

STATE OF NEW YORK

8976--A

IN ASSEMBLY

January 9, 2018

Introduced by M. of A. SIMON -- 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, the criminal procedure law and the penal law, in relation to establishing extreme risk protection orders as court-issued orders of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun

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

Section 1. The civil practice law and rules is amended by adding a new article 63-A to read as follows:

ARTICLE 63-A

EXTREME RISK PROTECTION ORDERS

Section 6340. Definitions.

6341. Application for an extreme risk protection order.

6342. Issuance of a temporary extreme risk protection order.

6343. Issuance of a final extreme risk protection order.

6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order.

6345. Request for renewal of an extreme risk protection order.

6346. Expiration of an extreme risk protection order.

6347. Effect of findings and determinations in subsequent proceedings.

§ 6340. Definitions. For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

2. "Petitioner" means: (a) a police officer, as defined in section 1.20 of the criminal procedure law, or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; or (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.

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

LBD10726-04-8

1 3. "Respondent" means the person against whom an extreme risk
2 protection order is or may be sought under this article.

3 § 6341. Application for an extreme risk protection order. In accord-
4 ance with this article, a petitioner may file a sworn application, and
5 accompanying supporting documentation, setting forth the facts and
6 circumstances justifying the issuance of an extreme risk protection
7 order. Such application and supporting documentation shall be filed in
8 the supreme court in the county in which the respondent resides. The
9 chief administrator of the courts shall adopt forms that may be used for
10 purposes of such applications and the court's consideration of such
11 applications. Such application form shall include inquiry as to whether
12 the petitioner knows, or has reason to believe, that the respondent
13 owns, possesses or has access to a firearm, rifle or shotgun and if so,
14 a request that the petitioner list or describe such firearms, rifles and
15 shotguns, and the respective locations thereof, with as much specificity
16 as possible.

17 § 6342. Issuance of a temporary extreme risk protection order. 1.
18 Upon application of a petitioner pursuant to this article, the court may
19 issue a temporary extreme risk protection order, ex parte or otherwise,
20 to prohibit the respondent from purchasing, possessing or attempting to
21 purchase or possess a firearm, rifle or shotgun, upon a finding that
22 there is probable cause to believe the respondent is likely to engage in
23 conduct that would result in serious harm to himself, herself or others,
24 as defined in paragraph one or two of subdivision (a) of section 9.39 of
25 the mental hygiene law. Such application for a temporary order shall be
26 determined in writing on the same day the application is filed.

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

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

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

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

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

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

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

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

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

46 3. The application of the petitioner and supporting documentation, if
47 any, shall set forth the factual basis for the request and probable
48 cause for issuance of a temporary order. The court may conduct an exam-
49 ination under oath of the petitioner and any witness the petitioner may
50 produce.

51 4. A temporary extreme risk protection order, if warranted, shall
52 issue in writing, and shall include:

53 (a) a statement of the grounds found for the issuance of the order;

54 (b) the date and time the order expires;

55 (c) the address of the court that issued the order;

1 (d) a statement to the respondent: (i) directing that the respondent
2 may not purchase, possess or attempt to purchase or possess a firearm,
3 rifle or shotgun while the order is in effect and that any firearm,
4 rifle or shotgun possessed by such respondent shall be promptly surren-
5 dered to any authorized law enforcement official;

6 (ii) informing the respondent that the court will hold a hearing no
7 sooner than three nor more than six business days after service of the
8 temporary order, to determine whether a final extreme risk protection
9 order will be issued and the date, time and location of such hearing,
10 provided that the respondent shall be entitled to more than six days
11 upon request in order to prepare for the hearing; and (iii) informing
12 the respondent the he or she may seek the advice of an attorney and that
13 an attorney should be consulted promptly; and

14 (e) a form to be completed and executed by the respondent at the time
15 of service of the temporary extreme risk protection order which elicits
16 a list of all firearms, rifles and shotguns possessed by the respondent
17 and the particular location of each firearm, rifle or shotgun listed.

18 5. If the application for a temporary extreme risk protection order is
19 not granted, the court shall notify the petitioner and, unless the
20 application is voluntarily withdrawn by the petitioner, nonetheless
21 schedule a hearing on the application for a final extreme risk
22 protection order. Such hearing shall be scheduled to be held promptly,
23 but in any event no later than ten business days after the date on which
24 such application is served on the respondent, provided, however, that
25 the respondent may request, and the court may grant, additional time to
26 allow the respondent to prepare for the hearing. A notice of such hear-
27 ing shall be prepared by the court and shall include the date and time
28 of the hearing, the address of the court, and the subject of the hear-
29 ing.

30 6. (a) The court shall, in the manner specified in paragraph (b) of
31 this subdivision, arrange for prompt service of a copy of the temporary
32 extreme risk protection order, if any, the application therefor and, if
33 separately applied for or if a temporary extreme risk protection order
34 was not granted, the application for an extreme risk protection order,
35 any notice of hearing prepared by the court, along with any associated
36 papers including the petition and any supporting documentation,
37 provided, that the court may redact the address and contact information
38 of the petitioner from such application and papers where the court finds
39 that disclosure of such address or other contact information would pose
40 an unreasonable risk to the health or safety of the petitioner.

41 (b) The court shall provide copies of such documents to the appropri-
42 ate law enforcement agency serving the jurisdiction of the respondent's
43 residence with a direction that such documents be promptly served on the
44 respondent; provided, however, that the petitioner may voluntarily
45 arrange for service of copies of such order and associated papers though
46 a third party, such as a licensed process server.

47 7. (a) The court shall notify the division of state police, any other
48 law enforcement agency with jurisdiction, all applicable licensing offi-
49 cers, and the division of criminal justice services of the issuance of a
50 temporary extreme risk protection order and provide a copy of such order
51 no later than the next business day after issuing the order to such
52 persons or agencies. The court also shall promptly notify such persons
53 and agencies and provide a copy of any order amending or revoking such
54 protection order or restoring the respondent's ability to own or possess
55 firearms, rifles or shotguns no later than the next business day after
56 issuing the order to restore such right to the respondent. Any notice or

1 report submitted pursuant to this subdivision shall be in an electronic
2 format, in a manner prescribed by the division of criminal justice
3 services.

4 (b) Upon receiving notice of the issuance of a temporary extreme risk
5 protection order, the division of criminal justice services shall imme-
6 diately report the existence of such order to the federal bureau of
7 investigation to allow the bureau to identify persons prohibited from
8 purchasing firearms, rifles or shotguns. The division shall also imme-
9 diately report to the bureau the expiration of any such protection
10 order, any court order amending or revoking such protection order or
11 restoring the respondent's ability to purchase a firearm, rifle or shot-
12 gun.

13 8. The issuance of a temporary extreme risk protection order shall
14 constitute authority and direction for a police officer to remove all
15 firearms, rifles and shotguns in the respondent's possession. As part of
16 the order, the court may also direct a police officer to search for
17 firearms, rifles and shotguns in the respondent's possession in a manner
18 consistent with the procedures of article six hundred ninety of the
19 criminal procedure law.

20 9. Upon issuance of a temporary extreme risk protection order, or upon
21 setting a hearing for a final extreme risk protection order where a
22 temporary order is denied or not requested, the court shall direct the
23 law enforcement agency having jurisdiction to conduct a background
24 investigation and report to the court and, subject to any appropriate
25 redactions to protect any person, each party regarding whether the
26 respondent:

27 (a) has any prior criminal conviction for an offense involving domes-
28 tic violence, use of a weapon, or other violence;

29 (b) has any criminal charge or violation currently pending against him
30 or her;

31 (c) is currently on parole or probation;

32 (d) possesses any registered firearms, rifles or shotguns; and

33 (e) has been, or is, subject to any order of protection or has
34 violated or allegedly violated any order of protection.

35 § 6343. Issuance of a final extreme risk protection order. 1. In
36 accordance with this article, no sooner than three business days nor
37 later than six business days after service of a temporary extreme risk
38 protection order and, alternatively, no later than ten business days
39 after service of an application under this article where no temporary
40 extreme risk protection order has been issued, the supreme court shall
41 hold a hearing to determine whether to issue a final extreme risk
42 protection order and, when applicable, whether a firearm, rifle or shot-
43 gun surrendered by, or removed from, the respondent should be returned
44 to the respondent. The respondent shall be entitled to more than six
45 business days if a temporary extreme risk protection order has been
46 issued and the respondent requests a reasonable period of additional
47 time to prepare for the hearing. Where no temporary order has been
48 issued, the respondent may request, and the court may grant, additional
49 time beyond the ten days to allow the respondent to prepare for the
50 hearing.

51 2. At the hearing pursuant to subdivision one of this section, the
52 petitioner shall have the burden of proving, by clear and convincing
53 evidence, that the respondent is likely to engage in conduct that would
54 result in serious harm to himself, herself or others, as defined in
55 paragraph one or two of subdivision (a) of section 9.39 of the mental
56 hygiene law. 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.

3. (a) After the hearing pursuant to subdivision one of this section, the court shall issue a written order granting or denying the extreme risk protection order and setting forth the reasons for such determination. If the extreme risk protection order is granted, the court shall direct service of such order 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.

(b) Upon issuance of an extreme risk protection order: (i) any firearm, rifle or shotgun removed pursuant to a temporary extreme risk protection order or such extreme risk protection order shall be retained by the law enforcement agency having jurisdiction for the duration of the order, unless ownership of the firearm, rifle or shotgun is legally transferred by the respondent to another individual permitted by law to own and possess such firearm, rifle or shotgun; (ii) the supreme court shall temporarily suspend any existing firearm license possessed by the respondent and order the respondent temporarily ineligible for such a license; (iii) the respondent shall be prohibited from purchasing or possessing, or attempting to purchase or possess, a firearm, rifle or shotgun; and (iv) the court shall direct the respondent to surrender any firearm, rifle or shotgun in his or her possession.

(c) An extreme risk protection order issued in accordance with this section shall extend, as specified by the court, for a period of up to one year from the date of the issuance of such order; provided, however, that if such order was immediately preceded by the issuance of a temporary extreme risk protection order, then the duration of the extreme risk protection order shall be measured from the date of issuance of such temporary extreme risk protection order.

(d) The issuance of a final extreme risk protection order shall constitute authority and direction for a police officer to remove all firearms, rifles and shotguns in the respondent's possession. As part of the order, the court may also direct a police officer 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.

4. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, and the division of criminal justice services of the issuance of a final extreme risk protection order and provide a copy of such order to such persons and agencies no later than the next business day after issuing the order. The court also shall promptly notify such persons and agencies and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a final extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of

1 investigation to allow the bureau to identify persons prohibited from
2 purchasing firearms, rifles or shotguns. The division shall also imme-
3 diately report to the bureau the expiration of such protection order and
4 any court order amending or revoking such protection order or restoring
5 the respondent's ability to purchase a firearm, rifle or shotgun.

6 5. (a) If, in accordance with a temporary extreme risk protection
7 order, a firearm, rifle or shotgun has been surrendered by or removed
8 from the respondent, and the supreme court subsequently finds that the
9 petitioner has not met the required standard of proof, the court's find-
10 ing shall include a written order, issued to all parties, directing that
11 any firearm, rifle or shotgun surrendered or removed pursuant to such
12 temporary order shall be returned to the respondent.

13 (b) If any other person demonstrates that he or she is the lawful
14 owner of any firearm, rifle or shotgun surrendered or removed pursuant
15 to a protection order issued in accordance with this article, and
16 provided that there is no legal impediment to the person's possession of
17 a surrendered or removed firearm, rifle or shotgun, the court may, after
18 notice to the parties and an opportunity to be heard, direct that such
19 firearm, rifle or shotgun be returned to such lawful owner.

20 6. The respondent shall be notified on the record and in writing by
21 the court that he or she may submit one written request, at any time
22 during the effective period of an extreme risk protection order, for a
23 hearing setting aside any portion of such order. The request shall be
24 submitted in substantially the same form and manner as prescribed by the
25 chief administrator of the courts. Upon such request, the court shall
26 promptly hold a hearing, in accordance with this article, after provid-
27 ing reasonable notice to the petitioner. The respondent shall bear the
28 burden to prove, by clear and convincing evidence, any change of circum-
29 stances that may justify a change to the order.

30 § 6344. Surrender and removal of firearms, rifles and shotguns pursu-
31 ant to an extreme risk protection order. 1. When a law enforcement offi-
32 cer takes any firearm, rifle or shotgun pursuant to a temporary extreme
33 risk protection order or a final extreme risk protection order, the
34 officer shall give to the person from whom such firearm, rifle or shot-
35 gun is taken a receipt or voucher for the property taken, describing the
36 property in detail. In the absence of a person, the officer shall leave
37 the receipt or voucher in the place where the property was found, mail a
38 copy of the receipt or voucher, retaining proof of mailing, to the last
39 known address of the respondent and, if different, the owner of the
40 firearm, rifle or shotgun, and file a copy of such receipt or voucher
41 with the court. All firearms, rifles and shotguns in the possession of a
42 law enforcement official pursuant to this article shall be subject to
43 the provisions of applicable law, including but not limited to subdivi-
44 sion six of section 400.05 of the penal law; provided, however, that any
45 such firearm, rifle or shotgun shall be retained and not disposed of by
46 the law enforcement agency for at least two years unless legally trans-
47 ferred by the respondent to an individual permitted by law to own and
48 possess such firearm, rifle or shotgun.

49 2. If the location to be searched during the execution of a temporary
50 extreme risk protection order or extreme risk protection order is joint-
51 ly occupied by two or more parties, and a firearm, rifle or shotgun
52 located during the execution of such order is owned by a person other
53 than the respondent, the court may allow return of such firearm, rifle
54 or shotgun if it is demonstrated that the firearm, rifle or shotgun will
55 be safely stored in a manner consistent with section 265.45 of the penal
56 law, so that the respondent will not have access to or control of the

1 firearm, rifle or shotgun, and there is no evidence of unlawful
2 possession of the firearm, rifle or shotgun by the owner.

3 § 6345. Request for renewal of an extreme risk protection order. 1.
4 If a petitioner believes a person subject to an extreme risk protection
5 order continues to be likely to engage in conduct that would result in
6 serious harm to himself, herself, or others, as defined in paragraph one
7 or two of subdivision (a) of section 9.39 of the mental hygiene law,
8 such petitioner may, at any time within sixty days prior to the expira-
9 tion of such existing extreme risk protection order, initiate a request
10 for a renewal of such order, setting forth the facts and circumstances
11 necessitating the request. The chief administrator of the courts shall
12 adopt forms that may be used for purposes of such applications and the
13 court's consideration of such applications. The court may issue a tempo-
14 rary extreme risk protection order in accordance with section sixty-
15 three hundred forty-two of this article, during the period that a
16 request for renewal of an extreme risk protection order is under consid-
17 eration pursuant to this section.

18 2. A hearing held pursuant to this section shall be conducted in the
19 supreme court, in accordance with section sixty-three hundred forty-
20 three of this article, to determine if a request for renewal of the
21 order shall be granted. The respondent shall be served with written
22 notice of an application for renewal a reasonable time before the hear-
23 ing, and shall be afforded an opportunity to fully participate in the
24 hearing. The court shall direct service of such application and the
25 accompanying papers in the manner and in accordance with the protections
26 for the petitioner set forth in subdivision six of section sixty-three
27 hundred forty-two of this article.

28 § 6346. Expiration of an extreme risk protection order. 1. A
29 protection order issued pursuant to this article, and all records of any
30 proceedings conducted pursuant to this article, shall be sealed upon
31 expiration of such order and the clerk of the court wherein such
32 proceedings were conducted shall immediately notify the commissioner of
33 the division of criminal justice services, the heads of all appropriate
34 police departments, applicable licensing officers, and all other appro-
35 priate law enforcement agencies that the order has expired and that the
36 record of such protection order shall be sealed and not be made avail-
37 able to any person or public or private entity, except that such records
38 shall be made available to:

39 (a) the respondent or the respondent's designated agent;
40 (b) courts in the unified court system;
41 (c) police forces and departments having responsibility for enforce-
42 ment of the general criminal laws of the state;
43 (d) any state or local officer or agency with responsibility for the
44 issuance of licenses to possess a firearm, rifle or shotgun, when the
45 respondent has made application for such a license; and
46 (e) any prospective employer of a police officer or peace officer as
47 those terms are defined in subdivisions thirty-three and thirty-four of
48 section 1.20 of the criminal procedure law, in relation to an applica-
49 tion for employment as a police officer or peace officer; provided,
50 however, that every person who is an applicant for the position of
51 police officer or peace officer shall be furnished with a copy of all
52 records obtained under this subparagraph and afforded an opportunity to
53 make an explanation thereto.

54 2. Upon expiration of a protection order issued pursuant to this arti-
55 cle and upon written application of the respondent who is the subject of
56 such order, with notice and opportunity to be heard to the petitioner

1 and every licensing officer responsible for issuance of a firearm
2 license to the subject of the order pursuant to article four hundred of
3 the penal law, and upon a written finding that there is no legal imped-
4 iment to the respondent's possession of a surrendered firearm, rifle or
5 shotgun, the court shall order the return of a firearm, rifle or shotgun
6 not otherwise disposed of in accordance with subdivision one of section
7 sixty-three hundred forty-four of this article. When issuing such order
8 in connection with any firearm subject to a license requirement under
9 article four hundred of the penal law, if the licensing officer informs
10 the court that he or she will seek to revoke the license, the order
11 shall be stayed by the court until the conclusion of any license revoca-
12 tion proceeding.

13 § 6347. Effect of findings and determinations in subsequent
14 proceedings. Notwithstanding any contrary claim based on common law or
15 a provision of any other law, no finding or determination made pursuant
16 to this article shall be interpreted as binding, or having collateral
17 estoppel or similar effect, in any other action or proceeding, or with
18 respect to any other determination or finding, in any court, forum or
19 administrative proceeding.

20 § 2. Paragraph (b) of subdivision 5 of section 530.14 of the criminal
21 procedure law, as added by chapter 644 of the laws of 1996, is amended
22 to read as follows:

23 (b) The prompt surrender of one or more firearms pursuant to a court
24 order issued pursuant to this section shall be considered a voluntary
25 surrender for purposes of subparagraph (f) of paragraph one of subdivi-
26 sion a of section 265.20 of the penal law. The disposition of any such
27 firearms shall be in accordance with the provisions of subdivision six
28 of section 400.05 of the penal law; provided, however, that upon termi-
29 nation of any suspension order issued pursuant to this section or
30 section eight hundred forty-two-a of the family court act, upon written
31 application of the subject of the order, with notice and opportunity to
32 be heard to the district attorney, the county attorney, the protected
33 party, and every licensing officer responsible for issuance of a
34 firearms license to the subject of the order pursuant to article four
35 hundred of the penal law, and upon a written finding that there is no
36 legal impediment to the subject's possession of a surrendered firearm,
37 rifle or shotgun, any court of record exercising criminal jurisdiction
38 may order the return of a firearm, rifle or shotgun not otherwise
39 disposed of in accordance with subdivision six of section 400.05 of the
40 penal law. When issuing such order in connection with any firearm
41 subject to a license requirement under article four hundred of the penal
42 law, if the licensing officer informs the court that he or she will seek
43 to revoke the license, the order shall be stayed by the court until the
44 conclusion of any license revocation proceeding.

45 § 3. Section 265.45 of the penal law, as amended by section 3 of part
46 FF of chapter 57 of the laws of 2013, is amended to read as follows:

47 § 265.45 Safe storage of rifles, shotguns, and firearms.

48 No person who owns or is custodian of a rifle, shotgun or firearm who
49 resides with an individual who such person knows or has reason to know
50 is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)
51 (1), (4), (8) or (9), or pursuant to a temporary or final extreme risk
52 protection order issued under article sixty-three-A of the civil prac-
53 tice law and rules, shall store or otherwise leave such rifle, shotgun
54 or firearm out of his or her immediate possession or control without
55 having first securely locked such rifle, shotgun or firearm in an appro-
56 priate safe storage depository or rendered it incapable of being fired

1 by use of a gun locking device appropriate to that weapon. For purposes
2 of this section "safe storage depository" shall mean a safe or other
3 secure container which, when locked, is incapable of being opened with-
4 out the key, combination or other unlocking mechanism and is capable of
5 preventing an unauthorized person from obtaining access to and
6 possession of the weapon contained therein. With respect to a person who
7 is prohibited from possessing a firearm pursuant to 18 USC § 922(g)(9),
8 for purposes of this section, this section applies only if such person
9 has been convicted of a crime included in subdivision one of section
10 370.15 of the criminal procedure law and such gun is possessed within
11 five years from the later of the date of conviction or completion of
12 sentence. Nothing in this section shall be deemed to affect, impair or
13 supersede any special or local act relating to the safe storage of
14 rifles, shotguns or firearms which impose additional requirements on the
15 owner or custodian of such weapons.

16 A violation of this section shall constitute a class A misdemeanor.

17 § 4. This act shall take effect on the two hundred tenth day after it
18 shall have become a law.