

# STATE OF NEW YORK

9113--A

## IN SENATE

May 9, 2022

Introduced by Sens. SKOUFIS, LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the executive law, the penal law and the mental hygiene law, in relation to authorizing certain health care providers to file an application for an extreme risk protection order against a person who was examined by such health care provider in certain circumstances

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

1 Section 1. Subdivision 2 of section 6340 of the civil practice law and  
2 rules, as added by chapter 19 of the laws of 2019, is amended to read as  
3 follows:  
4 2. "Petitioner" means: (a) a police officer, as defined in section  
5 1.20 of the criminal procedure law, or district attorney with jurisdic-  
6 tion in the county or city where the person against whom the order is  
7 sought resides; (b) a family or household member, as defined in subdivi-  
8 sion two of section four hundred fifty-nine-a of the social services  
9 law, of the person against whom the order is sought; [~~or~~] (c) a school  
10 administrator as defined in section eleven hundred twenty-five of the  
11 education law, or a school administrator's designee, of any school in  
12 which the person against whom the order is sought is currently enrolled  
13 or has been enrolled in the six months immediately preceding the filing  
14 of the petition; or (d) a licensed physician, licensed psychiatrist,  
15 licensed psychologist, registered nurse, licensed clinical social work-  
16 er, certified clinical nurse specialist, certified nurse practitioner,  
17 licensed clinical marriage and family therapist, registered professional  
18 nurse, licensed master social worker or licensed mental health counselor  
19 who has treated the person against whom the order is sought in the six  
20 months immediately preceding the filing of the petition. For purposes  
21 of this article, a school administrator's designee shall be employed at  
22 the same school as the school administrator and shall be any of the  
23 following who has been designated in writing to file a petition with

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

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1 respect to the person against whom the order is sought: a school teach-  
2 er, school guidance counselor, school psychologist, school social work-  
3 er, school nurse, or other school personnel required to hold a teaching  
4 or administrative license or certificate, and full or part-time compen-  
5 sated school employee required to hold a temporary coaching license or  
6 professional coaching certificate.

7 § 2. Section 6341 of the civil practice law and rules, as added by  
8 chapter 19 of the laws of 2019, is amended to read as follows:

9 § 6341. Application for an extreme risk protection order. In accord-  
10 ance with this article, a petitioner may file an application, which  
11 shall be sworn, and accompanying supporting documentation, setting forth  
12 the facts and circumstances justifying the issuance of an extreme risk  
13 protection order. Provided, however, that a petitioner who is a police  
14 officer or district attorney shall file such application upon the  
15 receipt of credible information that an individual is likely to engage  
16 in conduct that would result in serious harm to himself, herself or  
17 others, as defined in paragraph one or two of subdivision (a) of section  
18 9.39 of the mental hygiene law, unless such petitioner determines that  
19 there is no probable cause for such filing. Such application and  
20 supporting documentation shall be filed in the supreme court in the  
21 county in which the respondent resides. The chief administrator of the  
22 courts shall adopt forms that may be used for purposes of such applica-  
23 tions and the court's consideration of such applications. Such applica-  
24 tion form shall include inquiry as to whether the petitioner knows, or  
25 has reason to believe, that the respondent owns, possesses or has access  
26 to a firearm, rifle or shotgun and if so, a request that the petitioner  
27 list or describe such firearms, rifles and shotguns, and the respective  
28 locations thereof, with as much specificity as possible.

29 § 3. The civil practice law and rules is amended by adding a new  
30 section 6348 to read as follows:

31 § 6348. Protections for health care providers applying for an extreme  
32 risk protection order. 1. (a) Notwithstanding the privileges set forth  
33 in article forty-five of this chapter, or any other provision of law to  
34 the contrary, a health care provider authorized under paragraph (d) of  
35 subdivision two of section sixty-three hundred forty of this article to  
36 file an application for an extreme risk protection order against a  
37 person such health care provider has examined shall, upon filing any  
38 application for an extreme risk protection order, be authorized to  
39 disclose protected health information, of the person against whom such  
40 order is sought as are necessary for the full investigation and disposi-  
41 tion of such application for an extreme risk protection order under this  
42 article. When disclosing protected health information, such health care  
43 provider shall make reasonable efforts to limit protected health infor-  
44 mation to the minimum necessary to accomplish the filing of the applica-  
45 tion.

46 (b) Upon receipt of a petition by any health care provider identified  
47 in paragraph (a) of this subdivision and for good cause shown, the court  
48 may issue orders as may be necessary to obtain any records or documents  
49 relating to diagnosis, prognosis or treatment, and clinical records, of  
50 the patient against whom the order is sought as are necessary for the  
51 full investigation and disposition of an application for an extreme risk  
52 protection order under this article. All such records and other health  
53 information provided shall be sealed by the court.

54 2. The decision of any health care provider described in subdivision  
55 one of this section to disclose or not to disclose records or documents  
56 relating to the diagnosis, prognosis or treatment, and clinical records

1 of a patient under paragraphs (a) and (b) of subdivision one of this  
2 section, when made reasonably and in good faith, shall not be the  
3 basis for any civil or criminal liability with respect to such health  
4 care provider.

5 § 4 The executive law is amended by adding a new section 214-h to read  
6 as follows:

7 § 214-h. Extreme risk protection orders. The superintendent shall  
8 for all members of the division of state police, including new and  
9 veteran officers, develop, maintain and disseminate written policies and  
10 procedures and educational materials regarding the availability of and  
11 procedure for filing extreme risk protection orders under article  
12 sixty-three-A of the civil practice law and rules, including the  
13 requirements for police officers under section six thousand forty-one of  
14 such law.

15 § 5. Paragraphs (g) and (h) of subdivision 3 of section 840 of the  
16 executive law, paragraph (g) as amended and paragraph (h) as added by  
17 section 5 of part Q of chapter 56 of the laws of 2009, are amended and a  
18 new paragraph (i) is added to read as follows:

19 (g) Develop, maintain and disseminate, in consultation with the state  
20 division of human rights and the state civil service department, written  
21 policies and procedures to enhance police and correctional officer  
22 recruitment efforts and to increase police and correctional officer  
23 awareness of racial, ethnic, religious and gender differences, and other  
24 diversity issues, in communities served by such police and in correc-  
25 tional facilities; [~~and~~]

26 (h) Consult with the state commission of correction regarding correc-  
27 tional training programs[~~-~~]; and

28 (i) Develop, maintain and disseminate written policies and procedures  
29 and educational materials regarding the availability of and procedure  
30 for filing extreme risk protection orders under article sixty-three-A of  
31 the civil practice law and rules, including the requirements for police  
32 officers under section six thousand forty-one of such article, appropri-  
33 ately instruct any agency that employs police or peace officers regard-  
34 ing article sixty-three-A of the civil practice law and rules.

35 § 6. Paragraph (j) of subdivision 1 of section 400.00 of the penal  
36 law, as amended by chapter 1 of the laws of 2013, is amended to read as  
37 follows:

38 (j) who has not been involuntarily committed to a facility under the  
39 jurisdiction of an office of the department of mental hygiene pursuant  
40 to article nine or fifteen of the mental hygiene law, article seven  
41 hundred thirty or section 330.20 of the criminal procedure law, section  
42 four hundred two or five hundred eight of the correction law, section  
43 322.2 or 353.4 of the family court act, [~~or~~] has not been civilly  
44 confined in a secure treatment facility pursuant to article ten of the  
45 mental hygiene law, or has not been the subject of a report made pursu-  
46 ant to section 9.46 of the mental hygiene law;

47 § 7. Subdivision (a) of section 9.46 of the mental hygiene law, as  
48 added by chapter 1 of the laws of 2013, is amended to read as follows:

49 (a) For purposes of this section, the term "mental health profes-  
50 sional" shall include a physician, psychiatrist, psychologist, regis-  
51 tered nurse [~~or~~], licensed clinical social worker, licensed master  
52 social worker, licensed mental health counselor, clinical nurse  
53 specialist, certified nurse practitioner, licensed clinical marriage and  
54 family therapist, or a licensed professional nurse.

55 § 8. This act shall take effect on the thirtieth day after it shall  
56 have become a law.