

A11148 Text:**STATE OF NEW YORK**

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IN ASSEMBLY

June 9, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Simon) --
(at request of the Governor) -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules and the penal law, in relation to establishing extreme risk protection orders as court-issued orders of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun

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

Section 1. The civil practice law and rules is amended by adding a new article 63-A to read as follows:

ARTICLE 63-A**EXTREME RISK PROTECTION ORDERS****Section 6340. Definitions.**

6341. Application for an extreme risk protection order.

6342. Issuance of a temporary extreme risk protection order.

6343. Issuance of a final extreme risk protection order.

6344. Surrender and removal of firearms, rifles and shotguns pursuant to an extreme risk protection order.

6345. Request for renewal of an extreme risk protection order.

6346. Expiration of an extreme risk protection order.

6347. Effect of findings and determinations in subsequent proceedings.

§ 6340. Definitions. For the purposes of this article:

1. "Extreme risk protection order" means a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

2. "Petitioner" means: (a) a police officer, as defined in section 1.20 of the criminal procedure law, or district attorney with jurisdiction in the county or city where the person against whom the order is sought resides; (b) a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, of the person against whom the order is sought; or (c) a school

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

LBD12062-04-8

1 official, which includes but is not limited to school teacher, school
2 guidance counselor, school psychologist, school social worker, school
3 nurse, school administrator or other school personnel required to hold a
4 teaching or administrative license or certificate, and full or part-time
5 compensated school employee required to hold a temporary coaching
6 license or professional coaching certificate.

7 3. "Respondent" means the person against whom an extreme risk
8 protection order is or may be sought under this article.

9 4. "Possess" shall have the same meaning as defined in subdivision
10 eight of section 10.00 of the penal law.

11 § 6341. Application for an extreme risk protection order. In accord-
12 ance with this article, a petitioner may file a sworn application, and
13 accompanying supporting documentation, setting forth the facts and
14 circumstances justifying the issuance of an extreme risk protection
15 order. Such application and supporting documentation shall be filed in
16 the supreme court in the county in which the respondent resides. The
17 chief administrator of the courts shall adopt forms that may be used for
18 purposes of such applications and the court's consideration of such
19 applications. Such application form shall include inquiry as to whether
20 the petitioner knows, or has reason to believe, that the respondent
21 owns, possesses or has access to a firearm, rifle or shotgun and if so,
22 a request that the petitioner list or describe such firearms, rifles and
23 shotguns, and the respective locations thereof, with as much specificity
24 as possible.

25 § 6342. Issuance of a temporary extreme risk protection order. 1.
26 Upon application of a petitioner pursuant to this article, the court may
27 issue a temporary extreme risk protection order, ex parte or otherwise,
28 to prohibit the respondent from purchasing, possessing or attempting to
29 purchase or possess a firearm, rifle or shotgun, upon a finding that
30 there is probable cause to believe the respondent is likely to engage in
31 conduct that would result in serious harm to himself, herself or others,
32 as defined in paragraph one or two of subdivision (a) of section 9.39 of
33 the mental hygiene law. Such application for a temporary order shall be
34 determined in writing on the same day the application is filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) the date and time the order expires;

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

11 (d) a statement to the respondent: (i) directing that the respondent
12 may not purchase, possess or attempt to purchase or possess a firearm,
13 rifle or shotgun while the order is in effect and that any firearm,
14 rifle or shotgun possessed by such respondent shall be promptly surren-
15 dered to any authorized law enforcement official in the same manner as
16 set forth in subdivision five of section 530.14 of the criminal proce-
17 dure law,

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

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

30 5. If the application for a temporary extreme risk protection order is
31 not granted, the court shall notify the petitioner and, unless the
32 application is voluntarily withdrawn by the petitioner, nonetheless
33 schedule a hearing on the application for a final extreme risk
34 protection order. Such hearing shall be scheduled to be held promptly,
35 but in any event no later than ten business days after the date on which
36 such application is served on the respondent, provided, however, that
37 the respondent may request, and the court may grant, additional time to
38 allow the respondent to prepare for the hearing. A notice of such hear-
39 ing shall be prepared by the court and shall include the date and time
40 of the hearing, the address of the court, and the subject of the hear-
41 ing.

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

53 (b) The court shall provide copies of such documents to the appropri-
54 ate law enforcement agency serving the jurisdiction of the respondent's
55 residence with a direction that such documents be promptly served, at no
56 cost to the petitioner, on the respondent; provided, however, that the

1 petitioner may voluntarily arrange for service of copies of such order
2 and associated papers through a third party, such as a licensed process
3 server.

4 7. (a) The court shall notify the division of state police, any other
5 law enforcement agency with jurisdiction, all applicable licensing offi-
6 cers, and the division of criminal justice services of the issuance of a
7 temporary extreme risk protection order and provide a copy of such order
8 no later than the next business day after issuing the order to such
9 persons or agencies. The court also shall promptly notify such persons
10 and agencies and provide a copy of any order amending or revoking such
11 protection order or restoring the respondent's ability to own or possess
12 firearms, rifles or shotguns no later than the next business day after
13 issuing the order to restore such right to the respondent. The court
14 also shall report such demographic data as required by the state divi-
15 sion of criminal justice services at the time such order is transmitted
16 thereto. Any notice or report submitted pursuant to this subdivision
17 shall be in an electronic format, in a manner prescribed by the division
18 of criminal justice services.

19 (b) Upon receiving notice of the issuance of a temporary extreme risk
20 protection order, the division of criminal justice services shall imme-
21 diately report the existence of such order to the federal bureau of
22 investigation to allow the bureau to identify persons prohibited from
23 purchasing firearms, rifles or shotguns. The division shall also imme-
24 diately report to the bureau the expiration of any such protection
25 order, any court order amending or revoking such protection order or
26 restoring the respondent's ability to purchase a firearm, rifle or shot-
27 gun.

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

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

46 (a) has any prior criminal conviction for an offense involving domes-
47 tic violence, use of a weapon, or other violence;

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

50 (c) is currently on parole or probation;

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

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

54 § 6343. Issuance of a final extreme risk protection order. 1. In
55 accordance with this article, no sooner than three business days nor
56 later than six business days after service of a temporary extreme risk

1 protection order and, alternatively, no later than ten business days
2 after service of an application under this article where no temporary
3 extreme risk protection order has been issued, the supreme court shall
4 hold a hearing to determine whether to issue a final extreme risk
5 protection order and, when applicable, whether a firearm, rifle or shot-
6 gun surrendered by, or removed from, the respondent should be returned
7 to the respondent. The respondent shall be entitled to more than six
8 business days if a temporary extreme risk protection order has been
9 issued and the respondent requests a reasonable period of additional
10 time to prepare for the hearing. Where no temporary order has been
11 issued, the respondent may request, and the court may grant, additional
12 time beyond the ten days to allow the respondent to prepare for the
13 hearing.

14 2. At the hearing pursuant to subdivision one of this section, the
15 petitioner shall have the burden of proving, by clear and convincing
16 evidence, that the respondent is likely to engage in conduct that would
17 result in serious harm to himself, herself or others, as defined in
18 paragraph one or two of subdivision (a) of section 9.39 of the mental
19 hygiene law. The court may consider the petition and any evidence
20 submitted by the petitioner, any evidence submitted by the respondent,
21 any testimony presented, and the report of the relevant law enforcement
22 agency submitted pursuant to subdivision nine of section sixty-three
23 hundred forty-two of this article. The court shall also consider the
24 factors set forth in subdivision two of section sixty-three hundred
25 forty-two of this article.

26 3. (a) After the hearing pursuant to subdivision one of this section,
27 the court shall issue a written order granting or denying the extreme
28 risk protection order and setting forth the reasons for such determi-
29 nation. If the extreme risk protection order is granted, the court shall
30 direct service of such order in the manner and in accordance with the
31 protections for the petitioner set forth in subdivision six of section
32 sixty-three hundred forty-two of this article.

33 (b) Upon issuance of an extreme risk protection order: (i) any
34 firearm, rifle or shotgun removed pursuant to a temporary extreme risk
35 protection order or such extreme risk protection order shall be retained
36 by the law enforcement agency having jurisdiction for the duration of
37 the order, unless ownership of the firearm, rifle or shotgun is legally
38 transferred by the respondent to another individual permitted by law to
39 own and possess such firearm, rifle or shotgun; (ii) the supreme court
40 shall temporarily suspend any existing firearm license possessed by the
41 respondent and order the respondent temporarily ineligible for such a
42 license; (iii) the respondent shall be prohibited from purchasing or
43 possessing, or attempting to purchase or possess, a firearm, rifle or
44 shotgun; and (iv) the court shall direct the respondent to surrender any
45 firearm, rifle or shotgun in his or her possession in the same manner as
46 set forth in subdivision five of section 530.14 of the criminal proce-
47 dure law.

48 (c) An extreme risk protection order issued in accordance with this
49 section shall extend, as specified by the court, for a period of up to
50 one year from the date of the issuance of such order; provided, however,
51 that if such order was immediately preceded by the issuance of a tempo-
52 rary extreme risk protection order, then the duration of the extreme
53 risk protection order shall be measured from the date of issuance of
54 such temporary extreme risk protection order.

55 (d) A law enforcement officer serving a final extreme risk protection
56 order shall request that the respondent immediately surrender to the

1 officer all firearms, rifles and shotguns in the respondent's possession
2 and the officer shall conduct any search permitted by law for such
3 firearms. The law enforcement officer shall take possession of all
4 firearms, rifles and shotguns that are surrendered, that are in plain
5 sight, or that are discovered pursuant to a lawful search. As part of
6 the order, the court may also direct a police officer to search for
7 firearms, rifles and shotguns in a respondent's possession consistent
8 with the procedures of article six hundred ninety of the criminal proce-
9 dure law.

10 4. (a) The court shall notify the division of state police, any other
11 law enforcement agency with jurisdiction, all applicable licensing offi-
12 cers, and the division of criminal justice services of the issuance of a
13 final extreme risk protection order and provide a copy of such order to
14 such persons and agencies no later than the next business day after
15 issuing the order. The court also shall promptly notify such persons and
16 agencies and provide a copy of any order amending or revoking such
17 protection order or restoring the respondent's ability to own or possess
18 firearms, rifles or shotguns no later than the next business day after
19 issuing the order to restore such right to the respondent. Any notice or
20 report submitted pursuant to this subdivision shall be in an electronic
21 format, in a manner prescribed by the division of criminal justice
22 services.

23 (b) Upon receiving notice of the issuance of a final extreme risk
24 protection order, the division of criminal justice services shall imme-
25 diately report the existence of such order to the federal bureau of
26 investigation to allow the bureau to identify persons prohibited from
27 purchasing firearms, rifles or shotguns. The division shall also imme-
28 diately report to the bureau the expiration of such protection order and
29 any court order amending or revoking such protection order or restoring
30 the respondent's ability to purchase a firearm, rifle or shotgun.

31 5. (a) If, in accordance with a temporary extreme risk protection
32 order, a firearm, rifle or shotgun has been surrendered by or removed
33 from the respondent, and the supreme court subsequently finds that the
34 petitioner has not met the required standard of proof, the court's find-
35 ing shall include a written order, issued to all parties, directing that
36 any firearm, rifle or shotgun surrendered or removed pursuant to such
37 temporary order shall be returned to the respondent, upon a written
38 finding that there is no legal impediment to the respondent's possession
39 of such firearm, rifle or shotgun.

40 (b) If any other person demonstrates that he or she is the lawful
41 owner of any firearm, rifle or shotgun surrendered or removed pursuant
42 to a protection order issued in accordance with this article, and
43 provided that the court has made a written finding that there is no
44 legal impediment to the person's possession of a surrendered or removed
45 firearm, rifle or shotgun, the court shall direct that such firearm,
46 rifle or shotgun be returned to such lawful owner and inform such person
47 of the obligation to safely store such firearm, rifle, or shotgun in
48 accordance with section 265.45 of the penal law.

49 6. The respondent shall be notified on the record and in writing by
50 the court that he or she may submit one written request, at any time
51 during the effective period of an extreme risk protection order, for a
52 hearing, setting aside any portion of such order. The request shall be
53 submitted in substantially the same form and manner as prescribed by the
54 chief administrator of the courts. Upon such request, the court shall
55 promptly hold a hearing, in accordance with this article, after provid-
56 ing reasonable notice to the petitioner. The respondent shall bear the

1 burden to prove, by clear and convincing evidence, any change of circum-
2 stances that may justify a change to the order.

3 § 6344. Surrender and removal of firearms, rifles and shotguns pursu-
4 ant to an extreme risk protection order. 1. When a law enforcement offi-
5 cer takes any firearm, rifle or shotgun pursuant to a temporary extreme
6 risk protection order or a final extreme risk protection order, the
7 officer shall give to the person from whom such firearm, rifle or shot-
8 gun is taken a receipt or voucher for the property taken, describing the
9 property in detail. In the absence of a person, the officer shall leave
10 the receipt or voucher in the place where the property was found, mail a
11 copy of the receipt or voucher, retaining proof of mailing, to the last
12 known address of the respondent and, if different, the owner of the
13 firearm, rifle or shotgun, and file a copy of such receipt or voucher
14 with the court. All firearms, rifles and shotguns in the possession of a
15 law enforcement official pursuant to this article shall be subject to
16 the provisions of applicable law, including but not limited to subdivi-
17 sion six of section 400.05 of the penal law; provided, however, that any
18 such firearm, rifle or shotgun shall be retained and not disposed of by
19 the law enforcement agency for at least two years unless legally trans-
20 ferred by the respondent to an individual permitted by law to own and
21 possess such firearm, rifle or shotgun.

22 2. If the location to be searched during the execution of a temporary
23 extreme risk protection order or extreme risk protection order is joint-
24 ly occupied by two or more parties, and a firearm, rifle or shotgun
25 located during the execution of such order is owned by a person other
26 than the respondent, the court shall, upon a written finding that there
27 is no legal impediment to the person other than the respondent's
28 possession of such firearm, rifle or shotgun, order the return of such
29 firearm, rifle or shotgun to such lawful owner and inform such person of
30 their obligation to safely store their firearm, rifle, or shotgun in
31 accordance with section 265.45 of the penal law.

32 § 6345. Request for renewal of an extreme risk protection order. 1.
33 If a petitioner believes a person subject to an extreme risk protection
34 order continues to be likely to engage in conduct that would result in
35 serious harm to himself, herself, or others, as defined in paragraph one
36 or two of subdivision (a) of section 9.39 of the mental hygiene law,
37 such petitioner may, at any time within sixty days prior to the expira-
38 tion of such existing extreme risk protection order, initiate a request
39 for a renewal of such order, setting forth the facts and circumstances
40 necessitating the request. The chief administrator of the courts shall
41 adopt forms that may be used for purposes of such applications and the
42 court's consideration of such applications. The court may issue a tempo-
43 rary extreme risk protection order in accordance with section sixty-
44 three hundred forty-two of this article, during the period that a
45 request for renewal of an extreme risk protection order is under consid-
46 eration pursuant to this section.

47 2. A hearing held pursuant to this section shall be conducted in the
48 supreme court, in accordance with section sixty-three hundred forty-
49 three of this article, to determine if a request for renewal of the
50 order shall be granted. The respondent shall be served with written
51 notice of an application for renewal a reasonable time before the hear-
52 ing, and shall be afforded an opportunity to fully participate in the
53 hearing. The court shall direct service of such application and the
54 accompanying papers in the manner and in accordance with the protections
55 for the petitioner set forth in subdivision six of section sixty-three
56 hundred forty-two of this article.

§ 6346. Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order and the clerk of the court wherein such proceedings were conducted shall immediately notify the commissioner of the division of criminal justice services, the heads of all appropriate police departments, applicable licensing officers, and all other appropriate law enforcement agencies that the order has expired and that the record of such protection order shall be sealed and not be made available to any person or public or private entity, except that such records shall be made available to:

- (a) the respondent or the respondent's designated agent;
- (b) courts in the unified court system;
- (c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;
- (d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and
- (e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this subparagraph and afforded an opportunity to make an explanation thereto.

2. Upon expiration of a protection order issued pursuant to this article and upon written application of the respondent who is the subject of such order, with notice and opportunity to be heard to the petitioner and every licensing officer responsible for issuance of a firearm license to the subject of the order pursuant to article four hundred of the penal law, and upon a written finding that there is no legal impediment to the respondent's possession of a surrendered firearm, rifle or shotgun, the court shall order the return of a firearm, rifle or shotgun not otherwise disposed of in accordance with subdivision one of section sixty-three hundred forty-four of this article. When issuing such order in connection with any firearm subject to a license requirement under article four hundred of the penal law, if the licensing officer informs the court that he or she will seek to revoke the license, the order shall be stayed by the court until the conclusion of any license revocation proceeding.

§ 6347. Effect of findings and determinations in subsequent proceedings. Notwithstanding any contrary claim based on common law or a provision of any other law, no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding.

§ 2. Section 265.45 of the penal law, as amended by section 3 of part FF of chapter 57 of the laws of 2013, is amended to read as follows:

§ 265.45 Safe storage of rifles, shotguns, and firearms.

No person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who such person knows or has reason to know is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g) (1), (4), (8) or (9), or pursuant to a temporary or final extreme risk protection order issued under article sixty-three-A of the civil prac-

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1 tice law and rules, shall store or otherwise leave such rifle, shotgun
2 or firearm out of his or her immediate possession or control without
3 having first securely locked such rifle, shotgun or firearm in an appro-
4 priate safe storage depository or rendered it incapable of being fired
5 by use of a gun locking device appropriate to that weapon. For purposes
6 of this section "safe storage depository" shall mean a safe or other
7 secure container which, when locked, is incapable of being opened with-
8 out the key, combination or other unlocking mechanism and is capable of
9 preventing an unauthorized person from obtaining access to and
10 possession of the weapon contained therein. With respect to a person who
11 is prohibited from possessing a firearm pursuant to 18 USC § 922(g)(9),
12 for purposes of this section, this section applies only if such person
13 has been convicted of a crime included in subdivision one of section
14 370.15 of the criminal procedure law and such gun is possessed within
15 five years from the later of the date of conviction or completion of
16 sentence. Nothing in this section shall be deemed to affect, impair or
17 supersede any special or local act relating to the safe storage of
18 rifles, shotguns or firearms which impose additional requirements on the
19 owner or custodian of such weapons.
20 A violation of this section shall constitute a class A misdemeanor.
21 § 3. This act shall take effect on the one hundred eightieth day after
22 it shall have become a law.