

STATE OF NEW YORK

4762

2017-2018 Regular Sessions

IN SENATE

February 27, 2017

Introduced by Sen. AVELLA -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to determinations of willful violations of orders of protection

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

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

2 § 846-a. Powers on failure to obey order. (a) If a respondent is
3 brought before the court for failure to obey any lawful order issued
4 under this article or an order of protection or temporary order of
5 protection issued pursuant to this act or issued by a court of competent
6 jurisdiction of another state, territorial or tribal jurisdiction and
7 if, after hearing, the court is satisfied by competent proof that the
8 respondent has willfully failed to obey any such order, the court may:

9 (i) modify an existing order or temporary order of protection to add
10 reasonable conditions of behavior to the existing order,

11 (ii) make a new order of protection in accordance with section eight
12 hundred forty-two of this part, ~~[may]~~

13 (iii) order the forfeiture of bail in a manner consistent with article
14 five hundred forty of the criminal procedure law if bail has been
15 ordered pursuant to this act, ~~[may]~~

16 (iv) order the respondent to pay the petitioner's reasonable and
17 necessary counsel fees in connection with the violation petition where
18 the court finds that the violation of its order was willful, and ~~[may]~~

19 (v) commit the respondent to jail for a term not to exceed six months.
20 ~~[Such]~~ A commitment under this paragraph may be served upon certain
21 specified days or parts of days as the court may direct or may be
22 suspended, and the court may, at any time within the term of such
23 sentence, revoke such direction or suspension and commit the respondent
24

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

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1 for the remainder of the original sentence, or suspend the remainder of
2 such sentence. A commitment under this paragraph to a definite jail term
3 as a result of a determination of criminal contempt, whether or not such
4 term has been suspended, must be based upon proof beyond a reasonable
5 doubt.

6 (b) If the court determines that the willful failure to obey such
7 order involves violent behavior constituting the crimes of menacing,
8 reckless endangerment, assault or attempted assault and if such a
9 respondent is licensed to carry, possess, repair and dispose of firearms
10 pursuant to section 400.00 of the penal law, the court may also imme-
11 diately revoke such license and may arrange for the immediate surrender
12 pursuant to subparagraph (f) of paragraph one of subdivision a of
13 section 265.20 and subdivision six of section 400.05 of the penal law,
14 and disposal of any firearm such respondent owns or possesses.

15 (c) If the willful failure to obey such order involves the infliction
16 of physical injury as defined in subdivision nine of section 10.00 of
17 the penal law or the use or threatened use of a deadly weapon or danger-
18 ous instrument, as those terms are defined in subdivisions twelve and
19 thirteen of section 10.00 of the penal law, such revocation and immedi-
20 ate surrender pursuant to subparagraph (f) of paragraph one of subdivi-
21 sion a of section 265.20 and subdivision six of section 400.05 of the
22 penal law ~~and~~ 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 § 2. This act shall take effect immediately.