§ 6342. Issuance of a temporary extreme risk protection order. 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. Such application for a temporary order shall be determined in writing on the same day the application is filed.

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

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

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

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

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

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

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

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

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

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

For the purposes of this subdivision, "recent" means within the six

months prior to the date the petition was filed.

3. The application of the petitioner and supporting documentation, if any, shall set forth the factual basis for the request and probable cause for issuance of a temporary order. The court may conduct an examination under oath of the petitioner and any witness the petitioner may produce.

4. A temporary extreme risk protection order, if warranted, shall issue in writing, and shall include:

(a) a statement of the grounds found for the issuance of the order;

(b) the date and time the order expires;

(c) the address of the court that issued the order;

(d) a statement to the respondent: (i) directing that the respondent may not purchase, possess or attempt to purchase or possess a firearm, rifle or shotgun while the order is in effect and that any firearm, rifle or shotgun possessed by such respondent shall be promptly surrendered to any authorized law enforcement official in the same manner as set forth in subdivision five of section 530.14 of the criminal procedure law;

(ii) informing the respondent that the court will hold a hearing no sooner than three nor more than six business days after service of the temporary order, to determine whether a final extreme risk protection order will be issued and the date, time and location of such hearing, provided that the respondent shall be entitled to more than six days upon request in order to prepare for the hearing; and (iii) informing the respondent the he or she may seek the advice of an attorney and that an attorney should be consulted promptly; and

(e) a form to be completed and executed by the respondent at the time of service of the temporary extreme risk protection order which elicits a list of all firearms, rifles and shotguns possessed by the respondent and the particular location of each firearm, rifle or shotgun listed.

5. If the application for a temporary extreme risk protection order is not granted, the court shall notify the petitioner and, unless the application is voluntarily withdrawn by the petitioner, nonetheless schedule a hearing on the application for a final extreme risk

protection order. Such hearing shall be scheduled to be held promptly, but in any event no later than ten business days after the date on which such application is served on the respondent, provided, however, that the respondent may request, and the court may grant, additional time to allow the respondent to prepare for the hearing. A notice of such hearing shall be prepared by the court and shall include the date and time of the hearing, the address of the court, and the subject of the hearing.

6. (a) The court shall, in the manner specified in paragraph (b) of this subdivision, arrange for prompt service of a copy of the temporary extreme risk protection order, if any, the application therefor and, if separately applied for or if a temporary extreme risk protection order was not granted, the application for an extreme risk protection order, any notice of hearing prepared by the court, along with any associated papers including the petition and any supporting documentation, provided, that the court may redact the address and contact information of the petitioner from such application and papers where the court finds that disclosure of such address or other contact information would pose an unreasonable risk to the health or safety of the petitioner.

(b) The court shall provide copies of such documents to the appropriate law enforcement agency serving the jurisdiction of the respondent's residence with a direction that such documents be promptly served, at no cost to the petitioner, on the respondent; provided, however, that the petitioner may voluntarily arrange for service of copies of such order and associated papers through a third party, such as a licensed process server.

7. (a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, the statewide computerized registry of orders of protection and warrants of arrest referred to in section two hundred twenty-one-a of the executive law, and the division of criminal justice services of the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after issuing the order to such persons or agencies or registry. The court also shall promptly notify such persons and agencies and registry and provide a

copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

(b) Upon receiving notice of the issuance of a temporary extreme risk protection order, the division of criminal justice services shall immediately report the existence of such order to the federal bureau of investigation to allow the bureau to identify persons prohibited from purchasing firearms, rifles or shotguns. The division shall also immediately report to the bureau the expiration of any such protection order, any court order amending or revoking such protection order or restoring the respondent's ability to purchase a firearm, rifle or shotgun.

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

9. Upon issuance of a temporary extreme risk protection order, or upon setting a hearing for a final extreme risk protection order where a temporary order is denied or not requested, the court shall direct the law enforcement agency having jurisdiction to conduct a background investigation and report to the court and, subject to any appropriate redactions to protect any person, each party regarding whether the

respondent:

(a) has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence;

(b) has any criminal charge or violation currently pending against him or her;

(c) is currently on parole or probation;

(d) possesses any registered firearms, rifles or shotguns; and

(e) has been, or is, subject to any order of protection or has violated or allegedly violated any order of protection.