

STATE OF NEW YORK

S. 2451

A. 2689

2019-2020 Regular Sessions

SENATE - ASSEMBLY

January 24, 2019

IN SENATE -- Introduced by Sens. KAVANAGH, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KRUEGER, LIU, MARTINEZ, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, STAVISKY, STEWART-COUSINS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. SIMON, LENTOL, HEASTIE, PEOPLES-STOKES, ORTIZ, DICKENS, PICHARDO, GOTTFRIED, MOSLEY, GALEF, GLICK, JOYNER, L. ROSENTHAL, O'DONNELL, FAHY, SEAWRIGHT, D'URSO, ENGLEBRIGHT, QUART, CARROLL, PAULIN, MAGNARELLI, HUNTER, DE LA ROSA, TAYLOR, ABINANTI, LAVINE, RIVERA, BARRON, VANEL, ZEBROWSKI, NIOU, STECK, DINOWITZ, SIMOTAS, BLAKE, JAFFEE, ROZIC, AUBRY, WRIGHT, OTIS, WEPRIN, DAVILA, BICHOTTE, ARROYO, BUCHWALD, BURKE, GRIFFIN, JACOBSON, McMAHON, STERN, BRONSON, CRUZ, REYES, SAYEGH, FRONTUS -- Multi-Sponsored by -- M. of A. EPSTEIN, THIELE -- 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:

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

3 ARTICLE 63-A

4 EXTREME RISK PROTECTION ORDERS

5 Section 6340. Definitions.

6 6341. Application for an extreme risk protection order.

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

LBD08628-02-9

- 1 6342. Issuance of a temporary extreme risk protection order.
- 2 6343. Issuance of a final extreme risk protection order.
- 3 6344. Surrender and removal of firearms, rifles and shotguns
- 4 pursuant to an extreme risk protection order.
- 5 6345. Request for renewal of an extreme risk protection order.
- 6 6346. Expiration of an extreme risk protection order.
- 7 6347. Effect of findings and determinations in subsequent
- 8 proceedings.

9 § 6340. Definitions. For the purposes of this article:

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

13 2. "Petitioner" means: (a) a police officer, as defined in section
 14 1.20 of the criminal procedure law, or district attorney with jurisdic-
 15 tion in the county or city where the person against whom the order is
 16 sought resides; (b) a family or household member, as defined in subdivi-
 17 sion two of section four hundred fifty-nine-a of the social services
 18 law, of the person against whom the order is sought; or (c) a school
 19 administrator as defined in section eleven hundred twenty-five of the
 20 education law, or a school administrator's designee, of any school in
 21 which the person against whom the order is sought is currently enrolled
 22 or has been enrolled in the six months immediately preceding the filing
 23 of the petition. For purposes of this article, a school administrator's
 24 designee shall be employed at the same school as the school administra-
 25 tor and shall be any of the following who has been designated in writing
 26 to file a petition with respect to the person against whom the order is
 27 sought: a school teacher, school guidance counselor, school psychol-
 28 ogist, school social worker, school nurse, or other school personnel
 29 required to hold a teaching or administrative license or certificate,
 30 and full or part-time compensated school employee required to hold a
 31 temporary coaching license or professional coaching certificate.

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

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

36 § 6341. Application for an extreme risk protection order. In accord-
 37 ance with this article, a petitioner may file an application, which
 38 shall be sworn, and accompanying supporting documentation, setting forth
 39 the facts and circumstances justifying the issuance of an extreme risk
 40 protection order. Such application and supporting documentation shall be
 41 filed in the supreme court in the county in which the respondent
 42 resides. The chief administrator of the courts shall adopt forms that
 43 may be used for purposes of such applications and the court's consider-
 44 ation of such applications. Such application form shall include inquiry
 45 as to whether the petitioner knows, or has reason to believe, that the
 46 respondent owns, possesses or has access to a firearm, rifle or shotgun
 47 and if so, a request that the petitioner list or describe such firearms,
 48 rifles and shotguns, and the respective locations thereof, with as much
 49 specificity as possible.

50 § 6342. Issuance of a temporary extreme risk protection order. 1.
 51 Upon application of a petitioner pursuant to this article, the court may
 52 issue a temporary extreme risk protection order, ex parte or otherwise,
 53 to prohibit the respondent from purchasing, possessing or attempting to
 54 purchase or possess a firearm, rifle or shotgun, upon a finding that
 55 there is probable cause to believe the respondent is likely to engage in
 56 conduct that would result in serious harm to himself, herself or others,

1 as defined in paragraph one or two of subdivision (a) of section 9.39 of
2 the mental hygiene law. Such application for a temporary order shall be
3 determined in writing on the same day the application is filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (d) a statement to the respondent: (i) directing that the respondent
36 may not purchase, possess or attempt to purchase or possess a firearm,
37 rifle or shotgun while the order is in effect and that any firearm,
38 rifle or shotgun possessed by such respondent shall be promptly surren-
39 dered to any authorized law enforcement official in the same manner as
40 set forth in subdivision five of section 530.14 of the criminal proce-
41 dure law;

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

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

54 5. If the application for a temporary extreme risk protection order is
55 not granted, the court shall notify the petitioner and, unless the
56 application is voluntarily withdrawn by the petitioner, nonetheless

1 schedule a hearing on the application for a final extreme risk
2 protection order. Such hearing shall be scheduled to be held promptly,
3 but in any event no later than ten business days after the date on which
4 such application is served on the respondent, provided, however, that
5 the respondent may request, and the court may grant, additional time to
6 allow the respondent to prepare for the hearing. A notice of such hear-
7 ing shall be prepared by the court and shall include the date and time
8 of the hearing, the address of the court, and the subject of the hear-
9 ing.

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

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

28 7. (a) The court shall notify the division of state police, any other
29 law enforcement agency with jurisdiction, all applicable licensing offi-
30 cers, and the division of criminal justice services of the issuance of a
31 temporary extreme risk protection order and provide a copy of such order
32 no later than the next business day after issuing the order to such
33 persons or agencies. The court also shall promptly notify such persons
34 and agencies and provide a copy of any order amending or revoking such
35 protection order or restoring the respondent's ability to own or possess
36 firearms, rifles or shotguns no later than the next business day after
37 issuing the order to restore such right to the respondent. The court
38 also shall report such demographic data as required by the state divi-
39 sion of criminal justice services at the time such order is transmitted
40 thereto. Any notice or report submitted pursuant to this subdivision
41 shall be in an electronic format, in a manner prescribed by the division
42 of criminal justice services.

43 (b) Upon receiving notice of the issuance of a temporary extreme risk
44 protection order, the division of criminal justice services shall imme-
45 diately report the existence of such order to the federal bureau of
46 investigation to allow the bureau to identify persons prohibited from
47 purchasing firearms, rifles or shotguns. The division shall also imme-
48 diately report to the bureau the expiration of any such protection
49 order, any court order amending or revoking such protection order or
50 restoring the respondent's ability to purchase a firearm, rifle or shot-
51 gun.

52 8. A law enforcement officer serving a temporary extreme risk
53 protection order shall request that the respondent immediately surrender
54 to the officer all firearms, rifles and shotguns in the respondent's
55 possession and the officer shall conduct any search permitted by law for
56 such firearms. The law enforcement officer shall take possession of all

1 firearms, rifles and shotguns that are surrendered, that are in plain
2 sight, or that are discovered pursuant to a lawful search. As part of
3 the order, the court may also direct a police officer to search for
4 firearms, rifles and shotguns in the respondent's possession in a manner
5 consistent with the procedures of article six hundred ninety of the
6 criminal procedure law.

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

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

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

18 (c) is currently on parole or probation;

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

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

22 § 6343. Issuance of a final extreme risk protection order. 1. In
23 accordance with this article, no sooner than three business days nor
24 later than six business days after service of a temporary extreme risk
25 protection order and, alternatively, no later than ten business days
26 after service of an application under this article where no temporary
27 extreme risk protection order has been issued, the supreme court shall
28 hold a hearing to determine whether to issue a final extreme risk
29 protection order and, when applicable, whether a firearm, rifle or shot-
30 gun surrendered by, or removed from, the respondent should be returned
31 to the respondent. The respondent shall be entitled to more than six
32 business days if a temporary extreme risk protection order has been
33 issued and the respondent requests a reasonable period of additional
34 time to prepare for the hearing. Where no temporary order has been
35 issued, the respondent may request, and the court may grant, additional
36 time beyond the ten days to allow the respondent to prepare for the
37 hearing.

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. The court may consider the petition and any evidence
44 submitted by the petitioner, any evidence submitted by the respondent,
45 any testimony presented, and the report of the relevant law enforcement
46 agency submitted pursuant to subdivision nine of section sixty-three
47 hundred forty-two of this article. The court shall also consider the
48 factors set forth in subdivision two of section sixty-three hundred
49 forty-two of this article.

50 3. (a) After the hearing pursuant to subdivision one of this section,
51 the court shall issue a written order granting or denying the extreme
52 risk protection order and setting forth the reasons for such determi-
53 nation. If the extreme risk protection order is granted, the court shall
54 direct service of such order in the manner and in accordance with the
55 protections for the petitioner set forth in subdivision six of section
56 sixty-three hundred forty-two of this article.

1 (b) Upon issuance of an extreme risk protection order: (i) any
2 firearm, rifle or shotgun removed pursuant to a temporary extreme risk
3 protection order or such extreme risk protection order shall be retained
4 by the law enforcement agency having jurisdiction for the duration of
5 the order, unless ownership of the firearm, rifle or shotgun is legally
6 transferred by the respondent to another individual permitted by law to
7 own and possess such firearm, rifle or shotgun; (ii) the supreme court
8 shall temporarily suspend any existing firearm license possessed by the
9 respondent and order the respondent temporarily ineligible for such a
10 license; (iii) the respondent shall be prohibited from purchasing or
11 possessing, or attempting to purchase or possess, a firearm, rifle or
12 shotgun; and (iv) the court shall direct the respondent to surrender any
13 firearm, rifle or shotgun in his or her possession in the same manner as
14 set forth in subdivision five of section 530.14 of the criminal proce-
15 dure law.

16 (c) An extreme risk protection order issued in accordance with this
17 section shall extend, as specified by the court, for a period of up to
18 one year from the date of the issuance of such order; provided, however,
19 that if such order was immediately preceded by the issuance of a tempo-
20 rary extreme risk protection order, then the duration of the extreme
21 risk protection order shall be measured from the date of issuance of
22 such temporary extreme risk protection order.

23 (d) A law enforcement officer serving a final extreme risk protection
24 order shall request that the respondent immediately surrender to the
25 officer all firearms, rifles and shotguns in the respondent's possession
26 and the officer shall conduct any search permitted by law for such
27 firearms. The law enforcement officer shall take possession of all
28 firearms, rifles and shotguns that are surrendered, that are in plain
29 sight, or that are discovered pursuant to a lawful search. As part of
30 the order, the court may also direct a police officer to search for
31 firearms, rifles and shotguns in a respondent's possession consistent
32 with the procedures of article six hundred ninety of the criminal proce-
33 dure law.

34 4. (a) The court shall notify the division of state police, any other
35 law enforcement agency with jurisdiction, all applicable licensing offi-
36 cers, and the division of criminal justice services of the issuance of a
37 final extreme risk protection order and provide a copy of such order to
38 such persons and agencies no later than the next business day after
39 issuing the order. The court also shall promptly notify such persons and
40 agencies and provide a copy of any order amending or revoking such
41 protection order or restoring the respondent's ability to own or possess
42 firearms, rifles or shotguns no later than the next business day after
43 issuing the order to restore such right to the respondent. Any notice or
44 report submitted pursuant to this subdivision shall be in an electronic
45 format, in a manner prescribed by the division of criminal justice
46 services.

47 (b) Upon receiving notice of the issuance of a final extreme risk
48 protection order, the division of criminal justice services shall imme-
49 diately report the existence of such order to the federal bureau of
50 investigation to allow the bureau to identify persons prohibited from
51 purchasing firearms, rifles or shotguns. The division shall also imme-
52 diately report to the bureau the expiration of such protection order and
53 any court order amending or revoking such protection order or restoring
54 the respondent's ability to purchase a firearm, rifle or shotgun.

55 5. (a) If, in accordance with a temporary extreme risk protection
56 order, a firearm, rifle or shotgun has been surrendered by or removed

1 from the respondent, and the supreme court subsequently finds that the
2 petitioner has not met the required standard of proof, the court's find-
3 ing shall include a written order, issued to all parties, directing that
4 any firearm, rifle or shotgun surrendered or removed pursuant to such
5 temporary order shall be returned to the respondent, upon a written
6 finding that there is no legal impediment to the respondent's possession
7 of such firearm, rifle or shotgun.

8 (b) If any other person demonstrates that he or she is the lawful
9 owner of any firearm, rifle or shotgun surrendered or removed pursuant
10 to a protection order issued in accordance with this article, and
11 provided that the court has made a written finding that there is no
12 legal impediment to the person's possession of a surrendered or removed
13 firearm, rifle or shotgun, the court shall direct that such firearm,
14 rifle or shotgun be returned to such lawful owner and inform such person
15 of the obligation to safely store such firearm, rifle, or shotgun in
16 accordance with section 265.45 of the penal law.

17 6. The respondent shall be notified on the record and in writing by
18 the court that he or she may submit one written request, at any time
19 during the effective period of an extreme risk protection order, for a
20 hearing setting aside any portion of such order. The request shall be
21 submitted in substantially the same form and manner as prescribed by the
22 chief administrator of the courts. Upon such request, the court shall
23 promptly hold a hearing, in accordance with this article, after provid-
24 ing reasonable notice to the petitioner. The respondent shall bear the
25 burden to prove, by clear and convincing evidence, any change of circum-
26 stances that may justify a change to the order.

27 § 6344. Surrender and removal of firearms, rifles and shotguns pursu-
28 ant to an extreme risk protection order. 1. When a law enforcement offi-
29 cer takes any firearm, rifle or shotgun pursuant to a temporary extreme
30 risk protection order or a final extreme risk protection order, the
31 officer shall give to the person from whom such firearm, rifle or shot-
32 gun is taken a receipt or voucher for the property taken, describing the
33 property in detail. In the absence of a person, the officer shall leave
34 the receipt or voucher in the place where the property was found, mail a
35 copy of the receipt or voucher, retaining proof of mailing, to the last
36 known address of the respondent and, if different, the owner of the
37 firearm, rifle or shotgun, and file a copy of such receipt or voucher
38 with the court. All firearms, rifles and shotguns in the possession of a
39 law enforcement official pursuant to this article shall be subject to
40 the provisions of applicable law, including but not limited to subdivi-
41 sion six of section 400.05 of the penal law; provided, however, that any
42 such firearm, rifle or shotgun shall be retained and not disposed of by
43 the law enforcement agency for at least two years unless legally trans-
44 ferred by the respondent to an individual permitted by law to own and
45 possess such firearm, rifle or shotgun.

46 2. If the location to be searched during the execution of a temporary
47 extreme risk protection order or extreme risk protection order is joint-
48 ly occupied by two or more parties, and a firearm, rifle or shotgun
49 located during the execution of such order is owned by a person other
50 than the respondent, the court shall, upon a written finding that there
51 is no legal impediment to the person other than the respondent's
52 possession of such firearm, rifle or shotgun, order the return of such
53 firearm, rifle or shotgun to such lawful owner and inform such person of
54 their obligation to safely store their firearm, rifle, or shotgun in
55 accordance with section 265.45 of the penal law.

1 § 6345. Request for renewal of an extreme risk protection order. 1.
2 If a petitioner believes a person subject to an extreme risk protection
3 order continues to be likely to engage in conduct that would result in
4 serious harm to himself, herself, or others, as defined in paragraph one
5 or two of subdivision (a) of section 9.39 of the mental hygiene law,
6 such petitioner may, at any time within sixty days prior to the expira-
7 tion of such existing extreme risk protection order, initiate a request
8 for a renewal of such order, setting forth the facts and circumstances
9 necessitating the request. The chief administrator of the courts shall
10 adopt forms that may be used for purposes of such applications and the
11 court's consideration of such applications. The court may issue a tempo-
12 rary extreme risk protection order in accordance with section sixty-
13 three hundred forty-two of this article, during the period that a
14 request for renewal of an extreme risk protection order is under consid-
15 eration pursuant to this section.

16 2. A hearing held pursuant to this section shall be conducted in the
17 supreme court, in accordance with section sixty-three hundred forty-
18 three of this article, to determine if a request for renewal of the
19 order shall be granted. The respondent shall be served with written
20 notice of an application for renewal a reasonable time before the hear-
21 ing, and shall be afforded an opportunity to fully participate in the
22 hearing. The court shall direct service of such application and the
23 accompanying papers in the manner and in accordance with the protections
24 for the petitioner set forth in subdivision six of section sixty-three
25 hundred forty-two of this article.

26 § 6346. Expiration of an extreme risk protection order. 1. A
27 protection order issued pursuant to this article, and all records of any
28 proceedings conducted pursuant to this article, shall be sealed upon
29 expiration of such order and the clerk of the court wherein such
30 proceedings were conducted shall immediately notify the commissioner of
31 the division of criminal justice services, the heads of all appropriate
32 police departments, applicable licensing officers, and all other appro-
33 prate law enforcement agencies that the order has expired and that the
34 record of such protection order shall be sealed and not be made avail-
35 able to any person or public or private entity, except that such records
36 shall be made available to:

37 (a) the respondent or the respondent's designated agent;
38 (b) courts in the unified court system;
39 (c) police forces and departments having responsibility for enforce-
40 ment of the general criminal laws of the state;

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

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

52 2. Upon expiration of a protection order issued pursuant to this arti-
53 cle and upon written application of the respondent who is the subject of
54 such order, with notice and opportunity to be heard to the petitioner
55 and every licensing officer responsible for issuance of a firearm
56 license to the subject of the order pursuant to article four hundred of

1 the penal law, and upon a written finding that there is no legal imped-
2 iment to the respondent's possession of a surrendered firearm, rifle or
3 shotgun, the court shall order the return of a firearm, rifle or shotgun
4 not otherwise disposed of in accordance with subdivision one of section
5 sixty-three hundred forty-four of this article. When issuing such order
6 in connection with any firearm subject to a license requirement under
7 article four hundred of the penal law, if the licensing officer informs
8 the court that he or she will seek to revoke the license, the order
9 shall be stayed by the court until the conclusion of any license revoca-
10 tion proceeding.

11 § 6347. Effect of findings and determinations in subsequent
12 proceedings. Notwithstanding any contrary claim based on common law or
13 a provision of any other law, no finding or determination made pursuant
14 to this article shall be interpreted as binding, or having collateral
15 estoppel or similar effect, in any other action or proceeding, or with
16 respect to any other determination or finding, in any court, forum or
17 administrative proceeding.

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

20 § 265.45 Safe storage of rifles, shotguns, and firearms.

21 No person who owns or is custodian of a rifle, shotgun or firearm who
22 resides with an individual who such person knows or has reason to know
23 is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(g)
24 (1), (4), (8) or (9), or pursuant to a temporary or final extreme risk
25 protection order issued under article sixty-three-A of the civil prac-
26 tice law and rules, shall store or otherwise leave such rifle, shotgun
27 or firearm out of his or her immediate possession or control without
28 having first securely locked such rifle, shotgun or firearm in an appro-
29 priate safe storage depository or rendered it incapable of being fired
30 by use of a gun locking device appropriate to that weapon. For purposes
31 of this section "safe storage depository" shall mean a safe or other
32 secure container which, when locked, is incapable of being opened with-
33 out the key, combination or other unlocking mechanism and is capable of
34 preventing an unauthorized person from obtaining access to and
35 possession of the weapon contained therein. With respect to a person who
36 is prohibited from possessing a firearm pursuant to 18 USC § 922(g)(9),
37 for purposes of this section, this section applies only if such person
38 has been convicted of a crime included in subdivision one of section
39 370.15 of the criminal procedure law and such gun is possessed within
40 five years from the later of the date of conviction or completion of
41 sentence. Nothing in this section shall be deemed to affect, impair or
42 supersede any special or local act relating to the safe storage of
43 rifles, shotguns or firearms which impose additional requirements on the
44 owner or custodian of such weapons.

45 A violation of this section shall constitute a class A misdemeanor.

46 § 3. Severability. If any part or provision of this act is adjudged by
47 a court of competent jurisdiction to be unconstitutional or otherwise
48 invalid, such judgment shall not affect or impair any other part or
49 provision of this act, but shall be confined in its operation to such
50 part or provision.

51 § 4. This act shall take effect on the one hundred eightieth day after
52 it shall have become a law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S2451

SPONSOR: KAVANAGH

TITLE OF BILL:

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

PURPOSE:

To prevent individuals from accessing firearms, rifles, and shotguns who have been deemed, through judicial process, likely to engage in conduct that would result in serious harm to themselves or others.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill creates a new Article 63-A of Civil Practice Law and Rules to establish extreme risk protection orders. The new sections of Article 63-A are summarized as follows:

Section 6340 establishes definitions. It defines "extreme risk protection order" to mean a court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

Section 6341 sets forth the application process for those seeking an order of protection. The petitioner files a sworn application describing the circumstances and justification for the request.

Section 6342 describes- the process for the issuance of a temporary extreme risk protection order:

-To grant a temporary extreme risk protection order, the court must find 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. The court must also evaluate other relevant factors specified in the bill.

-If the application is granted, a temporary extreme risk protection order will be issued. This will prohibit the respondent from purchasing, possessing, or attempting to purchase or possess a firearm, rifle, or shotgun while the order is in effect, and to surrender any firearms, rifles or shotguns to law enforcement pending a court hearing to be held no sooner than three days nor longer than six days after the issuance of a temporary order, unless the respondent requests more time to prepare, to determine whether a final extreme risk protection order will be issued.

Section 6343 describes the issuance of a final extreme risk protection

order:

-At the hearing, the petitioner must prove by clear and convincing evidence that the petitioner 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.

-If the final order is granted by the court, any firearm, rifle, or shotgun removed under a temporary order will be retained by the law enforcement agency and the respondent will be prohibited from purchasing, attempting to purchase, or possessing a firearm, rifle or shotgun for up to one year, subject to renewal. Any firearm license will also be suspended for the duration of the time that the extreme risk protection order is in effect.

-The respondent is permitted to appeal a court's decision to issue an extreme risk protection order under the existing appeals procedure provided in the civil practice laws and rules. Additionally, the respondent is entitled to submit one request, at any time during the effective period of an extreme risk protection order, for a hearing at which said respondent bears the burden to prove, by clear and convincing evidence, any change of circumstances that may justify a change to the order.

Section 6344 sets forth how firearms, rifles, and shotguns shall be surrendered to or removed by law enforcement officers:

-The law enforcement officer must leave or mail a receipt or voucher to the respondent.

-Law enforcement must retain any firearm, rifle or shotgun surrendered or removed pursuant to an extreme risk protection order for at least two years following the expiration of the order unless it is legally transferred by the respondent.

Section 6345 lays out the process for a request for renewal of an extreme risk protection order:

-The petitioner may file a request for a renewal of an extreme risk protection order within 60 days of the expiration of an existing order. A hearing must be conducted to determine if the renewal is justified.

Section 6346 discusses the expiration of an extreme risk protection order. The section provides for sealing of all records upon expiration of an order, with limited availability to relevant parties. The section also outlines how the return of a firearm, rifle, or shotgun shall take place.

Section 6347 states that findings relevant to an extreme risk protection order shall not have any effect on any other action or proceeding.

Section two of the bill amends the penal law to include temporary or final extreme risk protection orders in the safe storage provision.

Section three of the bill provides a severability clause. Section four of the bill sets forth the effective date.

JUSTIFICATION:

Family and household members are often the first to know when someone is experiencing a crisis or exhibiting dangerous behavior. They may even report their fears to law enforcement, but in New York, as in many other states, law enforcement officers may not have the authority to intervene based on the evidence they are provided, sometimes resulting in prevent-

able tragedies, including interpersonal gun violence or suicide involving a gun.

In 2014, California became the first state in the nation to enact a law empowering family members and law enforcement to petition a court to have individuals' access to guns temporarily suspended when they are at risk of harming themselves or others. In 2016, Washington State enacted similar measures through a ballot initiative. Laws providing a procedure for the removal of firearms from at-risk individuals have existed for years in Indiana, and studies have shown that a similar provision of Connecticut law has resulted in a measurable reduction in suicide rates.

Enacting extreme risk protection orders here would keep New Yorkers safe while respecting due process rights.

LEGISLATIVE HISTORY:

2018: S7133A/A8976B - REPORTED FROM JUDICIARY TO CODES/passed Assembly

2017: S5447/A6994 - REFERRED TO JUDICIARY/passed assembly

2016: S6065/A7038 - REFERRED TO CODES/referred to codes

2015: S6065/A7038 - REFERRED TO RULES/referred to codes

FISCAL IMPLICATIONS:

Some costs associated with the implementation and administration of the procedures established by this legislation, possibly offset by a reduction in costs related to gun violence.

Some costs associated with the implementation and administration of the procedures established by this legislation, possibly offset by a reduction in costs related to gun violence.

IMPACT ON REGULATION OF BUSINESSES AND INDIVIDUALS:

Individuals who are subject to an order issued by a court would have their rights to access guns temporarily suspended.

IMPACT ON FINES, IMPRISONMENT, FORFEITURE OF RIGHTS, OR OTHER PENAL SANCTIONS:

An individual who violates an order would be subject to the penalties under existing New York law for a prohibited person who possesses, purchases, or attempts to possess or purchase a firearm, rifle, or shotgun.

EFFECTIVE DATE:

This act shall take effect on the 180th day after it shall have become law.