

# STATE OF NEW YORK

7021

2023-2024 Regular Sessions

## IN ASSEMBLY

May 10, 2023

Introduced by M. of A. THIELE -- read once and referred to the Committee on Codes

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:

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

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

19 § 2. Section 6341 of the civil practice law and rules, as amended by  
20 chapter 208 of the laws of 2022, is amended to read as follows:

21 § 6341. Application for an extreme risk protection order. In accord-  
22 ance with this article, a petitioner may file an application, which  
23 shall be sworn, and accompanying supporting documentation, setting forth  
24 the facts and circumstances justifying the issuance of an extreme risk  
25 protection order. Provided, however, that a petitioner who is a police  
26 officer or district attorney shall file such application upon the  
27 receipt of credible information that an individual is likely to engage  
28 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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1 others, as defined in paragraph one or two of subdivision (a) of section  
2 9.39 of the mental hygiene law, unless such petitioner determines that  
3 there is no probable cause for such filing, or unless an exception list-  
4 ed in paragraph five of section six thousand three hundred forty of this  
5 article exists, in which case a petitioner who is a police officer or  
6 district attorney has the discretion whether or not to file such appli-  
7 cation. Such application and supporting documentation shall be filed in  
8 the supreme court in the county in which the respondent resides. The  
9 chief administrator of the courts shall adopt forms that may be used for  
10 purposes of such applications and the court's consideration of such  
11 applications. Such application form shall include inquiry as to whether  
12 the petitioner knows, or has reason to believe, that the respondent  
13 owns, possesses or has access to a firearm, rifle or shotgun and if so,  
14 a request that the petitioner list or describe such firearms, rifles and  
15 shotguns, and the respective locations thereof, with as much specificity  
16 as possible.

17 § 3. Subdivision 1 of section 6342 of the civil practice law and  
18 rules, as added by chapter 19 of the laws of 2019, is amended to read as  
19 follows:

20 1. Upon application of a petitioner pursuant to this article, the  
21 court may issue a temporary extreme risk protection order, ex parte or  
22 otherwise, to prohibit the respondent from purchasing, possessing or  
23 attempting to purchase or possess a firearm, rifle or shotgun, upon a  
24 finding that there is probable cause to believe the respondent is likely  
25 to engage in conduct that would result in ~~[serious harm to himself,~~  
26 ~~herself or others, as defined in paragraph one or two of subdivision (a)~~  
27 ~~of section 9.39 of the mental hygiene law]~~: (a) substantial risk of  
28 physical harm to himself or herself as manifested by threats of or  
29 attempts at suicide or serious bodily harm or other conduct demonstrat-  
30 ing that he or she is dangerous to himself or herself, or (b) a substan-  
31 tial risk of physical harm to other persons as manifested by homicidal  
32 or other violent behavior by which others are placed in reasonable fear  
33 of serious physical harm. Such application for a temporary order shall  
34 be determined in writing on the same day the application is filed.

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

38 2. At the hearing pursuant to subdivision one of this section, the  
39 petitioner shall have the burden of proving, by clear and convincing  
40 evidence, that the respondent is likely to engage in conduct that would  
41 result in ~~[serious harm to himself, herself or others, as defined in~~  
42 ~~paragraph one or two of subdivision (a) of section 9.39 of the mental~~  
43 ~~hygiene law]~~: (a) substantial risk of physical harm to himself or  
44 herself as manifested by threats of or attempts at suicide or serious  
45 bodily harm or other conduct demonstrating that he or she is dangerous  
46 to himself or herself, or (b) a substantial risk of physical harm to  
47 other persons as manifested by homicidal or other violent behavior by  
48 which others are placed in reasonable fear of serious physical harm. The  
49 court may consider the petition and any evidence submitted by the peti-  
50 tioner, any evidence submitted by the respondent, any testimony  
51 presented, and the report of the relevant law enforcement agency submit-  
52 ted pursuant to subdivision nine of section sixty-three hundred forty-  
53 two of this article. The court shall also consider the factors set forth  
54 in subdivision two of section sixty-three hundred forty-two of this  
55 article.

56 § 5. This act shall take effect immediately.