STATE OF NEW YORK

5026

2021-2022 Regular Sessions

IN SENATE

February 22, 2021

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

AN ACT to amend the criminal procedure law, in relation to requiring police officers to take temporary custody of firearms when responding to reports of family violence

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

Section 1. Paragraphs (a) and (c) of subdivision 6 of section 140.10 of the criminal procedure law, as added by section 2 of part M of chapter 55 of the laws of 2020, are amended to read as follows:

(a) A police officer who responds to a report of a family offense as defined in section 530.11 of this chapter and section eight hundred twelve of the family court act [~~may~~] **shall** take temporary custody of any firearm, rifle, electronic dart gun, electronic stun gun, disguised gun, imitation weapon, shotgun, antique firearm, black powder rifle, black powder shotgun, or muzzle-loading firearm that is in plain sight or is discovered pursuant to a consensual or other lawful search, and shall take temporary custody of any such weapon that is in the possession of any person arrested for the commission of such family offense or suspected of its commission. An officer who takes custody of any weapon pursuant to this paragraph shall also take custody of any license to carry, possess, repair, and dispose of such weapon issued to the person arrested or suspected of such family offense. The officer shall deliver such weapon and/or license to the appropriate law enforcement officer as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law.

(c) Not less than [~~forty-eight~~] **one hundred twenty** hours after effecting such seizure, and in the absence of (i) an order of protection, an extreme risk protection order, or other court order prohibiting the owner from possessing such a weapon and/or license, or (ii) a pending criminal charge or conviction which prohibits such owner from possessing

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

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such a weapon and/or license, and upon a written finding that there is no legal impediment to the owner's possession of such a weapon and/or license, the court or, if no court is involved, licensing authority or custodian of the weapon shall direct return of a weapon not otherwise disposed of in accordance with subdivision one of section 400.05 of the penal law and/or such license taken into custody pursuant to this section.

§ 2. This act shall take effect immediately.