

STATE OF NEW YORK

3384--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 27, 2025

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Subdivisions 2 and 3 of section 6340 of the civil practice
2 law and rules, subdivision 2 as amended by chapter 425 of the laws of
3 2024, subdivision 3 as added by chapter 19 of the laws of 2019, are
4 amended to read as follows:

5 2. "Petitioner" means: (a) a law enforcement agency that employs a
6 police officer, as such term is defined in section 1.20 of the criminal
7 procedure law, or a police officer, deputy sheriff, or district attorney
8 with jurisdiction in the county or city where the person against whom
9 the order is sought resides; (b) a family or household member, as
10 defined in subdivision two of section four hundred fifty-nine-a of the
11 social services law, of the person against whom the order is sought; (c)
12 a school administrator as defined in section eleven hundred twenty-five
13 of the education law, or a school administrator's designee, of any
14 school in which the person against whom the order is sought is currently
15 enrolled or has been enrolled in the six months immediately preceding
16 the filing of the petition; or (d) a licensed physician, licensed
17 psychiatrist, licensed psychologist, registered nurse, licensed clinical
18 social worker, certified clinical nurse specialist, certified nurse
19 practitioner, licensed clinical marriage and family therapist, regis-
20 tered professional nurse, licensed master social worker or licensed
21 mental health counselor who has treated the person against whom the
22 order is sought in the six months immediately preceding the filing of
23 the petition. For purposes of this article, a school administrator's
24 designee shall be employed at the same school as the school administra-

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

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1 tor and shall be any of the following who has been designated in writing
2 to file a petition with respect to the person against whom the order is
3 sought: a school teacher, school guidance counselor, school psychol-
4 ogist, school social worker, school nurse, or other school personnel
5 required to hold a teaching or administrative license or certificate,
6 and full or part-time compensated school employee required to hold a
7 temporary coaching license or professional coaching certificate.

8 3. "Respondent" means the person, twelve years of age or older,
9 against whom an extreme risk protection order is or may be sought under
10 this article.

11 § 2. Section 6341 of the civil practice law and rules, as amended by
12 chapter 425 of the laws of 2024, is amended to read as follows:

13 § 6341. Application for an extreme risk protection order. 1. In
14 accordance with this article, a petitioner may file an application,
15 which shall be sworn, and accompanying supporting documentation, setting
16 forth the facts and circumstances justifying the issuance of an extreme
17 risk protection order. Provided, however, that a petitioner that is a
18 law enforcement agency that employs a police officer, as such term is
19 defined in section 1.20 of the criminal procedure law, or is a police
20 officer, deputy sheriff, or district attorney with jurisdiction in the
21 county or city where the person against whom the order is sought resides
22 shall file such application upon the receipt of credible information
23 that an individual is likely to engage in conduct that would result in
24 [~~serious harm to themselves or others, as defined in paragraph one or two~~
25 ~~of subdivision (a) of section 9.39 of the mental hygiene law~~]: (a)
26 substantial risk of physical harm to themselves as manifested by threats
27 of or attempts at suicide or serious bodily harm or other conduct demon-
28 strating that such respondent is dangerous to themselves; or (b) a
29 substantial risk of physical harm to other persons as manifested by
30 homicidal or other violent behavior by which others are placed in
31 reasonable fear of serious physical harm, unless such petitioner deter-
32 mines that there is no probable cause for such filing.

33 2. A police officer, deputy sheriff, or district attorney who would
34 otherwise be required to file an application under this section has the
35 discretion not to file such an application if the police officer, deputy
36 sheriff, or district attorney can determine with reasonable certainty
37 that the respondent: (a) has previously been deemed certified not suit-
38 able to possess a rifle or shotgun pursuant to subdivision sixteen of
39 section 265.00 of the penal law; (b) is a person presently subject to an
40 extreme risk protection order; (c) is a person presently incarcerated
41 whose earliest release date is no less than one year from the date of
42 the filing of the petition; or (d) is a person under the age of eigh-
43 teen, and the petition would be based only upon such person's likelihood
44 to engage in conduct posing a threat of harm to themselves, and the person
45 did not threaten or use physical force directed at another person or a
46 school, and the person did not use or threaten the use of a firearm,
47 rifle or shotgun, and there is no evidence of a firearm, rifle, shotgun
48 or ammunition possessed by anyone in the person's household.

49 3. Such application and supporting documentation shall be filed in the
50 supreme court in the county in which the respondent resides. If the
51 petitioner is unable to identify an in-state address for the respondent,
52 the application and documentation shall be filed in the supreme court in
53 any county where the conduct alleged in the petition occurred. The chief
54 administrator of the courts shall adopt forms that may be used for
55 purposes of such applications and the court's consideration of such
56 applications. Such application form shall allow for affirmation pursuant

1 to rule twenty-one hundred six of this chapter and include inquiry as to
2 whether the petitioner knows, or has reason to believe, that the
3 respondent owns, possesses or has access to a firearm, rifle or shotgun
4 and if so, a request that the petitioner list or describe such firearms,
5 rifles and shotguns, and the respective locations thereof, with as much
6 specificity as possible.

7 § 3. Subdivisions 1, 2, 3 and 8 of section 6342 of the civil practice
8 law and rules, subdivisions 1, 3 and 8 as added by chapter 19 of the
9 laws of 2019, and subdivision 2 as amended by chapter 450 of the laws of
10 2025, are amended to read as follows:

11 1. Upon application of a petitioner pursuant to this article, the
12 court may issue a temporary extreme risk protection order, ex parte or
13 otherwise, to prohibit the respondent from purchasing, possessing or
14 attempting to purchase or possess a firearm, rifle or shotgun, upon a
15 finding that there is probable cause to believe the respondent is likely
16 to engage in conduct that would result in [~~serious harm to himself,
17 herself or others, as defined in paragraph one or two of subdivision (a)
18 of section 9.39 of the mental hygiene law~~]: (a) substantial risk of
19 physical harm to themselves as manifested by threats of or attempts at
20 suicide or serious bodily harm or other conduct demonstrating that such
21 respondent is dangerous to themselves; or (b) a substantial risk of phys-
22 ical harm to other persons as manifested by homicidal or other violent
23 behavior by which others are placed in reasonable fear of serious phys-
24 ical harm. Such application for a temporary order shall be determined in
25 writing on the same day the application is filed.

26 2. In determining whether grounds for a temporary extreme risk
27 protection order exist, the court shall consider any relevant factors
28 including, but not limited to, the following acts of the respondent:

29 (a) a threat or act of violence or use of physical force directed
30 toward self, the petitioner, or another person;

31 (b) a violation or alleged violation of an order of protection;

32 (c) any pending charge or conviction for an offense involving the use
33 of a weapon;

34 (d) the reckless use, display or brandishing of a firearm, rifle or
35 shotgun;

36 (e) any history of a violation of an extreme risk protection order;

37 (f) evidence of recent or ongoing abuse of controlled substances or
38 alcohol;

39 (g) evidence of recent acquisition of a firearm, rifle, shotgun or
40 other deadly weapon or dangerous instrument, or any ammunition therefor;
41 or

42 (h) evidence of recent acts of aggravated cruelty to animals as
43 defined in section three hundred fifty-three-a of the agriculture and
44 markets law.

45 In considering the factors under this subdivision, the court shall
46 consider the time that has elapsed since the occurrence of such act or
47 acts and the age of the person at the time of the occurrence of such act
48 or acts.

49 For the purposes of this subdivision, "recent" means within the six
50 months prior to the date the petition was filed.

51 The court shall not consider whether a police officer, deputy sheriff,
52 or district attorney may have had the discretion to decline to file an
53 application in determining whether grounds for a temporary extreme risk
54 protection order exist.

55 3. The application of the petitioner and supporting documentation, if
56 any, shall set forth the factual basis for the request and probable

1 cause for issuance of a temporary order. The court may conduct an exam-
2 ination under oath of the petitioner and any witness the petitioner may
3 produce. Hearsay evidence shall not be excluded and shall be weighed
4 appropriately.

5 8. A law enforcement officer serving a temporary extreme risk
6 protection order shall request that the respondent immediately surrender
7 to the officer all firearms, rifles and shotguns in the respondent's
8 possession and the officer shall conduct any search permitted by law for
9 such firearms. The law enforcement officer shall take possession of all
10 firearms, rifles and shotguns that are surrendered, that are in plain
11 sight, or that are discovered pursuant to a lawful search. As part of
12 the order, the court may also direct a police officer or deputy sheriff
13 to search for firearms, rifles and shotguns in the respondent's
14 possession in a manner consistent with the procedures of article six
15 hundred ninety of the criminal procedure law.

16 § 4. Subdivisions 1 and 2 and paragraph (d) of subdivision 3 of
17 section 6343 of the civil practice law and rules, as added by chapter 19
18 of the laws of 2019, are amended to read as follows:

19 1. In accordance with this article, no sooner than three business days
20 nor later than six business days after service of a temporary extreme
21 risk protection order and, alternatively, no later than ten business
22 days after service of an application under this article where no tempo-
23 rary extreme risk protection order has been issued, unless the respond-
24 ent waives their right to a hearing and consents to the final extreme
25 risk protection order, the supreme court shall hold a hearing, in the
26 manner of a summary proceeding, to determine whether to issue a final
27 extreme risk protection order and, when applicable, whether a firearm,
28 rifle or shotgun surrendered by, or removed from, the respondent should
29 be returned to the respondent. The respondent shall be entitled to more
30 than six business days if a temporary extreme risk protection order has
31 been issued and the respondent requests a reasonable period of addi-
32 tional time to prepare for the hearing. Where no temporary order has
33 been issued, the respondent may request, and the court may grant, addi-
34 tional time beyond the ten days to allow the respondent to prepare for
35 the hearing. Upon receipt of waiver and consent the court shall
36 dispense with a hearing and promptly issue the final extreme risk
37 protection order.

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 themself as mani-
44 festated by threats of or attempts at suicide or serious bodily harm or
45 other conduct demonstrating that such respondent is dangerous to them-
46 self; or (b) a substantial risk of physical harm to other persons as
47 manifested by homicidal or other violent behavior by which others are
48 placed in reasonable fear of serious physical harm. The court may
49 consider the petition and any evidence submitted by the petitioner, any
50 evidence submitted by the respondent, any testimony presented, and the
51 report of the relevant law enforcement agency submitted pursuant to
52 subdivision nine of section sixty-three hundred forty-two of this arti-
53 cle. The court shall also consider the factors set forth in subdivision
54 two of section sixty-three hundred forty-two of this article. Hearsay
55 evidence shall not be excluded and shall be weighed appropriately. The
56 court shall not consider whether a police officer or district attorney

1 may have had the discretion to decline to file an application in deter-
2 mining whether grounds for an extreme risk protection order exist.

3 (d) A law enforcement officer serving a final extreme risk protection
4 order shall request that the respondent immediately surrender to the
5 officer all firearms, rifles and shotguns in the respondent's possession
6 and the officer shall conduct any search permitted by law for such
7 firearms. The law enforcement officer shall take possession of all
8 firearms, rifles and shotguns that are surrendered, that are in plain
9 sight, or that are discovered pursuant to a lawful search. As part of
10 the order, the court may also direct a police officer or deputy sheriff
11 to search for firearms, rifles and shotguns in a respondent's possession
12 consistent with the procedures of article six hundred ninety of the
13 criminal procedure law.

14 § 5. Subdivision 1 of section 6344 of the civil practice law and
15 rules, as added by chapter 19 of the laws of 2019, is amended to read as
16 follows:

17 1. When a law enforcement officer takes any firearm, rifle or shotgun
18 pursuant to a temporary extreme risk protection order or a final extreme
19 risk protection order, the officer or deputy sheriff shall give to the
20 person from whom such firearm, rifle or shotgun is taken a receipt or
21 voucher for the property taken, describing the property in detail. In
22 the absence of a person, the officer or deputy sheriff shall leave the
23 receipt or voucher in the place where the property was found, mail a
24 copy of the receipt or voucher, retaining proof of mailing, to the last
25 known address of the respondent and, if different, the owner of the
26 firearm, rifle or shotgun, and file a copy of such receipt or voucher
27 with the court. All firearms, rifles and shotguns in the possession of a
28 law enforcement official pursuant to this article shall be subject to
29 the provisions of applicable law, including but not limited to subdivi-
30 sion six of section 400.05 of the penal law; provided, however, that any
31 such firearm, rifle or shotgun shall be retained and not disposed of by
32 the law enforcement agency for at least two years unless legally trans-
33 ferred by the respondent to an individual permitted by law to own and
34 possess such firearm, rifle or shotgun.

35 § 6. Section 6345 of the civil practice law and rules, as added by
36 chapter 19 of the laws of 2019, is amended to read as follows:

37 § 6345. Request for renewal of an extreme risk protection order. 1. If
38 a petitioner believes a person subject to an extreme risk protection
39 order continues to be likely to engage in conduct that would result in
40 ~~[serious harm to himself, herself, or others, as defined in paragraph~~
41 ~~one or two of subdivision (a) of section 9.39 of the mental hygiene~~
42 ~~law]~~; (a) substantial risk of physical harm to themselves as manifested by
43 threats of or attempts at suicide or serious bodily harm or other
44 conduct demonstrating that such respondent is dangerous to themselves; or
45 (b) a substantial risk of physical harm to other persons as manifested
46 by homicidal or other violent behavior by which others are placed in
47 reasonable fear of serious physical harm, such petitioner may, at any
48 time within sixty days prior to the expiration of such existing extreme
49 risk protection order, initiate a request for a renewal of such order,
50 setting forth the facts and circumstances necessitating the request. The
51 chief administrator of the courts shall adopt forms that may be used for
52 purposes of such applications and the court's consideration of such
53 applications. The court may issue a temporary extreme risk protection
54 order in accordance with section sixty-three hundred forty-two of this
55 article, during the period that a request for renewal of an extreme risk
56 protection order is under consideration pursuant to this section.

1 2. A hearing held pursuant to this section shall be conducted in the
2 supreme court, in accordance with section sixty-three hundred forty-
3 three of this article, to determine if a request for renewal of the
4 order shall be granted. The court shall not consider whether a police
5 officer, deputy sheriff, or district attorney may have had the
6 discretion to decline to file an application in determining whether to
7 renew the extreme risk protection order. The respondent shall be served
8 with written notice of an application for renewal a reasonable time
9 before the hearing, and shall be afforded an opportunity to fully
10 participate in the hearing. The court shall direct service of such
11 application and the accompanying papers in the manner and in accordance
12 with the protections for the petitioner set forth in subdivision six of
13 section sixty-three hundred forty-two of this article.

14 § 7. Subdivision 1 of section 6346 of the civil practice law and
15 rules, as added by chapter 19 of the laws of 2019, is amended to read as
16 follows:

17 1. A protection order issued pursuant to this article, and all records
18 of any proceedings conducted pursuant to this article, shall be sealed
19 upon expiration of such order and the clerk of the court wherein such
20 proceedings were conducted shall immediately notify the commissioner of
21 the division of criminal justice services, the heads of all appropriate
22 police and sheriff departments, applicable licensing officers, and all
23 other appropriate law enforcement agencies that the order has expired
24 and that the record of such protection order shall be sealed and not be
25 made available to any person or public or private entity, except that
26 such records shall be made available to:

27 (a) the respondent or the respondent's designated agent;
28 (b) courts in the unified court system;
29 (c) police forces and departments having responsibility for enforce-
30 ment of the general criminal laws of the state, including sheriff
31 departments;

32 (d) any state or local officer or agency with responsibility for the
33 issuance of licenses to possess a firearm, rifle or shotgun, when the
34 respondent has made application for such a license; and

35 (e) any prospective employer of a police officer or peace officer as
36 those terms are defined in subdivisions thirty-three and thirty-four of
37 section 1.20 of the criminal procedure law, in relation to an applica-
38 tion for employment as a police officer or peace officer; provided,
39 however, that every person who is an applicant for the position of
40 police officer or peace officer shall be furnished with a copy of all
41 records obtained under this subparagraph and afforded an opportunity to
42 make an explanation thereto.

43 § 8. This act shall take effect immediately.