STATE OF NEW YORK

6826

2023-2024 Regular Sessions

IN SENATE

May 11, 2023

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

AN ACT to amend the civil practice law and rules, in relation to extreme risk protection orders

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

Section 1. Section 6340 of the civil practice law and rules is amended by adding a new subdivision 5 to read as follows:

5. "Exception" means a respondent who: (a) has previously been deemed certified not suitable to possess a rifle or shotgun pursuant to subdivision sixteen of section 265.00 of the penal law; (b) has previously been convicted of a felony, or serious offense as defined by subdivision seventeen of section 265.00 of the penal law; (c) has a current suspension or ineligibility order issued pursuant to the provisions of section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act, with an expiration date no less than one year from the date of the filing of the petition; or (d) is a person under the age of sixteen; and the petition would be based only upon such person's likelihood to engage in conduct posing a threat of harm to himself or herself; and the person did not threaten or use physical force directed at the petitioner or another person or a school; and the person did not use or threaten the use of a firearm, rifle or shotgun; and there is no evidence of a firearm, rifle, shotgun or ammunition possessed by anyone in the person's household.

§ 2. Section 6341 of the civil practice law and rules, as amended by chapter 208 of the laws of 2022, 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

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

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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, or unless an exception listed in paragraph five of section six thousand three hundred forty of this article exists, in which case a petitioner who is a police officer or district attorney has the discretion whether or not to file such application. 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. Subdivision 1 of section 6342 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

1. Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise, to prohibit the respondent from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun, upon a finding that there is probable cause to believe the respondent 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~~]: (a) substantial risk of physical harm to himself or herself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he or she is dangerous to himself or herself, or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. Such application for a temporary order shall be determined in writing on the same day the application is filed.

§ 4. Subdivision 2 of section 6343 of the civil practice law and rules, as added by chapter 19 of the laws of 2019, is amended to read as follows:

2. At the hearing pursuant to subdivision one of this section, the petitioner shall have the burden of proving, by clear and convincing evidence, that the respondent 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~~]: (a) substantial risk of physical harm to himself or herself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he or she is dangerous to himself or herself, or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted pursuant to subdivision nine of section sixty-three hundred forty-two of this article. The court shall also consider the factors set forth in subdivision two of section sixty-three hundred forty-two of this article.

§ 5. This act shall take effect immediately.