STATE OF NEW YORK

3384--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 27, 2025

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to extreme risk protection orders

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

Section 1. Subdivisions 2 and 3 of section 6340 of the civil practice law and rules, subdivision 2 as amended by chapter 425 of the laws of 2024, subdivision 3 as added by chapter 19 of the laws of 2019, are amended to read as follows:

2. "Petitioner" means: (a) a law enforcement agency that employs a police officer, as such term is defined in section 1.20 of the criminal procedure law, or a police officer*, deputy sheriff,* or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought; (c) a school administrator as defined in section eleven hundred twenty-five of the education law, or a school administrator's designee, of any school in which the person against whom the order is sought is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition; or (d) a licensed physician, licensed psychiatrist, licensed psychologist, registered nurse, licensed clinical social worker, certified clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker or licensed mental health counselor who has treated the person against whom the order is sought in the six months immediately preceding the filing of the petition. For purposes of this article, a school administrator's designee shall be employed at the same school as the school administra-

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

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tor and shall be any of the following who has been designated in writing to file a petition with respect to the person against whom the order is sought: a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

3. "Respondent" means the person**, twelve years of age or older,** against whom an extreme risk protection order is or may be sought under this article.

§ 2. Section 6341 of the civil practice law and rules, as amended by chapter 425 of the laws of 2024, is amended to read as follows:

§ 6341. Application for an extreme risk protection order. **1.** In accordance with this article, a petitioner may file an application, which shall be sworn, and accompanying supporting documentation, setting forth the facts and circumstances justifying the issuance of an extreme risk protection order. Provided, however, that a petitioner that is a law enforcement agency that employs a police officer, as such term **is** defined in section 1.20 of the criminal procedure law, or is a police officer**, deputy sheriff,** or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides shall file such application upon the receipt of credible information that an individual is likely to engage in conduct that would result in [~~serious harm to themself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law~~]**: (a) substantial risk of physical harm to themself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that such respondent is dangerous to themself; or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm**, unless such petitioner determines that there is no probable cause for such filing.

2. A police officer, deputy sheriff, or district attorney who would otherwise be required to file an application under this section has the discretion not to file such an application if the police officer, deputy sheriff, or district attorney can determine with reasonable certainty that the respondent: (a) has previously been deemed certified not suitable to possess a rifle or shotgun pursuant to subdivision sixteen of section 265.00 of the penal law; (b) is a person presently subject to an extreme risk protection order; (c) is a person presently incarcerated whose earliest release date is no less than one year from the date of the filing of the petition; or (d) is a person under the age of eighteen, and the petition would be based only upon such person's likelihood to engage in conduct posing a threat of harm to themself, and the person did not threaten or use physical force directed at another person or a school, and the person did not use or threaten the use of a firearm, rifle or shotgun, and there is no evidence of a firearm, rifle, shotgun or ammunition possessed by anyone in the person's household.

3. Such application and supporting documentation shall be filed in the supreme court in the county in which the respondent resides. **If the petitioner is unable to identify an in-state address for the respondent, the application and documentation shall be filed in the supreme court in any county where the conduct alleged in the petition occurred.** The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. Such application form shall **allow for affirmation pursuant**

to rule twenty-one hundred six of this chapter and include inquiry as to whether the petitioner knows, or has reason to believe, that the respondent owns, possesses or has access to a firearm, rifle or shotgun and if so, a request that the petitioner list or describe such firearms, rifles and shotguns, and the respective locations thereof, with as much specificity as possible.

§ 3. Subdivisions 1, 2, 3 and 8 of section 6342 of the civil practice law and rules, subdivisions 1, 3 and 8 as added by chapter 19 of the laws of 2019, and subdivision 2 as amended by chapter 450 of the laws of 2025, are amended to read as follows:

1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent is likely to engage in conduct that would result in [~~serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law~~]: (a) substantial risk of physical harm to themself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that such respondent is dangerous to themself; or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. Such application for a temporary order shall be determined in writing on the same day the application is filed.

2. In determining whether grounds for a temporary extreme risk protection order exist, the court shall consider any relevant factors including, but not limited to, the following acts of the respondent:

(a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;

(b) a violation or alleged violation of an order of protection;

(c) any pending charge or conviction for an offense involving the use of a weapon;

(d) the reckless use, display or brandishing of a firearm, rifle or shotgun;

(e) any history of a violation of an extreme risk protection order;

(f) evidence of recent or ongoing abuse of controlled substances or alcohol;

(g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor; or

(h) evidence of recent acts of aggravated cruelty to animals as defined in section three hundred fifty-three-a of the agriculture and markets law.

In considering the factors under this subdivision, the court shall consider the time that has elapsed since the occurrence of such act or acts and the age of the person at the time of the occurrence of such act or acts.

For the purposes of this subdivision, "recent" means within the six months prior to the date the petition was filed.

The court shall not consider whether a police officer, deputy sheriff, or district attorney may have had the discretion to decline to file an application in determining whether grounds for a temporary extreme risk protection order exist.

3. The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable

cause for issuance of a temporary order. The court may conduct an examination under oath of the petitioner and any witness the petitioner may produce. **Hearsay evidence shall not be excluded and shall be weighed appropriately.**

8. A law enforcement officer serving a temporary extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer **or deputy sheriff** to search for firearms, rifles and shotguns in the respondent's possession in a manner consistent with the procedures of article six hundred ninety of the criminal procedure law.

§ 4. Subdivisions 1 and 2 and paragraph (d) of subdivision 3 of section 6343 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, are amended to read as follows:

1. In accordance with this article, no sooner than three business days nor later than six business days after service of a temporary extreme risk protection order and, alternatively, no later than ten business days after service of an application under this article where no temporary extreme risk protection order has been issued, **unless the respondent waives their right to a hearing and consents to the final extreme risk protection order,** the supreme court shall hold a hearing**, in the manner of a summary proceeding,** to determine whether to issue a final extreme risk protection order and, when applicable, whether a firearm, rifle or shotgun surrendered by, or removed from, the respondent should be returned to the respondent. The respondent shall be entitled to more than six business days if a temporary extreme risk protection order has been issued and the respondent requests a reasonable period of additional time to prepare for the hearing. Where no temporary order has been issued, the respondent may request, and the court may grant, additional time beyond the ten days to allow the respondent to prepare for the hearing. **Upon receipt of waiver and consent the court shall dispense with a hearing and promptly issue the final extreme risk protection order.**

2. At the hearing pursuant to subdivision one of this section, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent is likely to engage in conduct that would result in [~~serious harm to himself, herself or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law~~]**: (a) substantial risk of physical harm to themself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that such respondent is dangerous to themself; or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm**. The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted pursuant to subdivision nine of section sixty-three hundred forty-two of this article. The court shall also consider the factors set forth in subdivision two of section sixty-three hundred forty-two of this article. **Hearsay evidence shall not be excluded and shall be weighed appropriately. The court shall not consider whether a police officer or district attorney**

may have had the discretion to decline to file an application in determining whether grounds for an extreme risk protection order exist.

(d) A law enforcement officer serving a final extreme risk protection order shall request that the respondent immediately surrender to the officer all firearms, rifles and shotguns in the respondent's possession and the officer shall conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms, rifles and shotguns that are surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of the order, the court may also direct a police officer **or deputy sheriff** to search for firearms, rifles and shotguns in a respondent's possession consistent with the procedures of article six hundred ninety of the criminal procedure law.

§ 5. Subdivision 1 of section 6344 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

1. When a law enforcement officer takes any firearm, rifle or shotgun pursuant to a temporary extreme risk protection order or a final extreme risk protection order, the officer **or deputy sheriff** shall give to the person from whom such firearm, rifle or shotgun is taken a receipt or voucher for the property taken, describing the property in detail. In the absence of a person, the officer **or deputy sheriff** shall leave the receipt or voucher in the place where the property was found, mail a copy of the receipt or voucher, retaining proof of mailing, to the last known address of the respondent and, if different, the owner of the firearm, rifle or shotgun, and file a copy of such receipt or voucher with the court. All firearms, rifles and shotguns in the possession of a law enforcement official pursuant to this article shall be subject to the provisions of applicable law, including but not limited to subdivision six of section 400.05 of the penal law; provided, however, that any such firearm, rifle or shotgun shall be retained and not disposed of by the law enforcement agency for at least two years unless legally transferred by the respondent to an individual permitted by law to own and possess such firearm, rifle or shotgun.

§ 6. Section 6345 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

§ 6345. Request for renewal of an extreme risk protection order. 1. If a petitioner believes a person subject to an extreme risk protection order continues to be likely to engage in conduct that would result in [~~serious harm to himself, herself, or others, as defined in paragraph one or two of subdivision (a) of section 9.39 of the mental hygiene law~~]**: (a) substantial risk of physical harm to themself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that such respondent is dangerous to themself; or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm**, such petitioner may, at any time within sixty days prior to the expiration of such existing extreme risk protection order, initiate a request for a renewal of such order, setting forth the facts and circumstances necessitating the request. The chief administrator of the courts shall adopt forms that may be used for purposes of such applications and the court's consideration of such applications. The court may issue a temporary extreme risk protection order in accordance with section sixty-three hundred forty-two of this article, during the period that a request for renewal of an extreme risk protection order is under consideration pursuant to this section.

2. A hearing held pursuant to this section shall be conducted in the supreme court, in accordance with section sixty-three hundred forty-three of this article, to determine if a request for renewal of the order shall be granted. **The court shall not consider whether a police officer, deputy sheriff, or district attorney may have had the discretion to decline to file an application in determining whether to renew the extreme risk protection order.** The respondent shall be served with written notice of an application for renewal a reasonable time before the hearing, and shall be afforded an opportunity to fully participate in the hearing. The court shall direct service of such application and the accompanying papers in the manner and in accordance with the protections for the petitioner set forth in subdivision six of section sixty-three hundred forty-two of this article.

§ 7. Subdivision 1 of section 6346 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order and the clerk of the court wherein such proceedings were conducted shall immediately notify the commissioner of the division of criminal justice services, the heads of all appropriate police **and sheriff** departments, applicable licensing officers, and all other appropriate law enforcement agencies that the order has expired and that the record of such protection order shall be sealed and not be made available to any person or public or private entity, except that such records shall be made available to:

(a) the respondent or the respondent's designated agent;

(b) courts in the unified court system;

(c) police forces and departments having responsibility for enforcement of the general criminal laws of the state**, including sheriff departments**;

(d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and

(e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this subparagraph and afforded an opportunity to make an explanation thereto.

§ 8. This act shall take effect immediately.