

STATE OF NEW YORK

10502

IN ASSEMBLY

May 30, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cahill) --
read once and referred to the Committee on Codes

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
24 respect to the person against whom the order is sought: a school teach-
25 er, school guidance counselor, school psychologist, school social work-

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

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1 er, school nurse, or other school personnel required to hold a teaching
2 or administrative license or certificate, and full or part-time compen-
3 sated school employee required to hold a temporary coaching license or
4 professional coaching certificate.

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

7 § 6341. Application for an extreme risk protection order. In accord-
8 ance with this article, a petitioner may file an application, which
9 shall be sworn, and accompanying supporting documentation, setting forth
10 the facts and circumstances justifying the issuance of an extreme risk
11 protection order. Provided, however, that a petitioner who is a police
12 officer or district attorney shall file such application upon the
13 receipt of credible information that an individual is likely to engage
14 in conduct that would result in serious harm to himself, herself or
15 others, as defined in paragraph one or two of subdivision (a) of section
16 9.39 of the mental hygiene law, unless such petitioner determines that
17 there is no probable cause for such filing. Such application and
18 supporting documentation shall be filed in the supreme court in the
19 county in which the respondent resides. The chief administrator of the
20 courts shall adopt forms that may be used for purposes of such applica-
21 tions and the court's consideration of such applications. Such applica-
22 tion form shall include inquiry as to whether the petitioner knows, or
23 has reason to believe, that the respondent owns, possesses or has access
24 to a firearm, rifle or shotgun and if so, a request that the petitioner
25 list or describe such firearms, rifles and shotguns, and the respective
26 locations thereof, with as much specificity as possible.

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

29 § 6348. Protections for health care providers applying for an extreme
30 risk protection order. 1. (a) Notwithstanding the privileges set forth
31 in article forty-five of this chapter, or any other provision of law to
32 the contrary, a health care provider authorized under paragraph (d) of
33 subdivision two of section sixty-three hundred forty of this article to
34 file an application for an extreme risk protection order against a
35 person such health care provider has examined shall, upon filing any
36 application for an extreme risk protection order, be authorized to
37 disclose protected health information, of the person against whom such
38 order is sought as are necessary for the full investigation and disposi-
39 tion of such application for an extreme risk protection order under this
40 article. When disclosing protected health information, such health care
41 provider shall make reasonable efforts to limit protected health infor-
42 mation to the minimum necessary to accomplish the filing of the applica-
43 tion.

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

52 2. The decision of any health care provider described in subdivision
53 one of this section to disclose or not to disclose records or documents
54 relating to the diagnosis, prognosis or treatment, and clinical records
55 of a patient under paragraphs (a) and (b) of subdivision one of this
56 section, when made reasonably and in good faith, shall not be the

1 basis for any civil or criminal liability with respect to such health
2 care provider.

3 § 4 The executive law is amended by adding a new section 214-h to read
4 as follows:

5 § 214-h. Extreme risk protection orders. The superintendent shall
6 for all members of the division of state police, including new and
7 veteran officers, develop, maintain and disseminate written policies and
8 procedures and educational materials regarding the availability of and
9 procedure for filing extreme risk protection orders under article
10 sixty-three-A of the civil practice law and rules, including the
11 requirements for police officers under section six thousand forty-one of
12 such law.

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

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

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

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

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

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

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

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

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