

STATE OF NEW YORK

4824

2017-2018 Regular Sessions

IN SENATE

March 2, 2017

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

AN ACT to amend the family court act, in relation to gun violence restraining orders

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

1 Section 1. Article 12 of the family court act is renumbered article
2 13, section 1211 is renumbered section 1311 and a new article 12 is
3 added to read as follows:

ARTICLE 12

GUN VIOLENCE RESTRAINING ORDER

Section 1211. General.

7 1212. Temporary emergency gun violence restraining order.

8 1213. Ex parte gun violence restraining order.

9 1214. Gun violence restraining order issued after notice and
10 hearing.

1215. Offenses.

12 § 1211. General. 1. A gun violence restraining order is an order, in
13 writing, signed by the court, prohibiting and enjoining a named person
14 from having in his or her custody or control, owning, purchasing,
15 possessing, or receiving any firearms or ammunition. This article estab-
16 lishes a civil restraining order process to accomplish that purpose.

17 2. The office of court administration shall prescribe the form of the
18 petitions and orders and any other documents, and shall promulgate any
19 rules of court, necessary to implement this article.

20 3. A petition for a gun violence restraining order shall describe the
21 number, types, and locations of any firearms and ammunition presently
22 believed by the petitioner to be possessed or controlled by the subject
23 of the petition.

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

LBD05908-01-7

4. Nothing in this article shall be interpreted to require a law enforcement agency or a law enforcement officer to seek a gun violence restraining order in any case, including, but not limited to, in a case in which the agency or officer concludes, after investigation, that the criteria for issuance of a gun violence restraining order are not satisfied.

5. Prior to a hearing on the issuance, renewal, or termination of an order under section twelve hundred thirteen or twelve hundred fourteen of this article the court shall ensure that a search warrant is conducted and shall keep information obtained from a search conducted pursuant to this section confidential.

6. (a) The court shall notify the division of criminal justice services when a gun violence restraining order has been issued or renewed under this article no later than one court day after issuing or renewing the order.

(b) The court shall notify the division of criminal justice services when a gun violence restraining order has been dissolved or terminated under this article no later than five court days after dissolving or terminating the order. Upon receipt of either a notice of dissolution or a notice of termination of a gun violence restraining order, the division of criminal justice services shall, within fifteen days, document the updated status of any order issued under this article.

(c) The notices required to be submitted to the division of criminal justice services pursuant to this section shall be submitted in an electronic format, in a manner prescribed by the division.

(d) When notifying the division of criminal justice services pursuant to paragraph (a) or (b) of this subdivision, the court shall indicate in the notice whether the person subject to the gun violence restraining order was present in court to be informed of the contents of the order or if the person failed to appear. The person's presence in court shall constitute proof of service of notice of the terms of the order.

(e) (1) Within one business day of service, a law enforcement officer who served a gun violence restraining order shall submit the proof of service directly into the database established under section two hundred twenty-one-a of the executive law, including his or her name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.

(2) Within one business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a gun violence restraining order directly into the database established under section two hundred twenty-one-a of the executive law, including the name of the person who served the order. If the court is unable to provide this notification to the division of criminal justice services by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall submit the proof of service directly into the registry established under section two hundred twenty-one-a of the executive law within one business day of receipt from the court.

7. (a) A person subject to a gun violence restraining order issued pursuant to this article shall not have in his or her custody or control, own, purchase, possess, or receive any firearms or ammunition while that order is in effect.

(b) (1) Upon issuance of a gun violence restraining order issued pursuant to this article, the court shall order the restrained person to surrender to the local law enforcement agency all firearms and ammuni-

tion in the restrained person's custody or control, or which the restrained person possesses or owns.

(2) The surrender ordered pursuant to subparagraph one of this paragraph shall occur by immediately surrendering all firearms and ammunition in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the restraining order. A law enforcement officer serving a gun violence restraining order that indicates that the restrained person possesses any firearms or ammunition shall request that all firearms and ammunition be immediately surrendered. Alternatively, if no request is made by a law enforcement officer, the surrender shall occur within twenty-four hours of being served with the order, by either surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, or by selling all firearms and ammunition to a licensed gun dealer. The law enforcement officer or licensed gun dealer taking possession of any firearms or ammunition pursuant to this subdivision shall issue a receipt to the person surrendering the firearm or firearms or ammunition or both at the time of surrender. A person ordered to surrender all firearms and ammunition pursuant to this subdivision shall, within forty-eight hours after being served with the order, do both of the following:

(A) File with the court that issued the gun violence restraining order the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of the restraining order.

(B) File a copy of the receipt described in clause (A) of this subparagraph with the law enforcement agency that served the gun violence restraining order. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order.

(c) (1) Any firearms or ammunition surrendered to a law enforcement officer or law enforcement agency pursuant to this section shall be retained by the law enforcement agency until the expiration of any gun violence restraining order that has been issued against the restrained person. Upon expiration of any order, any firearms or ammunition shall be returned to the restrained person.

(2) A restrained person who owns any firearms or ammunition that are in the custody of a law enforcement agency pursuant to this section and who does not wish to have the firearm or firearms or ammunition returned is entitled to sell or transfer title of any firearms or ammunition to a licensed dealer provided that the firearm or firearms or ammunition are otherwise legal to own or possess and the restrained person otherwise has right to title of the firearm or firearms or ammunition.

(d) If a person other than the restrained person claims title to any firearms or ammunition surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or firearms or ammunition, the firearm or firearms or ammunition shall be returned to him or her.

§ 1212. Temporary emergency gun violence restraining order. 1. A temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

(a) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in

1 his or her custody or control, owning, purchasing, possessing, or
2 receiving a firearm; and

3 (b) A temporary emergency gun violence restraining order is necessary
4 to prevent personal injury to the subject of the petition or another
5 because less restrictive alternatives either have been tried and found
6 to be ineffective, or have been determined to be inadequate or inappro-
7 priate for the circumstances of the subject of the petition.

8 2. A temporary emergency gun violence restraining order issued pursu-
9 ant to this section shall prohibit the subject of the petition from
10 having in his or her custody or control, owning, purchasing, possessing,
11 or receiving, or attempting to purchase or receive, a firearm or ammuni-
12 tion, and shall expire twenty-one days from the date the order is
13 issued.

14 3. A temporary emergency gun violence restraining order is valid only
15 if it is issued by a judicial officer after making the findings required
16 by subdivision one of this section and pursuant to a specific request by
17 a law enforcement officer.

18 4. A temporary emergency gun violence restraining order issued under
19 this section shall include all of the following:

20 (a) A statement of the grounds supporting the issuance of the order.

21 (b) The date and time the order expires.

22 (c) The address of the superior court for the county in which the
23 restrained party resides; and

24 (d) The following statement: "To the restrained person: This order
25 will last until the date and time noted above. You are required to
26 surrender all firearms and ammunition that you own or possess in accord-
27 ance with Article 12 of the Family Court Act and you may not have in
28 your custody or control, own, purchase, possess, or receive, or attempt
29 to purchase or receive a firearm or ammunition, while this order is in
30 effect. However, a more permanent gun violence restraining order may be
31 obtained from the court. You may seek the advice of an attorney as to
32 any matter connected with the order. The attorney should be consulted
33 promptly so that the attorney may assist you in any matter connected
34 with the order."

35 5. A law enforcement officer who requests a temporary emergency gun
36 violence restraining order shall do all of the following:

37 (a) If the order is obtained orally, memorialize the order of the
38 court on the form approved by the office of court administration;

39 (b) Serve the order on the restrained person, if the restrained person
40 can reasonably be located;

41 (c) File a copy of the order with the court as soon as practicable
42 after issuance;

43 (d) Have the order entered into the computer database system for
44 protective orders maintained by the division of criminal justice
45 services.

46 6. (a) (1) Except as provided in subparagraph two of this paragraph,
47 the petition for a temporary emergency gun violence restraining order
48 shall be obtained by submitting a written petition to the court.

49 (2) If time and circumstances do not permit the submission of a writ-
50 ten petition, a temporary emergency gun violence restraining order may
51 be issued in accordance with the procedures for obtaining an oral search
52 warrant.

53 (b) The presiding judge of the supreme court of each county shall
54 designate at least one judge, commissioner, or referee who shall be
55 reasonably available to issue temporary emergency gun violence restrain-
56 ing orders when the family court is not in session.

1 § 1213. Ex parte gun violence restraining order. 1. (a) A family
2 member of a person or a law enforcement officer may file a petition
3 requesting that the court issue an ex parte gun violence restraining
4 order enjoining the subject of the petition from having in his or her
5 custody or control, owning, purchasing, possessing, or receiving a
6 firearm or ammunition.

7 (b) For the purposes of this section, "family member" shall mean a
8 member of the same family or household as defined in section eight
9 hundred twelve of this chapter.

10 (c) A court may issue an ex parte gun violence restraining order if
11 the petition, supported by an affidavit made in writing and signed by
12 the petitioner under oath, or an oral statement taken pursuant to subdi-
13 vision two of this section and any additional information provided to
14 the court shows that there is a substantial likelihood that both of the
15 following are true:

16 (1) The subject of the petition poses a significant danger, in the
17 near future, of personal injury to himself, herself, or another by
18 having in his or her custody or control, owning, purchasing, possessing,
19 or receiving a firearm as determined by considering the factors listed
20 in subdivision two of this section.

21 (2) An ex parte gun violence restraining order is necessary to prevent
22 personal injury to the subject of the petition or another because less
23 restrictive alternatives either have been tried and found to be ineffec-
24 tive, or are inadequate or inappropriate for the circumstances of the
25 subject of the petition.

26 (d) An affidavit supporting a petition for the issuance of an ex parte
27 gun violence restraining order shall set forth the facts tending to
28 establish the grounds of the petition, or the reason for believing that
29 they exist.

30 (e) An ex parte order under this section shall be issued or denied on
31 the same day that the petition is submitted to the court, unless the
32 petition is filed too late in the day to permit effective review, in
33 which case the order shall be issued or denied on the next day of judi-
34 cial business in sufficient time for the order to be filed that day with
35 the clerk of the court.

36 2. (a) (1) The court, before issuing an ex parte gun violence
37 restraining order, shall examine on oath, the petitioner and any witness
38 the petitioner may produce.

39 (2) In lieu of examining the petitioner and any witness the petitioner
40 may produce, the court may require the petitioner and any witness to
41 submit a written affidavit signed under oath.

42 (b) (1) In determining whether grounds for a gun violence restraining
43 order exist, the court shall consider all evidence of the following:

44 (A) A recent threat of violence or act of violence by the subject of
45 the petition directed toward another.

46 (B) A recent threat of violence or act of violence by the subject of
47 the petition directed toward himself or herself.

48 (C) A violation of an emergency order of protection that is in effect
49 at the time the court is considering the petition.

50 (D) A recent violation of an unexpired order of protection.

51 (E) A pattern of violent acts or violent threats within the past
52 twelve months, including, but not limited to, threats of violence or
53 acts of violence by the subject of the petition directed toward himself,
54 herself, or another.

55 (2) In determining whether grounds for a gun violence restraining
56 order exist, the court may consider any other evidence of an increased

1 risk for violence, including, but not limited to, evidence of any of the
2 following:

3 (A) The unlawful and reckless use, display, or brandishing of a
4 firearm by the subject of the petition.

5 (B) The history of use, attempted use, or threatened use of physical
6 force by the subject of the petition against another person.

7 (C) Any prior arrest of the subject of the petition for a felony
8 offense.

9 (D) Any history of a violation by the subject of the petition of an
10 emergency order of protection.

11 (E) Any history of a violation by the subject of the petition of an
12 order of protection.

13 (F) Documentary evidence, including, but not limited to, police
14 reports and records of convictions, of either recent criminal offenses
15 by the subject of the petition that involve controlled substances or
16 alcohol or ongoing abuse of controlled substances or alcohol by the
17 subject of the petition.

18 (G) Evidence of recent acquisition of firearms, ammunition, or other
19 deadly weapons.

20 (3) For the purposes of this subdivision, "recent" shall mean within
21 the six months prior to the date the petition was filed.

22 (c) If the court determines that grounds to issue an ex parte gun
23 violence restraining order exist, it shall issue an ex parte gun
24 violence restraining order that prohibits the subject of the petition
25 from having in his or her custody or control, owning, purchasing,
26 possessing, or receiving, or attempting to purchase or receive, a
27 firearm or ammunition, and expires no later than twenty-one days from
28 the date of the order.

29 3. (a) An ex parte gun violence restraining order issued under this
30 section shall include all of the following:

31 (1) A statement of the grounds supporting the issuance of the order.

32 (2) The date and time the order expires.

33 (3) The address of the superior court in which any responsive pleading
34 should be filed.

35 (4) The date and time of the scheduled hearing.

36 (5) The following statement: "To the restrained person: This order is
37 valid until the expiration date and time noted above. You are required
38 to surrender all firearms and ammunition that you own or possess in
39 accordance with Article 12 of the Family Court Act and you may not have
40 in your custody or control, own, purchase, possess, or receive, or
41 attempt to purchase or receive a firearm or ammunition, while this order
42 is in effect. A hearing will be held on the date and at the time noted
43 above to determine if a more permanent gun violence restraining order
44 should be issued. Failure to appear at that hearing may result in a
45 court making an order against you that is valid for a year. You may seek
46 the advice of an attorney as to any matter connected with the order. The
47 attorney should be consulted promptly so that the attorney may assist
48 you in any matter connected with the order."

49 (b) (1) An ex parte gun violence restraining order shall be personally
50 served on the restrained person by a law enforcement officer, or any
51 person who is at least eighteen years of age and not a party to the
52 action, if the restrained person can reasonably be located.

53 (2) When serving a gun violence restraining order, a law enforcement
54 officer shall inform the restrained person of the hearing scheduled
55 pursuant to subdivision four of this section.

1 4. Within twenty-one days after the date on the order, before the
2 court that issued the order or another court in the same jurisdiction,
3 the court shall hold a hearing pursuant to section twelve hundred four-
4 teen of this article to determine if a gun violence restraining order
5 should be issued.

6 § 1214. Gun violence restraining order issued after notice and hear-
7 ing. 1. (a) A family member of a person or a law enforcement officer may
8 request that a court, after notice and a hearing, issue a gun violence
9 restraining order enjoining the subject of the petition from having in
10 his or her custody or control, owning, purchasing, possessing, or
11 receiving a firearm or ammunition for a period of one year.

12 (b) For the purposes of this section, "family member" shall mean a
13 member of the same family or household as defined in section eight
14 hundred twelve of this chapter.

15 2. In determining whether to issue a gun violence restraining order
16 under this section, the court shall consider evidence of the facts iden-
17 tified in subparagraph one of paragraph (b) of subdivision two of
18 section twelve hundred thirteen of this article and may consider any
19 other evidence of an increased risk for violence, including, but not
20 limited to, evidence of the facts identified in subparagraph two of
21 paragraph (b) of subdivision two of section twelve hundred thirteen of
22 this article.

23 3. (a) At the hearing, the petitioner shall have the burden of prov-
24 ing, by clear and convincing evidence, that both of the following are
25 true:

26 (1) The subject of the petition, or a person subject to an ex parte
27 gun violence restraining order, as applicable, poses a significant
28 danger of personal injury to himself, herself, or another by having in
29 his or her custody or control, owning, purchasing, possessing, or
30 receiving a firearm or ammunition.

31 (2) A gun violence restraining order is necessary to prevent personal
32 injury to the subject of the petition, or the person subject to an ex
33 parte gun violence restraining order, as applicable, or another because
34 less restrictive alternatives either have been tried and found to be
35 ineffective, or are inadequate or inappropriate for the circumstances of
36 the subject of the petition, or the person subject to an ex parte gun
37 violence restraining order, as applicable.

38 (b) (1) If the court finds that there is clear and convincing evidence
39 to issue a gun violence restraining order, the court shall issue a gun
40 violence restraining order that prohibits the subject of the petition
41 from having in his or her custody or control, owning, purchasing,
42 possessing, or receiving, or attempting to purchase or receive, a
43 firearm or ammunition.

44 (2) If the court finds that there is not clear and convincing evidence
45 to support the issuance of a gun violence restraining order, the court
46 shall dissolve any temporary emergency or ex parte gun violence
47 restraining order then in effect.

48 (c) The gun violence restraining order issued under this section shall
49 have a duration of one year, subject to termination by further order of
50 the court at a hearing held pursuant to subdivision four of this section
51 and renewal by further order of the court pursuant to subdivision five
52 of this section.

53 4. (a) A gun violence restraining order issued pursuant to this chap-
54 ter shall include all of the following:

55 (1) A statement of the grounds supporting the issuance of the order.

56 (2) The date and time the order expires.

1 (3) The address of the superior court for the county in which the
2 restrained party resides.

3 (4) The following statement: "To the restrained person: This order
4 will last until the date and time noted above. If you have not done so
5 already, you must surrender all firearms and ammunition that you own or
6 possess in accordance with Article 12 of the Family Court Act. You may
7 not have in your custody or control, own, purchase, possess, or receive,
8 or attempt to purchase or receive a firearm or ammunition, while this
9 order is in effect. Pursuant to section 1214 of the Family Court Act,
10 you have the right to request one hearing to terminate this order at any
11 time during its effective period. You may seek the advice of an attorney
12 as to any matter connected with the order."

13 (b) When the court issues a gun violence restraining order under this
14 article, the court shall inform the restrained person that he or she is
15 entitled to one hearing to request a termination of the order, pursuant
16 to subdivision five of this section, and shall provide the restrained
17 person with a form to request a hearing.

18 5. (a) A person subject to a gun violence restraining order issued
19 under this section may submit one written request at any time during the
20 effective period of the order for a hearing to terminate the order.

21 (b) If the court finds after the hearing that there is no longer clear
22 and convincing evidence to believe: (1) that the person poses a signif-
23 icant danger, in the near future, of personal injury to himself,
24 herself, or another by having in his or her custody or control, owning,
25 purchasing, possessing, or receiving a firearm as determined under
26 section twelve hundred thirteen of this article; or

27 (2) that a gun violence restraining order is necessary to prevent
28 personal injury to the subject of the petition or another, the court
29 shall terminate the order.

30 6. (a) (1) A family member of a restrained person or a law enforcement
31 officer may request a renewal of a gun violence restraining order at any
32 time within the three months before the expiration of a gun violence
33 restraining order.

34 (2) For the purposes of this subdivision, "family member" shall mean a
35 member of the same family or household as defined in section eight
36 hundred twelve of this chapter.

37 (b) A court may, after notice and a hearing, renew a gun violence
38 restraining order issued under this section if the petitioner proves, by
39 clear and convincing evidence, that the subject of the petition poses a
40 significant danger, in the near future, of personal injury to himself,
41 herself, or another by having in his or her custody or control, owning,
42 purchasing, possessing, or receiving a firearm as determined by consid-
43 ering the factors listed in subdivision two of this section; or that a
44 gun violence restraining order is necessary to prevent personal injury
45 to the subject of the petition or another because less restrictive
46 alternatives either have been tried and found to be ineffective, or are
47 inadequate or inappropriate for the circumstances of the subject of the
48 petition.

49 (c) In determining whether to renew a gun violence restraining order
50 issued under this section, the court shall consider evidence of the
51 facts identified in subparagraph one of paragraph (b) of subdivision two
52 of section twelve hundred thirteen of this article and may consider any
53 other evidence of an increased risk for violence, including, but not
54 limited to, evidence of the facts identified in subparagraph two of
55 paragraph (b) of subdivision two of section twelve hundred thirteen of
56 this article.

1 (d) At the hearing, the petitioner shall have the burden of proving,
2 by clear and convincing evidence, that the subject of the petition poses
3 a significant danger, in the near future, of personal injury to himself,
4 herself, or another by having in his or her custody or control, owning,
5 purchasing, possessing, or receiving a firearm as determined by consid-
6 ering the factors listed in subdivision two of this section; or that a
7 gun violence restraining order is necessary to prevent personal injury
8 to the subject of the petition or another because less restrictive
9 alternatives either have been tried and found to be ineffective, or are
10 inadequate or inappropriate for the circumstances of the subject of the
11 petition.

12 (e) If the renewal petition is supported by clear and convincing
13 evidence, the court shall renew the gun violence restraining order
14 issued under this section.

15 (f) The renewal of a gun violence restraining order issued pursuant to
16 this section shall have a duration of one year, subject to termination
17 by further order of the court at a hearing held pursuant to subdivision
18 five of this section and further renewal by further order of the court
19 pursuant to this subdivision.

20 (g) A gun violence restraining order renewed pursuant to this section
21 shall include the following information:

22 (1) A statement of the grounds supporting the issuance of the order.

23 (2) The date and time the order expires.

24 (3) The address of the superior court in which any responsive pleading
25 should be filed.

26 (4) The date and time of the scheduled hearing.

27 (5) The following statement: "To the restrained person: This order is
28 valid until the expiration date and time noted above. You are required
29 to surrender all firearms and ammunition that you own or possess in
30 accordance with Article 12 of the Family Court Act and you may not have
31 in your custody or control, own, purchase, possess, or receive, or
32 attempt to purchase or receive a firearm or ammunition, while this order
33 is in effect. A hearing will be held on the date and at the time noted
34 above to determine if a more permanent gun violence restraining order
35 should be issued. Failure to appear at that hearing may result in a
36 court making an order against you that is valid for a year. You may seek
37 the advice of an attorney as to any matter connected with the order. The
38 attorney should be consulted promptly so that the attorney may assist
39 you in any matter connected with the order."

40 7. Any hearing held pursuant to this section may be continued upon a
41 showing of good cause. Any existing order issued pursuant to this
42 subdivision shall remain in full force and effect during the period of
43 continuance.

44 8. If a person subject to a gun violence restraining order issued or
45 renewed pursuant to this section was not present in court at the time
46 the order was issued or renewed, the gun violence restraining order
47 shall be personally served on the restrained person by a law enforcement
48 officer or any person who is at least eighteen years of age and not a
49 party to the action, if the restrained person can reasonably be located.

50 § 1215. Offenses. 1. Every person who files a petition for an ex parte
51 gun violence restraining order pursuant to section twelve hundred thir-
52 teen of this article, or a gun violence restraining order issued after
53 notice and a hearing pursuant to section twelve hundred fourteen of this
54 article, knowing the information in the petition to be false or with the
55 intent to harass, is guilty of a misdemeanor.

1 2. Every person who owns or possesses a firearm or ammunition with
2 knowledge that he or she is prohibited from doing so by a temporary
3 emergency gun violence restraining order issued pursuant to section
4 twelve hundred twelve of this article, an ex parte gun violence
5 restraining order issued pursuant to section twelve hundred thirteen of
6 this article, or a gun violence restraining order issued after notice
7 and a hearing issued pursuant to section twelve hundred fourteen of this
8 article, is guilty of a misdemeanor and shall be prohibited from having
9 in his or her custody or control, owning, purchasing, possessing, or
10 receiving, or attempting to purchase or receive, a firearm or ammunition
11 for a five-year period, to commence upon the expiration of the existing
12 gun violence restraining order.

13 § 2. This act shall take effect on the one hundred twentieth day after
14 it shall have become a law.