal law. The disposition of any such weapons and ammunition shall
39 be in accordance with the provisions of subdivision six of section
40 400.05 of the penal law; provided, however that upon the termination of
41 any suspension order issued pursuant to this section, any court of
42 record exercising criminal jurisdiction may order the return of a
43 firearm, rifle or shotgun and any ammunition pursuant to paragraph b of
44 subdivision five of section 530.14 of the criminal procedure law.

45 (c) The provisions of this section shall not be deemed to limit,
46 restrict or otherwise impair the authority of the court to order and
47 direct the surrender of any or all pistols, revolvers, rifles, shotguns
48 or other firearms and any ammunition owned or possessed by a respondent
49 pursuant to this act.

50 (a) Where an order requiring surrender, revocation, suspension or
51 ineligibility has been issued pursuant to this section, any temporary
52 order of protection or order of protection issued shall state that such
53 firearm license has been suspended or revoked or that the respondent is
54 ineligible for such license, as the case may be, and that the defendant
55 is prohibited from possessing any firearms, rifles or shotguns and any
56 ammunition.

(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender of any firearm, [~~rifles~~] rifle or [~~shotguns~~] shotgun and any ammunition shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

§ 8. Section 370.25 of the criminal procedure law, as added by chapter 60 of the laws of 2018, is amended to read as follows:

§ 370.25 Procedure for the surrender of firearms, rifles [~~and~~], shotguns and ammunition upon judgment of conviction for a felony or a serious offense.

1. Upon judgment of conviction for a felony or a serious offense, the court shall inquire of the defendant as to the existence of all firearms, rifles [~~and~~], shotguns and ammunition he or she owns or possesses. The court shall order the immediate surrender, pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles [~~and~~], shotguns and ammunition owned or possessed by the defendant.

2. The court ordering the surrender of any firearms, rifles or shotguns and any ammunition as provided in this section shall immediately notify the duly constituted police authorities of the locality of such action and the division of state police at its office in the city of Albany. The court shall direct the authority receiving such surrendered firearms, rifles [~~and~~], shotguns and ammunition to immediately notify the court of such surrender.

3. The disposition of any firearms, rifles or shotguns and any ammunition surrendered pursuant to this section shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law.

4. The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all firearms, rifles [~~and~~], shotguns and ammunition owned or possessed by a defendant pursuant to any other provision of law.

§ 9. This act shall take effect on the same date and in the same manner as chapter 60 of the laws of 2018 takes effect.