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:

Section 1. Subdivision 2 of section 6340 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

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; (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; [~~or~~] (c) a school administrator as defined in section eleven hundred twenty-five of the education law, or a school administrator's designee, of any school in which the person against whom the order is sought is currently enrolled or has been enrolled in the six months immediately preceding the filing of the petition**; or (d) a licensed physician, licensed psychiatrist, licensed psychologist, registered nurse, licensed clinical social worker, certified clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker or licensed mental health counselor who has treated the person against whom the order is sought in the six months immediately preceding the filing of the petition**. For purposes of this article, a school administrator's designee shall be employed at the same school as the school administrator and shall be any of the following who has been designated in writing to file a petition with respect to the person against whom the order is sought: a school teacher, school guidance counselor, school psychologist, school social work-

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

LBD15458-04-2

er, school nurse, or other school personnel required to hold a teaching or administrative license or certificate, and full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate.

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

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

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

§ 6348. Protections for health care providers applying for an extreme risk protection order. 1. (a) Notwithstanding the privileges set forth in article forty-five of this chapter, or any other provision of law to the contrary, a health care provider authorized under paragraph (d) of subdivision two of section sixty-three hundred forty of this article to file an application for an extreme risk protection order against a person such health care provider has examined shall, upon filing any application for an extreme risk protection order, be authorized to disclose protected health information, of the person against whom such order is sought as are necessary for the full investigation and disposition of such application for an extreme risk protection order under this article. When disclosing protected health information, such health care provider shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the application.

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

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

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

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

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

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

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

(h) Consult with the state commission of correction regarding correctional training programs[~~.~~]**; and**

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

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

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

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

(a) For purposes of this section, the term "mental health professional" shall include a physician**, psychiatrist**, psychologist, registered nurse [~~or~~]**,** licensed clinical social worker**, licensed master social worker, licensed mental health counselor, clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, or a licensed professional nurse**.

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