

# STATE OF NEW YORK

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5705

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

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Introduced by M. of A. MIKULIN -- 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 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  
21 subdivision one of section eight hundred twelve of the family court act  
22 or subdivision one of section 530.11 of the criminal procedure law, the  
23 court shall commit such person to a term of imprisonment of no less than  
24 five days, which may be served upon certain specified days or parts of

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

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

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

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

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

§ 846-a. Powers on failure to obey order. If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection or temporary order of protection issued pursuant to this act or issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order or temporary order of protection to add reasonable conditions of behavior to the existing order, make a new order of protection in accordance with section eight hundred forty-two of this part, may order the forfeiture of bail in a manner consistent with article five hundred forty of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for a term not to exceed six months. If the respondent has been found by competent proof to have willfully failed to obey such order of protection on one occasion, and this willful failure consisted of committing a family offense as defined in subdivision one of section eight hundred twelve of this article or subdivision one of section 530.11 of the criminal procedure law, the court shall commit such person to a term of imprisonment of no less than five days. If the respondent has been found by competent proof to have willfully failed to obey such order of protection on two occasions, and this willful failure consisted of committing a family offense as defined in subdivision one of section eight hundred twelve of this article or subdivision one of section 530.11 of the criminal procedure law, the court shall commit such person to a term of imprisonment of no less than fifteen days. If the respondent has been found by competent proof to have willfully failed to obey such order of protection on three or more occasions, and this willful failure consisted of committing a family offense as defined in subdivision one of section eight hundred twelve of this article or subdivision one of section 530.11 of the criminal procedure law, the court shall commit such person to a term of imprisonment of no less than thirty days. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. If the court determines that the willful failure to obey such order involves violent behavior constituting the crimes of menacing, reckless endangerment, assault or attempted assault and if such a respondent is licensed to carry, possess, repair and dispose of firearms pursuant to section 400.00 of the penal law, the court may also immediately revoke such license and may arrange for the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, and disposal of any firearm such respondent owns or possesses. If the willful failure to obey such order involves the infliction of physical injury as defined in subdivision nine of section 10.00 of the penal law or 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, such revocation and immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law ~~and~~ and disposal of any

1 firearm owned or possessed by respondent shall be mandatory, pursuant to  
2 subdivision eleven of section 400.00 of the penal law.

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

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

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

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

19 ~~[(c)]~~ (iii) revoke a conditional discharge in accordance with section  
20 410.70 of this chapter and impose probation supervision or impose a  
21 sentence of imprisonment in accordance with the penal law based on the  
22 original conviction; or

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

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

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

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

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

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