

STATE OF NEW YORK

6391

2023-2024 Regular Sessions

IN SENATE

April 18, 2023

Introduced by Sens. PARKER, COMRIE, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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 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 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

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

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

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

6 9. Upon issuance of an order of protection or temporary order of
7 protection or upon a violation of such order, the court shall make a
8 determination regarding the suspension and revocation of a license to
9 carry, possess, repair or dispose of a firearm or firearms, ineligibil-
10 ity for such a license and the surrender of firearms in accordance with
11 sections eight hundred forty-two-a and eight hundred forty-six-a of the
12 family court act, as applicable. Upon issuance of an order of protection
13 pursuant to this section or upon a finding of a violation thereof, the
14 court also may direct payment of restitution in an amount not to exceed
15 ten thousand dollars in accordance with subdivision (e) of section eight
16 hundred forty-one of such act; provided, however, that in no case shall
17 an order of restitution be issued where the court determines that the
18 party against whom the order would be issued has already compensated the
19 injured party or where such compensation is incorporated in a final
20 judgment or settlement of the action. If the person so violating the
21 order has been found to have violated such order on more than one occa-
22 sion, and this violation consisted of committing a family offense as
23 defined in subdivision one of section eight hundred twelve of the family
24 court act or subdivision one of section 530.11 of the criminal procedure
25 law, the court shall commit such person to a term of imprisonment of no
26 less than thirty days, which may be served upon certain specified days
27 or parts of days as the court may direct.

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

30 § 846-a. Powers on failure to obey order. If a respondent is brought
31 before the court for failure to obey any lawful order issued under this
32 article or an order of protection or temporary order of protection
33 issued pursuant to this act or issued by a court of competent jurisdic-
34 tion of another state, territorial or tribal jurisdiction and if, after
35 hearing, the court is satisfied by competent proof that the respondent
36 has willfully failed to obey any such order, the court may modify an
37 existing order or temporary order of protection to add reasonable condi-
38 tions of behavior to the existing order, make a new order of protection
39 in accordance with section eight hundred forty-two of this part, may
40 order the forfeiture of bail in a manner consistent with article five
41 hundred forty of the criminal procedure law if bail has been ordered
42 pursuant to this act, may order the respondent to pay the petitioner's
43 reasonable and necessary counsel fees in connection with the violation
44 petition where the court finds that the violation of its order was will-
45 ful, and may commit the respondent to jail for a term not to exceed six
46 months. If the respondent has been found by competent proof to have
47 willfully failed to obey such order of protection on more than one occa-
48 sion, and this willful failure consisted of committing a family offense
49 as defined in subdivision one of section eight hundred twelve of this
50 article or subdivision one of section 530.11 of the criminal procedure
51 law, the court shall commit such person to a term of imprisonment of not
52 less than thirty days. Such commitment may be served upon certain speci-
53 fied days or parts of days as the court may direct, and the court may,
54 at any time within the term of such sentence, revoke such suspension and
55 commit the respondent for the remainder of the original sentence, or
56 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 ~~[six]~~ and disposal of any firearm owned or possessed by respondent shall be mandatory, pursuant to subdivision eleven of section 400.00 of the penal law.

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

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

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

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

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

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

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

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

8. If a defendant is brought before the court for failure to obey any 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, release under non-monetary
4 conditions or bail and commit the 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 more than one occasion and this willful
21 failure consisted of committing a family offense as defined in subdivi-
22 sion one of section 530.11 of this article or subdivision one of section
23 eight hundred twelve of the family court act, the court shall commit
24 such person to a term of imprisonment of not less than thirty days,
25 which may be served upon certain specified days or parts of days as the
26 court may direct.

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