

6746--A

2011-2012 Regular Sessions

I N A S S E M B L Y

March 28, 2011

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

15 (B) THE LAW ENFORCEMENT AGENCY SHALL INFORM THE OWNER OR PERSON WHO
16 HAD LAWFUL POSSESSION OF THE FIREARM OR OTHER DEADLY WEAPON, AT THAT
17 PERSON'S LAST KNOWN ADDRESS BY REGISTERED MAIL, RETURN RECEIPT
18 REQUESTED, THAT THE OWNER OR PERSON HAS THIRTY DAYS FROM THE DATE OF
19 RECEIPT OF THE NOTICE TO RESPOND TO THE COURT CLERK TO CONFIRM HIS OR
20 HER DESIRE FOR A HEARING, AND THAT THE FAILURE TO RESPOND SHALL RESULT
21 IN A DEFAULT ORDER FORFEITING THE CONFISCATED FIREARM OR OTHER DEADLY
22 WEAPON. IN THE EVENT THE OWNER OR PERSON WHOSE FIREARM OR OTHER DEADLY
23 WEAPON WAS SEIZED DOES NOT RESIDE AT THE LAST ADDRESS PROVIDED TO THE

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

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1 AGENCY, THE AGENCY SHALL MAKE A DILIGENT, GOOD FAITH EFFORT TO LEARN THE
2 WHEREABOUTS OF THE OWNER OR PERSON AND TO COMPLY WITH THESE NOTIFICATION
3 REQUIREMENTS.

4 (C) IF THE OWNER OR PERSON REQUESTS A HEARING, SUCH HEARING SHALL
5 OCCUR NO LATER THAN THIRTY DAYS FROM RECEIPT OF THE REQUEST. UNLESS THE
6 PROPONENT OF THE SEIZURE SHOWS BY A PREPONDERANCE OF THE EVIDENCE THAT
7 THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON WOULD RESULT IN ENDAN-
8 GERING THE VICTIM OR THE PERSON REPORTING THE ASSAULT OR THREAT, THE
9 COURT SHALL ORDER THE RETURN OF THE FIREARM OR OTHER DEADLY WEAPON.

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

25 S 3. This act shall take effect immediately.