S T A T E O F N E W Y O R K

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I N S E N A T E

March 6, 2012

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing the safe homes act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "safe homes act".

S 2. Section 140.10 of the criminal procedure law is amended by adding a new subdivision 6 to read as follows:

6. (A) WHEN RESPONDING TO A REPORT OF A FAMILY OFFENSE AS DEFINED IN SECTION 530.11 OF THIS CHAPTER AND SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, A LAW ENFORCEMENT OFFICER SHALL DETERMINE WHETHER THERE ARE FIREARMS ON THE PREMISES OWNED OR POSSESSED BY THE PERSON ALLEGED TO HAVE COMMITTED SUCH FAMILY OFFENSES AND WHERE THE REPORT OF A FAMILY OFFENSE RESULTS IN AN ARREST, THE LAW ENFORCEMENT OFFICER SHALL SEIZE SUCH FIREARMS AND ANY LICENSE TO CARRY, POSSESS, REPAIR AND DISPOSE OF FIREARMS HELD BY THE PERSON ARRESTED, UNTIL THE COURT RESPONSIBLE FOR ADJUDICATING THE OFFENSE FOR WHICH THE PERSON WAS ARRESTED AUTHORIZES THE RELEASE OF SUCH FIREARMS OR LICENSE.

(B) THE LAW ENFORCEMENT AGENCY SHALL INFORM THE OWNER OR PERSON WHO HAD LAWFUL POSSESSION OF THE FIREARM OR OTHER DEADLY WEAPON, AT THAT PERSON'S LAST KNOWN ADDRESS BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, THAT THE OWNER OR PERSON HAS THIRTY DAYS FROM THE DATE OF RECEIPT OF THE NOTICE TO RESPOND TO THE COURT CLERK TO CONFIRM HIS OR HER DESIRE FOR A HEARING, AND THAT THE FAILURE TO RESPOND SHALL RESULT IN A DEFAULT ORDER FORFEITING THE CONFISCATED FIREARM OR OTHER DEADLY WEAPON. IN THE EVENT THE OWNER OR PERSON WHOSE FIREARM OR OTHER DEADLY WEAPON WAS SEIZED DOES NOT RESIDE AT THE LAST ADDRESS PROVIDED TO THE AGENCY, THE AGENCY SHALL MAKE A DILIGENT, GOOD FAITH EFFORT TO LEARN THE WHEREABOUTS OF THE OWNER OR PERSON AND TO COMPLY WITH THESE NOTIFICATION REQUIREMENTS.

(C) IF THE OWNER OR PERSON REQUESTS A HEARING, SUCH HEARING SHALL OCCUR NO LATER THAN THIRTY DAYS FROM RECEIPT OF THE REQUEST. UNLESS THE

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

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PROPONENT OF THE SEIZURE SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON WOULD RESULT IN ENDANGERING THE VICTIM OR THE PERSON REPORTING THE ASSAULT OR THREAT, THE COURT SHALL ORDER THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON.

(D) IF, AT THE HEARING, THE COURT DOES NOT ORDER THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON TO THE OWNER OR PERSON WHO HAD LAWFUL POSSESSION OF SUCH FIREARM OR OTHER DEADLY WEAPON, THAT OWNER OR PERSON MAY PETITION THE COURT FOR A SECOND HEARING WITHIN TWELVE MONTHS FROM THE DATE OF THE INITIAL HEARING. IF THERE IS A PETITION FOR A SECOND HEARING, UNLESS IT IS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON WOULD RESULT IN ENDANGERING THE VICTIM OR THE PERSON REPORTING THE ASSAULT OR THREAT, THE COURT SHALL ORDER THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON AND SHALL AWARD REASONABLE ATTORNEY'S FEES TO THE PREVAILING PARTY. IF THE OWNER OR PERSON WHO HAD LAWFUL POSSESSION DOES NOT PETITION THE COURT WITHIN THIS TWELVE MONTH PERIOD FOR A SECOND HEARING OR IS UNSUCCESSFUL AT THE SECOND HEARING IN GAINING RETURN OF THE FIREARM OR OTHER DEADLY WEAPON, THE FIREARM OR OTHER DEADLY WEAPON MAY BE DISPOSED OF AS PROVIDED IN SECTION 400.05 OF THE PENAL LAW.

S 3. This act shall take effect immediately.