

STATE OF NEW YORK

10787

IN ASSEMBLY

July 10, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weprin) --
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 Assem-
bly, 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 530.11 of the criminal procedure
23 law, the court shall commit such person to a term of imprisonment of no
24 less than thirty days, which may be served upon certain specified days
25 or parts of days as the court may direct.

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

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

4 9. 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 530.11 of the criminal procedure
23 law, the court shall commit such person to a term of imprisonment of no
24 less than thirty days, which may be served upon certain specified days
25 or parts of days as the court may direct.

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

28 § 846-a. Powers on failure to obey order. If a respondent is brought
29 before the court for failure to obey any lawful order issued under this
30 article or an order of protection or temporary order of protection
31 issued pursuant to this act or issued by a court of competent jurisdic-
32 tion of another state, territorial or tribal jurisdiction and if, after
33 hearing, the court is satisfied by competent proof that the respondent
34 has willfully failed to obey any such order, the court may modify an
35 existing order or temporary order of protection to add reasonable condi-
36 tions of behavior to the existing order, make a new order of protection
37 in accordance with section eight hundred forty-two of this part, may
38 order the forfeiture of bail in a manner consistent with article five
39 hundred forty of the criminal procedure law if bail has been ordered
40 pursuant to this act, may order the respondent to pay the petitioner's
41 reasonable and necessary counsel fees in connection with the violation
42 petition where the court finds that the violation of its order was will-
43 ful, and may commit the respondent to jail for a term not to exceed six
44 months. If the respondent has been found by competent proof to have
45 willfully failed to obey such order of protection on more than one occa-
46 sion, and this willful failure consisted of committing a family offense
47 as defined in subdivision one of section eight hundred twelve of this
48 article or subdivision one of section 530.11 of the criminal procedure
49 law, the court shall commit such person to a term of imprisonment of not
50 less than thirty days. Such commitment may be served upon certain speci-
51 fied days or parts of days as the court may direct, and the court may,
52 at any time within the term of such sentence, revoke such suspension and
53 commit the respondent for the remainder of the original sentence, or
54 suspend the remainder of such sentence. If the court determines that the
55 willful failure to obey such order involves violent behavior constitut-
56 ing the crimes of menacing, reckless endangerment, assault or attempted

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

17 § 4. Subdivision 11 of section 530.12 of the criminal procedure law,
18 as amended by section 15 of part JJJ of chapter 59 of the laws of 2019,
19 is amended to read as follows:

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

26 ~~[(a)]~~ ~~(i)~~ revoke an order of recognizance or release under non-mone-
27 tary conditions or revoke an order of bail or order forfeiture of such
28 bail and commit the defendant to custody; or

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

32 ~~[(c)]~~ ~~(iii)~~ revoke a conditional discharge in accordance with section
33 410.70 of this chapter and impose probation supervision or impose a
34 sentence of imprisonment in accordance with the penal law based on the
35 original conviction; or

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

42 (b) If the court finds that the defendant has willfully failed to obey
43 such order of protection on more than one occasion and this willful
44 failure consisted of committing a family offense as defined in subdivi-
45 sion one of this section or subdivision one of section eight hundred
46 twelve of a family court act, the court shall commit such person to a
47 term of imprisonment of not less than thirty days, which may be served
48 upon certain specified days or parts of days as the court may direct.

49 § 5. Subdivision 8 of section 530.13 of the criminal procedure law, as
50 added by chapter 388 of the laws of 1984, and paragraph (a) as amended
51 by section 13 of part JJJ of chapter 59 of the laws of 2019, is amended
52 to read as follows:

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

1 ~~[(a)]~~ (i) revoke an order of recognizance, release under non-monetary
2 conditions or bail and commit the defendant to custody; or

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

7 ~~[(c)]~~ (iii) revoke a conditional discharge in accordance with section
8 410.70 of this chapter and impose probation supervision or impose a
9 sentence of imprisonment in accordance with the penal law based on the
10 original conviction; or

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

17 (b) if the court finds that the defendant has willfully failed to obey
18 such order of protection on more than one occasion and this willful
19 failure consisted of committing a family offense as defined in subdivi-
20 sion one of section 530.11 of this article or subdivision one of section
21 eight hundred twelve of the family court act, the court shall commit
22 such person to a term of imprisonment of not less than thirty days,
23 which may be served upon certain specified days or parts of days as the
24 court may direct.

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