

**THEODORE ROOSEVELT AMERICAN INN OF COURT  
HOW TO NAVIGATE THE NEW GUN LAWS**

**December 7, 2022**

Co-Chairs: Hon. Elizabeth Fox-McDonough, Justice of the Supreme Court

Jared A. Kasschau, Esq. Harris Beach, LLC

**NEW YORK STATE RIFLE and PISTOL ASSN., INC. v BRUEN and Subsequent Cases**

*St. John's University Law Students: Elizabeth Gomiela, Mary Johnson, Joseph Pizzingrillo and Jack Prochner*

**EXTREME RISK PROTECTION ORDERS**

*Jared Kasschau, Esq., Harris Beach , PLLC*

*Kevin Kearon , Esq.*

**ORDERS OF PROTECTION AND THE SURRENDER OF FIREARMS**

*Hon. Elizabeth Fox-McDonough Justice of the Supreme Court, Nassau County*

**CRIMINAL PROCEDURE LAW 370.15 AND THE REMOVAL OF FIREARMS**

*Assistant District Attorney Dana Grossblatt, Nassau County District Attorney's Office*

THEODORE ROOSEVELT AMERICAN INN OF COURT

HOW TO NAVIGATE THE NEW GUN LAWS

December 7, 2022

- 5:30 -6:00     **New York State Rifle & Pistol Assn. Inc. v. Bruen and Survey of Recent Law**  
*St. John's University Law Students: Elizabeth Gomelia, Mary Johnson, Jack Prochner*
- 6:00 – 6:30     **Extreme Risk Protection Orders (ERPO)**  
Jared Kasschau, Esq., Harris Beach, PLLC  
Kevin Kearon, Esq., Barkett Epstein Kearon Aldea & LoTurco, LLP
- 6:30 – 7:00     **Orders of Protection and the Surrender of Firearms**  
Hon. Elizabeth Fox-McDonough, Justice of the Supreme Court, Nassau County
- 7:00 – 7:30     **Criminal Procedure Law §370.15 and the Removal of Firearms**  
A.D.A Dana Grossblatt, Nassau County District Attorney's Office
- 7:30 – 7:40     **Discussion with Q&A**

## Dana Grossblatt Bio

Dana graduated with honors from University of Massachusetts at Amherst with a Bachelor of Arts in English. She went on to earn her Juris Doctor from Brooklyn Law School. Dana began work at the Kings County District Attorney's Office in January 1992. There she learned litigation skills by working in numerous bureaus such as the Early Case Assessment Bureau, misdemeanor trials, Grand Jury, and Homicide Grand Jury. Ultimately Dana was assigned to the Orange Zone Felony Bureau where she tried countless Robberies, Burglaries and drug cases. Shortly thereafter Dana was promoted to Senior Assistant District Attorney where she was tasked to oversee the trial work of newer assistants. It was during this time that Dana began trying homicides and other high publicity cases.

Upon leaving the District Attorney's Office in 1997 Dana worked as an associate at a firm which handled in house litigation for State Farm Insurance. The trials, depositions, conferences and motion practice she undertook at that firm gave her a fundamental understanding of civil litigation.

In 2002 she opened her own law firm, The Law Office of Dana Grossblatt, in which she focuses on criminal defense. As a criminal defense attorney she regularly litigates numerous trials every year including homicide and high publicity trials. She has earned a reputation as a fierce and relentless litigator.

In 2014 Dana Grossblatt became President of the Criminal Courts Bar Association of Nassau County. She was only the 2<sup>nd</sup> woman and the first mother to have done so. While on the board she was instrumental in the creation of the Criminal Courts Bar Foundation Charity. The charity has supported the childcare center in Family Court, Westbury Middle School after school programming, the Prisoner Toy Project, and Youth Empowerment workshops.

In January 2021 Dana was hired as the Principal Law Clerk for the Hon. Joseph Conway a Supreme Court Judge. They were assigned to the Matrimonial Center. She wrote countless decisions for *pendente lite* relief, contempt as well as after hearings and trials. Currently Dana Grossblatt is the Bureau Chief of District Court at the Nassau County District Attorney's Office. She oversees all aspects of the misdemeanor trial bureau.

**Kevin Kearon** is a founding partner at the Garden City, New York criminal defense and litigation firm, Barket Epstein Kearon LoTurco & Aldea, LLP.

He received his law degree from St. John's University in 1985 and began his legal career as an assistant district attorney in Nassau County.

Since entering private practice in 1989, he has successfully defended a broad spectrum of criminal cases in both New York state and federal courts, including charges of murder, weapons possession, sexual abuse, embezzlement, tax fraud, narcotics trafficking and driving while intoxicated.

Mr. Kearon is a former president of the Nassau Criminal Courts Bar Foundation and former chair of the Nassau County Bar Association's Ethics and Technology and Practice Management Committees.

He is a member of the Attorney Roundtable and the Theodore Roosevelt American Inn of Court.

# New York State Red Flag Laws

## Processes, Updates, and Controversies

By:

Jared A. Kasschau, Esq. of Harris Beach PLLC

Kevin Kearon, Esq. of Barket Epstein Kearon Aldea & LoTurco, LLP



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# Red Flag Law is also known as Extreme Risk Protection Order (ERPO) Law

- The Red Flag Law was enacted on August 24, 2019
- It is codified in Article 63-A of the CPLR
- The law allows certain designated individuals to file a petition in New York State Supreme Court to ensure that an individual who shows signs of being a threat to themselves or others will not be able to possess or purchase firearms
- An ERPO requires the person to surrender any guns they already own or possess and an ERPO can direct police to search a person, premises, or vehicle for guns and remove them
- ERPO petitions are civil cases with no criminal penalties or charges
- Per OCA, 1,410 applications were **granted** (over 1/5<sup>th</sup> are in Suffolk County) from August 25, 2019 through October 1, 2022.
- The Red Flag Law has resulted in many individuals being placed on the Red Flag list, but it has also had high profile failures, faced a constitutional challenge, and has been plagued by lack of resources to carry out its goals
- It has also been amended/modified since its enactment, both through an Executive Order on May 18, 2022 and legislation enacted on June 6, 2022
- This presentation will summarize the components of the law, legal updates, the process by which ERPO cases are filed and adjudicated, data on filings, and challenges and controversies

# Who Can File an ERPO Petition?

- Possible Petitioner may be:
  - Police Officer
  - District Attorney
  - Family or Household Member, School Administrator or Designee
  - June 6, 2022 legislation expanded list of petitioners to include:
    - Licensed physician, licensed psychiatrist, licensed psychologist, RN, licensed social worker, certified clinical nurse specialist, certified Nurse Practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker, licensed mental health counselor– who has treated the person against whom the order is sought \*in the 6 months immediately preceding the petition\*

# Who Can File an ERPO Petition (cont'd)?

- June 6, 2022 legislation also expanded the obligation of certain filers
  - Now, a petitioner who is a Police Officer or District Attorney ”**shall** file such application upon the receipt of credible information that an individual 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, unless such petitioner determines that there is no probable cause for such filing” (CPLR § 6341)
- May 18, 2022 Executive Order also had mandated that State Police file for an ERPO when they have probable cause to believe an individual is a threat to themselves or others



# Application Form for an ERPO

- Petition is brought ex parte, must be sworn and contains:
  - Information establishing standing of petitioner to bring case
  - Statement that Respondent “is likely to engage in conduct that would result in serious harm to self or others as defined by MHL 9.39(a)”<sup>1</sup>
  - Applicant must check a box indicating that respondent has engaged in, exhibited, or committed certain behaviors, which include: threat or act of violence or use of physical force toward self, petitioner, or another person; evidence of substance abuse; evidence of recent acquisition of firearm; and others; there is also a category for “Other”
  - Applicant may provide other facts and circumstances justifying issuance of an ERPO
  - Name, address, and age of the person against whom the petition is filed
  - Respondent’s location
  - Optional Sections
    - Documents in support of application for an ERPO
    - The Petitioner’s basis of knowledge that the Respondent “owns, possesses, or has access to a firearm, rifle, or shotgun” (include information about location and description of weapons) (CPLR § 6341)
    - Request that Court direct a search of the Respondent’s vehicle, home, premises per procedures in CPL § 690
    - Request that certain documents be filed under seal and/or order of confidentiality of petitioner’s address and contact information, and/or name

<sup>1</sup> MHL 9.39(a): “Likelihood to result in serious harm” as used in this article shall mean: 1. substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the respondent is dangerous to him/herself, or 2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

# Filing the ERPO Petition

- Petition must be filed in the County where the Respondent lives
- Request for Judicial Intervention
- Notarized Application form
- Supporting Documents
- Notice to the Respondent is not required (Ex Parte application)
  - “Upon application of a petitioner pursuant to this article, the court may issue a temporary extreme risk protection order, ex parte or otherwise” (CPLR § 6342(1))

# Presenting an ERPO Petition

- Petition will be decided in writing the same day it is filed, and can be granted ex parte
- The relief to be decided that day is only whether a Temporary ERPO (or “TERPO”) (CPLR § 6342) should be granted
- At TERPO hearing, court may conduct “ex parte or otherwise” a hearing and examine petitioner and any witnesses produced by petitioner under oath.
- If TERPO is granted, guns will be taken the very same day
- A hearing on the final ERPO determination is scheduled as part of the TERPO order, to take place 3-6 business days later (unless Respondent asks for additional time) (if TERPO not granted, hearing on final ERPO to be held within 10 business days)
- At the hearing on the ERPO, both sides can testify, call witnesses, and submit evidence
- A final ERPO order can be issued for up to one year

# Determination of TERPO is based on criteria included on Application Form

- Is there probable cause to believe Respondent is likely to engage in conduct that would result in serious harm to self or others?
- In deciding whether Probable Cause exists, the following criteria are considered:
  - A threat or act of violence against the Petitioner, self or other person
  - Any prior violation of an order of protection
  - Any pending charge or conviction involving weapons
  - Any reckless use or display of a firearm, rifle, shotgun
  - Evidence of recent or ongoing drug or alcohol abuse
  - Recent acquisition of a firearm, rifle, shotgun or other deadly weapon or instrument, or any ammunition (recent defined in statute as within 6 months prior to the date petition was filed)
  - When the acts occurred and age of individual

# Terms of a Temporary ERPO

- Prohibition on the Respondent from purchasing or possessing or attempting to purchase or possess a firearm, rifle, or shotgun
- Surrender and seizure of firearms, rifles, or shotguns in the Respondent's possession (may be seized even if they belong to another person (CPLR § 6344(2))
- Permits law enforcement to conduct "any search permitted by law for such firearms" CPLR § 6342(8)
- Order may permit a search, consistent with procedures used for search warrants based on probable cause to believe firearms will be found (CPLR § 6342(8))
- Court shall notify Division of State Police, any law enforcement agency with jurisdiction, DCJS. DCJS shall report order to FBI (CPLR § 6342(7))
- A sworn and subscribed inventory of all recovered firearms must be brought back to the court.
- Court must direct that a final hearing be held within three to six days to determine whether it should issue a final ERPO.

# Service of the TERPO (CPLR § 6342)

- Court arranges for prompt issuance of the TERPO on Respondent by law enforcement agency serving the jurisdiction of Respondent's residence (including TERPO application, notice of hearing, and any associated papers such as Petition and supporting documentation)
- The court may redact the name and address of the Petitioner if it finds that disclosure of the address or other contact information would pose an unreasonable risk to the health or safety of the Petitioner
- At the time of service, a form must be completed and signed by the Respondent, which elicits a list of all firearms, rifles, and shotguns that the Respondent possesses and the location of each.

# Background Investigation (CPLR § 6342(9))

- After issuance (or denial of) temporary ERPO, the Court shall direct law enforcement agency having jurisdiction conduct a background investigation and report to the Court any of the following:
- The Respondent's prior convictions, if any, for offenses involving domestic violence, use of weapons, or other violation
- Any current criminal charge pending against the Respondent
- Whether the Respondent is currently on parole or probation
- Whether the Respondent possesses any registered firearms, rifles, or shotguns
- Whether the Respondent has been, or is subject to an order of protection, or has violated or allegedly violated an order of protection



# Burden of Proof at ERPO Hearing

- Petitioner must prove by "clear and convincing evidence" that the Respondent is likely to engage in conduct that would result in serious harm to themselves or others
  - This is a higher standard than the "probable cause" standard for a Temporary ERPO
- Court will review the same factors as were considered as part of the TERPO review (and also may consider evidence submitted by Petitioner or Respondent as well as any information obtained from the background report conducted by law enforcement)
- The respondent may also waive the hearing and, after questioning by the court to establish that the waiver is voluntary, may choose to not contest the final ERPO
- Hearing is NOT ex parte, Respondent has opportunity to be heard
- Court must issue written decision explaining reasoning



# Issuance of Final ERPO (CPLR § 6343)

If an ERPO is granted at the Hearing:

- Valid for 1 year from the date that the Temporary ERPO was issued.
- All firearms, rifles, or shotguns previously surrendered or seized will be retained by law enforcement
- Any firearm license possessed by the Respondent will be temporarily suspended by Court
- Court can order search for firearms
- Issuing court notifies and send copies of ERPO to NYS Police, DCJS, local law enforcement, local firearm licensing officers.
- DCJS must report issuance of ERPO to FBI for entry into National Instant Criminal Background Check System (NICS) so that gun may not be purchased while order is in effect
- The ERPO may be extended for up to one additional year from the date of issuance
- Application to extend the ERPO can be made within 60 days of the expiration of the existing order
- Also, only once during the time an ERPO is in effect, the Respondent can file an Application to Amend or Vacate Extreme Risk Protection Order if there is a change in circumstances.

# Expiration of the ERPO

Records of all proceedings are sealed upon expiration of order (CPLR § 6346(1)) but remain available to...

- Respondent or his or her agent
- All Courts in the Unified Court System
- Police agencies having responsibility for enforcement of the general criminal laws of the state
- Any state or local office or agency with responsibility for the issuance of licenses to possess a firearm, rifle, or shotgun, when Respondent has made such an application
- Any prospective employer of police officers or peace officers in relation to application for employment as a police officer or peace officer

# Return of Guns After Expiration of ERPO (CPLR § 6346)

- The Respondent must apply for the return of guns, on notice and opportunity to be heard, to:
  - The licensing officer
  - The Petitioner
- The Court will order the return if it finds no legal impediment to the Respondent's possession of the surrendered weapons
- If the licensing officer informs the Court that he or she will seek to revoke the license, the Court's order is stayed until conclusion of the revocation proceeding

# Challenges to Constitutionality of ERPO

- Anon Detective v. Westchester Cnty 71 Misc.3d 810 (N.Y. Sup. Ct. 2021)
  - Do Red Flag Laws have criminal implications?
  - Individuals can be criminally charged for possession of weapons recovered pursuant to a TERPO or ERPO (Fourth amendment issue)
  - Respondent not represented at hearing even though result of TERPO could be search warrants (Sixth amendment issue)
  - Second Amendment issues (burden on core right based merely on PC/Clear and Convincing Evidence standards)
- SCOTUS decisions (*Heller* and *McDonald*) have noted that gov't may restrict firearm possession for mentally ill, for example

# Buffalo Case, Executive Order and Legislation

- Buffalo case
  - Buffalo shooter had made online threats about murder and suicide
  - As part of high school project, made statement in school that after graduation, he planned to commit a murder-suicide (claimed to be joking, but a Vice-Principal reported the remark).
  - Was taken to mental hospital for mental health evaluation, released within a couple days. State Police did NOT seek red flag order. This helped lead to Gov. Hochul's exec order.
  - State Police claim they may not have sought ERPO petition because shooter did not name a specific murder target and applicant must state "specific facts and circumstances" justifying the order
- Executive Order May 18, 2022
  - Requires State Police to file ERPO whenever they have probable cause to believe an individual is a threat to themselves or others
  - Issued shortly after Buffalo mass shooting, and in light of mass shootings in Pennsylvania, California, and Texas

# Buffalo Case, Executive Order and Legislation cont'd

- Times Union reported in late June 2022 that filings by State Police surged after the order
  - In 2021, the State Police filed applications for 36 temporary or final extreme risk protection orders between Jan. 1 and June 22. In 2022, the number of those applications during that same time period has soared to 146 — including 85 over the past two months
  - TERPOs are usually granted, but the cases are being dismissed because troopers and investigators filing the applications appear without attorneys and are instructed by State Police not to make legal arguments at the ERPO hearing (they are not aware of rules of evidence and conducting examinations)
- Orange County Sup. Ct. wrote a letter to AG's office stating that he would inform AG when State Police file an ERPO application (Justice Craig Stephen Brown)
- AG's office initially said it would not represent State Police in these civil matters, but indicated this position might change
- Some DAs will represent police in these proceedings
- County Attorneys' offices may also represent petitioners in civil proceedings

# June 6, 2022 Legislation Summary

- CPLR § 6340(2) - Adds licensed physicians, therapist, social workers and similar professionals to petition for an ERPO provided professional has treated the individual in the preceding 6 months
- CPLR § 6341 – a police officer or D.A. must file a petition after receiving credible information that someone is likely to cause serious harm as defined under MHL Section 9.39(a)(1) & (2)
- CPLR § 6348 – allows health care providers who file a ERPO petition to disclose protected health information of the person to the extent necessary to fully investigate and decide on the ERPO
- Executive Law § 214-h – The state police must develop and disseminate a written policy, procedure, and educational materials regarding filing an ERPO and police officers' related duties



# June 6, 2022 Legislation Summary cont'd

- Executive Law § 840(i) – The Municipal Police Training Council must develop and disseminate a written policy, procedure, and educational materials regarding filing an ERPO and related duties
- Penal Law § 400.00(1)(j) – prohibits the issuance or renewal of a firearm license to those who have been the subject of a report made pursuant to MHL § 9.46
- Mental Hygiene Law § 9.46(a) – adds the following to “mental health professional” definition: psychiatrist, LMSC, LMHC, clinical nurse specialist, NP, LCMFT, and licensed professional nurse



# Practical Issues and Examples

- Weapons in the home controversies
- Resources for Enforcement
  - DA in King County WA has a team that helps residents and law enforcement file orders and ensure guns are taken after orders approved
  - Suffolk County example of robust Red Flag enforcement (Gov. Hochul spoke in August 2022 in Suffolk County to bring attention to strong enforcement efforts by Suffolk County)
    - Can CA's offices help?
- Nassau County Police v. M.B.

# Current Data

- Court System tracks Red Flag Orders, but not number of denied applications
- We obtained data from OCA regarding ERPOs Issued (see Appendix A)

# Questions?

- Jared Kasschau (JKasschau@HarrisBeach.com)
- Kevin Kearon (kkearon@barketepstein.com)

# APPENDIX A: OCA ERPO DATA

NYS Unified Court System, Division of Technology & Court Research  
Statewide  
Extreme Risk Protection Orders Issued  
Between 8/25/2019 & 10/1/2022

Court Name	Final Order of Protection	Distinct Count of People w/ Final OP	Temp. Order of Protection	Distinct Count of People w/ Temp. OP	Total Count (Final + Temp)	Distinct Count of People w/ any type of OP
<b>Statewide</b>	<b>1,410</b>	<b>1,346</b>	<b>2,050</b>	<b>1,844</b>	<b>3,460</b>	<b>1,968</b>
Albany County Supreme Court	30	30	35	32	65	32
Bronx County Supreme Court, Civil Term	1	1	0	0	1	1
Broome County Supreme Court	45	43	65	52	110	53
Cattaraugus County Supreme Court (M-B)	5	5	7	7	12	8
Cayuga County Supreme Court (M-B)	8	8	9	8	17	12
Chautauqua County Supreme Court	12	12	17	16	29	18
Chemung County Supreme Court (M-B)	7	7	8	8	15	8
Chenango County Supreme Court (M-B)	20	19	21	20	41	20
Clinton County Supreme Court (M-B)	14	13	16	16	30	17
Columbia County Supreme Court (M-B)	9	7	18	17	27	19
Cortland County Supreme Court (M-B)	16	15	17	16	33	16
Delaware County Supreme Court (M-B)	19	18	18	18	37	19
Dutchess County Supreme Court	28	27	56	50	84	55
Erie County Supreme Court	50	49	77	69	127	72
Essex County Supreme Court (M-B)	8	8	16	12	24	12
Franklin County Supreme Court (M-B)	16	15	23	17	39	17
Fulton County Supreme Court (M-B)	18	18	21	20	39	22
Genesee County Supreme Court (M-B)	9	8	10	10	19	10
Greene County Supreme Court	8	8	12	12	20	14
Herkimer County Supreme Court (M-B)	41	39	43	43	84	48
Jefferson County Supreme Court	37	35	51	49	88	51
Kings County Supreme Court, Civil Term	3	3	5	5	8	5
Lewis County Supreme Court (M-B)	9	8	9	9	18	10

\* Data does not include extensions of orders.

\*\* More than one order can be issued to an individual (e.g., multiple temporary orders or a temporary order followed by a final order). Use 'Distinct' columns for count of individuals.

NYS Unified Court System, Division of Technology & Court Research  
Statewide  
Extreme Risk Protection Orders Issued  
Between 8/25/2019 & 10/1/2022

Court Name	Final Order of Protection	Distinct Count of People w/ Final OP	Temp. Order of Protection	Distinct Count of People w/ Temp. OP	Total Count (Final + Temp)	Distinct Count of People w/ any type of OP
Livingston County Supreme Court (M-B)	13	11	22	18	35	19
Madison County Supreme Court (M-B)	27	27	34	28	61	32
Monroe County Supreme Court	21	21	31	29	52	32
Montgomery County Supreme Court	9	7	14	10	23	10
Nassau County Supreme Court	28	26	41	35	69	37
Niagara County Supreme Court	9	9	10	10	19	12
Oneida County Supreme Court	52	51	86	70	138	72
Onondaga County Supreme Court	77	75	131	108	208	110
Ontario County Supreme Court (M-B)	6	6	14	14	20	15
Orange County Supreme Court	45	43	85	81	130	85
Orleans County Supreme Court (M-B)	3	3	2	2	5	3
Oswego County Supreme Court	63	61	70	65	133	81
Otsego County Supreme Court (M-B)	18	18	23	22	41	22
Putnam County Supreme Court	6	6	10	10	16	10
Queens County Supreme Court, Civil Term	2	2	6	4	8	4
Rensselaer County Supreme Court	15	15	23	20	38	23
Richmond County Supreme Court, Civil Term	6	6	12	10	18	10
Rockland County Supreme Court	53	53	72	67	125	81
Saratoga County Supreme Court	18	18	25	25	43	25
Schenectady County Supreme Court	8	8	12	11	20	12
Schoharie County Supreme Court (M-B)	5	5	9	9	14	11
Schuyler County Supreme Court (M-B)	1	1	2	2	3	2
Seneca County Supreme Court (M-B)	2	2	3	3	5	3

\* Data does not include extensions of orders.

\*\* More than one order can be issued to an individual (e.g., multiple temporary orders or a temporary order followed by a final order). Use 'Distinct' columns for count of individuals.

# APPENDIX A: OCA ERPO DATA cont'd

**NYS Unified Court System, Division of Technology & Court Research  
Statewide**

**Extreme Risk Protection Orders Issued  
Between 8/25/2019 & 10/1/2022**

<b>Court Name</b>	<b>Final Order of Protection</b>	<b>Distinct Count of People w/ Final OP</b>	<b>Temp. Order of Protection</b>	<b>Distinct Count of People w/ Temp. OP</b>	<b>Total Count (Final + Temp)</b>	<b>Distinct Count of People w/ any type of OP</b>
St. Lawrence County Supreme Court	7	7	11	9	18	9
Steuben County Supreme Court (M-B)	25	25	34	29	59	33
Suffolk County Supreme Court	304	293	463	444	767	453
Sullivan County Supreme Court (M-B)	36	17	52	25	88	25
Tioga County Supreme Court (M-B)	5	5	8	6	13	7
Tompkins County Supreme Court (M-B)	15	15	11	11	26	17
Ulster County Supreme Court	20	20	38	34	58	36
Warren County Supreme Court (M-B)	18	16	20	16	38	21
Washington County Supreme Court (M-B)	31	29	39	38	70	40
Wayne County Supreme Court (M-B)	11	11	13	12	24	13
Westchester County Supreme Court	34	34	63	54	97	57
Wyoming County Supreme Court (M-B)	1	1	1	1	2	1
Yates County Supreme Court (M-B)	3	3	6	6	9	6



# APPENDIX B: NYS Unified Court System Application for a Temporary Extreme Risk Protection Order



New York State Unified Court System

## Application for a Temporary Extreme Risk Protection Order

Reset Form

[nycourts.gov](http://nycourts.gov)

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[nycourthelp.gov](http://nycourthelp.gov)

Supreme Court

County

Petitioner (applying party)	Index Number:
-against- Respondent (against party)	

The petitioner, being a:

- Police Officer, as defined in CPL § 1.20; or
- District Attorney with jurisdiction in the county or city where the respondent resides; or
- Family or household member of the respondent, as defined in Social Services Law § 459-a(2)<sup>1</sup>; or
- Principal or other chief school officer or their designee named in writing of any school in which the respondent is currently enrolled or has been enrolled in the past six months; or
- Licensed physician, licensed psychiatrist, licensed psychologist, registered nurse, licensed clinical social worker, certified clinical nurse specialist, certified nurse practitioner, licensed clinical marriage and family therapist, registered professional nurse, licensed master social worker or licensed mental health counselor and having treated the respondent within the previous six months.

Residing or doing business at:

Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Cell: \_\_\_\_\_  
 Email: \_\_\_\_\_

<sup>1</sup> Social Services Law 459-a(2): "Family or household members" mean the following individuals: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; (e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; (f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time . . . ; or (g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.



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Petitioner alleges that the above-named respondent **is likely to engage in conduct that would result in serious harm to self or others** as defined in MHL § 9.39(a)<sup>2</sup> and petitions the Court to issue a temporary extreme risk protection order against the respondent pursuant to CPLR § 6342 based upon the facts and circumstances set forth in the following sworn application justifying the issuance of the order, to wit: Petitioner believes that the respondent is likely to engage in conduct that would result in serious harm to self or others because the respondent has engaged in, exhibited, or committed the following behavior(s) or act(s) [*check **all** that apply*]:

- A threat or act of violence or use of physical force directed toward self, the petitioner, or another person;
- A violation or alleged violation of an Order of Protection;
- A pending charge or conviction for an offense involving the use of a weapon;
- The reckless use, display or brandishing of a firearm, rifle or shotgun;
- A history of a violation of an Extreme Risk Protection Order;
- Evidence of recent or ongoing abuse of controlled substances or alcohol;
- Evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor;
- Other [*specify **any** other relevant factors the Court should consider*]:

### Facts and Circumstances

Please provide specific facts and circumstances justifying the issuance of an extreme risk protection order:

<sup>2</sup> MHL 9.39(a): "Likelihood to result in serious harm" as used in this article shall mean: 1. substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the respondent is dangerous to him/herself, or 2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

# APPENDIX B: NYS Unified Court System Application for a Temporary Extreme Risk Protection Order cont'd

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### Respondent's Age

The respondent's date of birth is \_\_\_\_\_ and age at the time the above act(s) allegedly occurred was: \_\_\_\_\_; or if exact age is not known, the respondent's approximate age at the time the above act(s) allegedly occurred was: \_\_\_\_\_.

### Time Elapsed

The above act(s) allegedly occurred:

- Less than six months ago; or
- More than six months ago.

### Respondent's Location

The respondent currently is located, resides, or may be contacted at:

Current Location: \_\_\_\_\_  
 Home Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Cell: \_\_\_\_\_  
 Email: \_\_\_\_\_

#### [Optional: check and complete this section only if applicable]

- The petitioner offers the following attached documents in support of this application for an extreme risk protection order.

**NOTE:** List each attached document with a brief description. Attach additional sheets if necessary:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

- The petitioner requests that attachment(s) numbered \_\_\_\_\_ be filed under seal as they contain medical, mental health, or other sensitive records and information.

- The petitioner requests that attachment(s) numbered \_\_\_\_\_ be filed under seal or, in the alternative, with all personally identifiable information redacted to prevent an unreasonable risk to the physical safety of those affiants, witnesses, and other non-parties named therein.

#### [Optional: check and complete this section only if applicable]

- The petitioner knows or has reason to believe that the respondent owns, possesses or has access to a firearm, rifle or shotgun, and the following is a complete listing and description of **ALL** firearms, rifles and shotguns known or believed to be owned, possessed or accessible to the respondent and the respective location of each firearm, rifle or shotgun.<sup>3</sup>

<sup>3</sup> For the purposes of this listing, the term "possession," as defined in PL § 10.00(8), means to have "physical possession or otherwise to exercise dominion or control."

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**NOTE:** Be as specific as possible regarding the description and location of the weapons and attach additional sheets if necessary:

TYPE	MAKE	MODEL	CALIBER	SERIAL NUMBER	PHYSICAL LOCATION (be specific)
<input type="radio"/> firearm					
<input type="radio"/> rifle					
<input type="radio"/> shotgun					
<input type="radio"/> firearm					
<input type="radio"/> rifle					
<input type="radio"/> shotgun					
<input type="radio"/> firearm					
<input type="radio"/> rifle					
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<input type="radio"/> firearm					
<input type="radio"/> rifle					
<input type="radio"/> shotgun					

#### [Optional: check and complete this section only if applicable]

- Pursuant to CPLR § 6342(8), the petitioner requests that the court direct a search of the respondent's:

- person
- premises: \_\_\_\_\_
- vehicle: \_\_\_\_\_

for firearms, rifles and shotguns and the seizure any such weapons found pursuant to said search in a manner consistent with the procedures set forth in article 690 of the criminal procedure law.

Statement of Reasonable Cause:

- The petitioner further requests that the court authorize the search to be executed:

- at any time of the day or night
- without notice of the officer's authority or purpose

Statement of Reasonable Cause:

# APPENDIX B: NYS Unified Court System Application for a Temporary Extreme Risk Protection Order cont'd

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**[Optional: check only if applicable]**

- Disclosure of petitioner's address or contact information would pose an unreasonable risk to petitioner's health or safety, and petitioner hereby requests that the Court order the confidentiality and redaction of petitioner's address and contact information from any papers served upon or provided to the respondent pursuant to CPLR §6342(6)(a).
- Disclosure of petitioner's name would pose an unreasonable risk to petitioner's health or safety, and petitioner hereby requests that the Court order the case caption to reflect that petitioner's name is anonymous and to redact petitioner's name from any papers served upon or provided to the respondent.

\_\_\_\_\_  
Signature of Petitioner

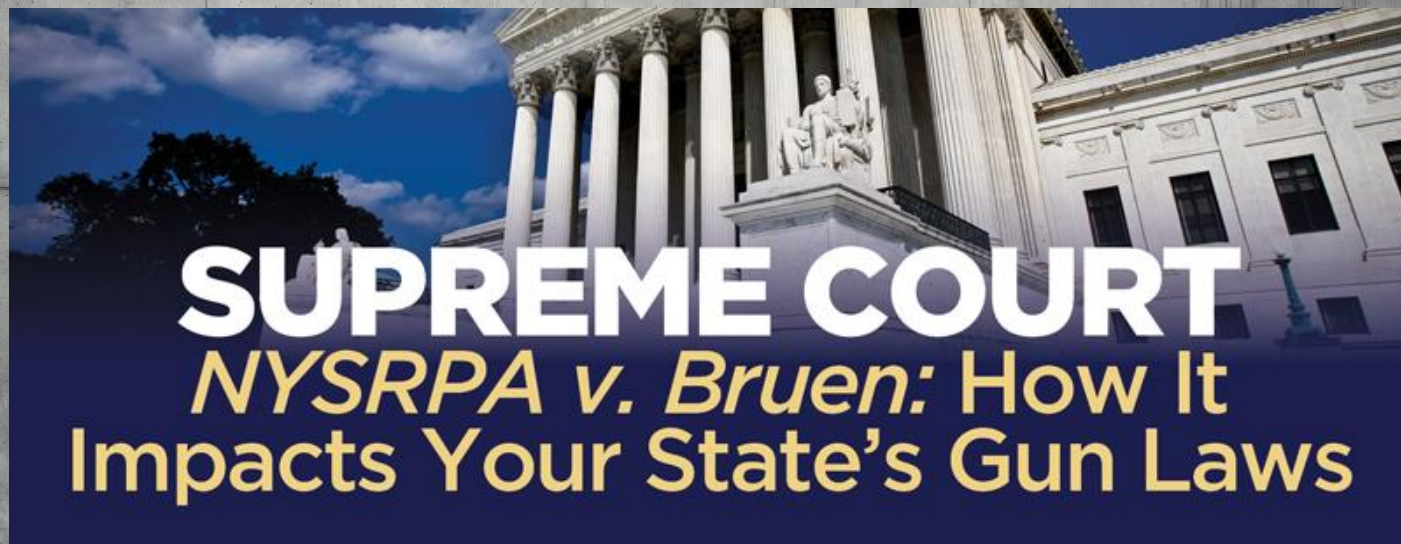
Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Justice of the Supreme Court or Notary Public

Print Form

[https://www.nycourts.gov/legacypdfs/forms/erpo/Application\\_Temporary\\_ERPO\\_\(UCS-6341\)\\_fillable.pdf](https://www.nycourts.gov/legacypdfs/forms/erpo/Application_Temporary_ERPO_(UCS-6341)_fillable.pdf)





# NYSRPA V. BRUEN— Effects in New York

Jack Prochner  
Mary Johnson  
Liz Gomiela



**ST. JOHN'S**  
UNIVERSITY  
SCHOOL OF LAW

# The Second Amendment

**"A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed."**

- **Prefatory clause**
- **Operative clause**

# District of Columbia v. Heller (2008)

- **Issue**: DC prohibition on handguns in the home.
- First time the Court recognized the 2nd Amendment as a matter of **individualized right**.
- **Majority (Scalia)**: Right to self-defense, unconnected with militia service
  - Textual analysis – prefatory clause announces a purpose; does not limit the operative clause
  - "Right of the people" = an individual right (not a collective right)
  - Confirmed by historical background – defense against tyranny
  - Not an unlimited right (limitations – mentally ill, felons, sensitive areas, conditions on sale)

# McDonald v. City of Chicago (2010)

- Identical issue to *Heller*, but now a state issue. (DC is federal jurisdiction)
- Incorporation Doctrine
- Plurality (Alito):
  - "Deep roots in history and tradition. . . one of the fundamental rights of Englishmen."
  - No reason to selectively incorporate other rights but not this one. (Not a second-class right)
  - 14th Amendment makes the Bill of Rights equally as effective against the States.

# New York State Rifle & Pistol Ass'n, Inc. v. Bruen (2022)

- **Issue:** Proper cause requirement for concealed carry in public settings (in 6 states, including NY)
  - "Proper cause" = a demonstration of special need for self-protection distinguishable from that of the general community.
- **Background:** Appellate Courts have applied "means-end scrutiny" after *Heller* and *McDonald*.
  - If a "core" 2A right is burdened, apply strict scrutiny.
  - Otherwise, apply intermediate scrutiny.

# New York State Rifle & Pistol Ass'n, Inc. v. Bruen (2022)

- 6-3 decision (partisan split)
- Majority (Thomas):
  - Permissible only if consistent with history and tradition
  - *Heller* and *McDonald* do not support applying a means-end analysis (burden on State to prove consistency with tradition)
  - Analysis of historical sources dating back to the 13th century affirms *Heller* (NY is a historical outlier)
  - No special need required for other rights contained in the Bill of Rights

## **New York State Rifle & Pistol Ass'n, Inc. v. Bruen (2022)**

- **Notable dissent (Breyer):**
  - Criticizes the majority's "history only" approach
  - Majority ignores evidentiary record of mass shootings
  - NY regulation would survive strict scrutiny in a means-end analysis
  - Complex problems best left to legislatures to solve

## What Has Stayed the same in New York Law post *Bruen*

- New York does **not allow** handguns to be carried openly at all, and that restriction was not challenged in the case.





## What Has Stayed the same in New York Law post *Bruen*

*Bruen* does not undo the licensing requirements, e.g., fingerprinting, background checks, and training, that existed in NY and many states to possess a firearm, nor does it repeal the prohibitions that exist under federal and state law regarding who is qualified to possess a firearm.



## What changed in NY post Bruen:

**New York Penal Law § 400.00(2)(f)** that had origins of over a century old was struck down as **unconstitutional**. 400.00(2)(f) required an individual to prove “**proper cause**” existed before a license would be issued for that person to carry a concealed pistol or revolver in public.

- The “proper cause” licensing requirement has been interpreted to mean that a person must demonstrate a special need for self-protection that is distinguished from that of the general community.
- The Bruen court held that this “proper cause” requirement violated the 14th Amendment because it prevented law-abiding citizens who have ordinary self-defense needs from exercising their 2nd Amendment right to keep and bear arms.

## What else changed in NY post Bruen:

### New York Concealed Carry Improvement Act ("CCIA")

**On July 1, 2022, Governor Hochul signed legislation expanding restrictions on access to guns.**

**More restrictions for those seeking conceal carry permit:**

- Firearm training
- In person interview
- Written exam
- Character references
- Disqualifying criteria expanded:
  - Documented instances of violence
  - Certain misdemeanor convictions
  - Recent drug treatment

## What else changed in NY post Bruen:

### New York Concealed Carry Improvement Act ("CCIA")

#### **CCIA Restricts firearms in "sensitive places"**

- Who this restriction does and does not apply to is under debate (see Antonyuk v. Hochul)
- Violation for unlawful possession in sensitive place (Class E felony)

#### **CCIA Enhances safe storage requirements**

- Extends to vehicles (lockbox)
- Home (safe storage age raised from 16 to 18)

#### **No concealed carry on Private Property / Businesses is Default**

(Unless expressly allowed by property owners)

#### **Ammunition Purchases**

Background checks now required

#### **Body Armor Amendment**

Purchase and sale prohibitions encompasses broader array of protective equipment

**However, portions of the CCIA remain under dispute.**

**Since the passing of the CCIA, multiple lawsuits have been filed by groups claiming their 2nd Amendment right to bear arms has been violated.**

On November 4th, Judge Sinatra of the W.D.N.Y. issued a preliminary injunction, blocking the enforcement of the CCIA's provision which prohibited concealed carry in places of worship.

On November 22nd, Judge Sinatra issued another preliminary injunction, this time blocking the private property exclusion. Additionally, Judge Sinatra has requested supplemental briefing regarding the concealed carry ban in public parks and on public transportation. He will decide these issues on a future date.

**However, portions  
of the CCIA  
remain under  
dispute.**

**On November 7th, Judge Suddaby of the  
N.D.N.Y. issued a preliminary injunction  
against many of the Act's provisions and  
requirements, including:**

- the concealed carry ban in places of worship and several other "sensitive locations,"
- the good moral character provision,
- the requirement applicants turn over a list of family members and co-habitants, and
- the requirement applicants turn over their social media accounts.

# What lies ahead for NY Gun laws?

**On November 15th, the Second Circuit has granted an interim stay on Judge Sudabby's ruling while the state appeals the preliminary injunction.**

The stay will remain in effect until a panel of Second Circuit judges hears the case. Until then, New Yorker's will have to abide by the CCIA's requirements despite Judge Suddaby's ruling.

As more decisions make their way before the Court of Appeals, the Second Circuit will have to consider each lower court's rulings and historical tests. It could be a while before New York has a uniform ruling on these gun laws.





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NY CLS Family Ct Act § 828



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**NY CLS Family Ct Act § 828****Copy Citation**

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[New York Consolidated Laws Service](#) [Family Court Act \(Arts. 1 – 12\)](#) [Article 8 Family Offenses Proceedings \(Pts. 1 – 4\)](#) [Part 2 Preliminary Procedure \(§§ 821 – 828\)](#)

**§ 828. Temporary order of protection; temporary orders for child support and spousal maintenance.****1.**

(a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection, which may contain any of the provisions authorized on the making of an order of protection under [section eight hundred forty-two](#), provided that the court shall make a determination, and the court shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons.

(b) Upon the filing of a petition under this article, or as soon thereafter as the petitioner appears before the court, the court shall advise the petitioner of the right to proceed in both the family and criminal courts, pursuant to the provisions of [section one hundred fifteen](#) of this act.

**2.** A temporary order of protection is not a finding of wrongdoing.

**3.** The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court, pursuant to [section eight hundred twenty-seven](#) of this article.

**4.** Notwithstanding the provisions of [section eight hundred seventeen](#) of this article the court may, together with a temporary order of protection issued pursuant to this section, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of [section four hundred thirteen](#) of this act. An order making such award shall be deemed to have been issued pursuant to article four of this act. Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in [section fifty-two hundred forty-one of the civil practice law and rules](#).

**5.** Notwithstanding the provisions of [section eight hundred seventeen](#) of this article, where a temporary order of spousal support has not already been issued, the court may, in addition to the issuance of a temporary order of protection pursuant to this section, issue an order directing the parties to appear within seven business days of the issuance of the

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**NY CLS CPL § 530.12**

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**New York Consolidated Laws Service Criminal Procedure Law (Pts. ONE – THREE) Part THREE Special Proceedings and Miscellaneous Procedures (Titles P – U) Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment (Arts. 500 – 540) Article 530 Orders of Recognizance or Bail With Respect to Defendants in Criminal Actions and Proceedings—When and by What Courts Authorized (§§ 530.10 – 530.80)**

**§ 530.12. Protection for victims of family offenses.**

**1.** When a criminal action is pending involving a complaint charging any crime or violation between spouses, former spouses, parent and child, or between members of the same family or household, as members of the same family or household are defined in subdivision one of [section 530.11](#) of this article, the court, in addition to any other powers conferred upon it by this chapter may issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of any order of recognizance or bail or an adjournment in contemplation of dismissal.

**(a)** In addition to any other conditions, such an order may require the defendant:

- (1)** to stay away from the home, school, business or place of employment of the family or household member or of any designated witness, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this paragraph, provided further, however, that failure to make such a determination shall not affect the validity of such temporary order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons;
- (2)** to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (3)** to refrain from committing a family offense, as defined in subdivision one of [section 530.11](#) of this article, or any criminal offense against the child or against the family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;
- (4)** to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health;
- (5)** to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this chapter, the family court act or the domestic relations law;
- (6)**
  - (A)** to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household.
  - (B)** "Companion animal", as used in this section, shall have the same meaning as in subdivision five of [section three hundred fifty of the agriculture and markets law](#);



**(7)**

**(A)** to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may: (i) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (ii) specify the manner in which such return shall be accomplished.

**(B)** For purposes of this subparagraph, "identification document" shall mean any of the following: (i) exclusively in the name of the protected party: birth certificate, passport, social security card, health insurance or other benefits card, a card or document used to access bank, credit or other financial accounts or records, tax returns, any driver's license, and immigration documents including but not limited to a United States permanent resident card and employment authorization document; and (ii) upon motion and after notice and an opportunity to be heard, any of the following, including those that may reflect joint use or ownership, that the court determines are necessary and are appropriately transferred to the protected party: any card or document used to access bank, credit or other financial accounts or records, tax returns, and any other identifying cards and documents;

**(8)**

**(A)** to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

**(B)** For purposes of this subparagraph, "connected device" shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address.

**(b)** The court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

**2.** Notwithstanding any other provision of law, a temporary order of protection issued or continued by a family court pursuant to section eight hundred thirteen of the family court act shall continue in effect, absent action by the appropriate criminal court pursuant to subdivision three of this section, until the defendant is arraigned upon an accusatory instrument filed pursuant to section eight hundred thirteen of the family court act in such criminal court.

**3.** The court may issue a temporary order of protection ex parte upon the filing of an accusatory instrument and for good cause shown. When a family court order of protection is modified, the criminal court shall forward a copy of such modified order to the family court issuing the original order of protection; provided, however, that where a copy of the modified order is transmitted to the family court by facsimile or other electronic means, the original copy of such modified order and accompanying affidavit shall be forwarded immediately thereafter.

**3-a.** Emergency powers when family court not in session; issuance of temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis issue a temporary order of protection pending a hearing in family court, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of this chapter, is submitted: (i) alleging that the family court is not in session; (ii) alleging that a family offense, as defined in subdivision one of section eight hundred twelve of the family court act and subdivision one of section 530.11 of this article, has been committed; (iii) alleging that a family offense petition has been filed or will be filed in family court on the next day the court is in session; and (iv) showing good cause. Upon appearance in a local criminal court, the petitioner shall be advised that he or she may continue with the proceeding either in family court or upon the filing of a local criminal court accusatory instrument in criminal court or both. Upon issuance of a temporary order of protection where petitioner requests that it be returnable in family court, the local criminal court shall transfer the matter forthwith to the family court and shall make the matter returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the order. The local criminal court, upon issuing a temporary order of protection returnable in family court pursuant to this subdivision, shall immediately forward, in a manner designed to insure arrival before the return date set in the order, a copy of the temporary order of protection and sworn affidavit to the family court and shall provide a copy of such temporary order of protection to the petitioner; provided, however, that where a copy of the temporary order of protection and affidavit are transmitted to the family court by facsimile or other electronic means, the original order and affidavit shall be forwarded to the family court immediately thereafter. Any temporary order of protection issued pursuant to this subdivision shall be issued to the respondent, and copies shall be filed as required in subdivisions six and eight of this section for orders of protection issued pursuant to this section. Any temporary order of protection issued pursuant to this subdivision shall plainly state the date that such order expires which, in the case of an order returnable in family court, shall be not more than four calendar days after its issuance, unless sooner vacated or modified by the family court. A petitioner requesting a temporary order of protection returnable in family court pursuant to this subdivision in a case in which a family court petition has not been filed shall be informed that such temporary order of protection shall expire as provided for herein, unless the petitioner files a petition pursuant to subdivision one of section eight hundred twenty-one of the family court act on or before the return date in family court and the family court issues a temporary order of protection or order of protection as authorized under article eight of the family court act. Nothing in this subdivision shall limit or restrict the



petitioner's right to proceed directly and without court referral in either a criminal or family court, or both, as provided for in [section one hundred fifteen of the family court act](#) and [section 100.07](#) of this chapter.

**3-b.** Emergency powers when family court not in session; modifications of orders of protection or temporary orders of protection. Upon the request of the petitioner, a local criminal court may on an ex parte basis modify a temporary order of protection or order of protection which has been issued under article four, five, six or eight of the family court act pending a hearing in family court, provided that a sworn affidavit verified in accordance with subdivision one of [section 100.30](#) of this chapter is submitted: (i) alleging that the family court is not in session and (ii) showing good cause, including a showing that the existing order is insufficient for the purposes of protection of the petitioner, the petitioner's child or children or other members of the petitioner's family or household. The local criminal court shall make the matter regarding the modification of the order returnable in family court on the next day the family court is in session, or as soon thereafter as practicable, but in no event more than four calendar days after issuance of the modified order. The court shall immediately forward a copy of the modified order, if any, and sworn affidavit to the family court and shall provide a copy of such modified order, if any, and affidavit to the petitioner; provided, however, that where copies of such modified order and affidavit are transmitted to the family court by facsimile or other electronic means, the original copies of such modified order and affidavit shall be forwarded to the family court immediately thereafter. Any modified temporary order of protection or order of protection issued pursuant to this subdivision shall be issued to the respondent and copies shall be filed as required in subdivisions six and eight of this section for orders of protection issued pursuant to this section.

**4.** The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant for the arrest of defendant. Such temporary order of protection may continue in effect until the day the defendant subsequently appears in court pursuant to such warrant or voluntarily or otherwise.







**5.** [Eff until Sept 1, 2023] Upon sentencing on a conviction for any crime or violation between spouses, between a parent and child, or between members of the same family or household as defined in subdivision one of [section 530.11](#) of this article, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and: (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a felony sexual assault, as provided in subparagraph (iii) of paragraph (a) of subdivision three of [section 65.00 of the penal law](#), in which case, ten years from the date of such sentencing, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a misdemeanor sexual assault, as provided in subparagraph (ii) of paragraph (b) of subdivision three of [section 65.00 of the penal law](#), in which case, six years from the date of such sentencing, or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant:

**5.** [Eff Sept 1, 2023] Upon sentencing on a conviction for any crime or violation between spouses, between a parent and child, or between members of the same family or household as defined in subdivision one of [section 530.11](#) of this article, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant:

**(a)** to stay away from the home, school, business or place of employment of the family or household member, the other spouse or the child, or of any witness designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this paragraph, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to

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**New York Consolidated Laws Service Criminal Procedure Law (Pts. ONE — THREE) Part THREE Special Proceedings and Miscellaneous Procedures (Titles P — U) Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment (Arts. 500 — 540) Article 530 Orders of Recognizance or Bail With Respect to Defendants in Criminal Actions and Proceedings—When and by What Courts Authorized (§§ 530.10 — 530.80)**

**§ 530.13. Protection of victims of crimes, other than family offenses.**

1. When any criminal action is pending, and the court has not issued a temporary order of protection pursuant to [section 530.12](#) of this article, the court, in addition to the other powers conferred upon it by this chapter, may for good cause shown issue a temporary order of protection in conjunction with any securing order or an adjournment in contemplation of dismissal. In addition to any other conditions, such an order may require that the defendant:

(a) stay away from the home, school, business or place of employment of the victims of, or designated witnesses to, the alleged offense;

(b) refrain from harassing, intimidating, threatening or otherwise interfering with the victims of the alleged offense and such members of the family or household of such victims or designated witnesses as shall be specifically named by the court in such order;

(c)

1. to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by such victim or victims or a minor child residing in such victim's or victims' household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of [section three hundred fifty of the agriculture and markets law](#);

(d)

1. to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

2. For purposes of this paragraph, "connected device" shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address. In addition to the foregoing provisions, the court may issue an order, pursuant to [section two hundred twenty-seven-c of the real property law](#), authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to [section two hundred twenty-seven-c of the real property law](#).

2. The court may issue a temporary order of protection under this section ex parte upon the filing of an accusatory instrument and for good cause shown.

3. The court may issue or extend a temporary order of protection under this section ex parte simultaneously with the issuance of a warrant for the arrest of the defendant. Such temporary order of protection may continue in effect until the day the defendant subsequently appears in court pursuant to such warrant or voluntarily or otherwise.

4. [Eff until Sept 1, 2023] Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and; (A) in the case of a felony conviction, shall not exceed the greater of: (i) eight years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a felony sexual assault, as provided in subparagraph (iii) of paragraph (a) of subdivision three of section 65.00 of the penal law, in which case, ten years from the date of such sentencing, or (ii) eight years from the date of the expiration of the maximum term of an indeterminate or the term of a determinate sentence of imprisonment actually imposed; or (B) in the case of a conviction for a class A misdemeanor, shall not exceed the greater of: (i) five years from the date of such sentencing, except where the sentence is or includes a sentence of probation on a conviction for a misdemeanor sexual assault, as provided in subparagraph (ii) of paragraph (b) of subdivision three of section 65.00 of the penal law, in which case, six years from the date of such sentencing or (ii) five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

4. [Eff Sept 1, 2023] Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

**(a)** stay away from the home, school, business or place of employment of the victim or victims, or of any witness designated by the court, of such offense;

**(b)** refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such order;

**(c)**

1. to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by such victim or victims or a minor child residing in such victim's or victims' household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law;

**(d)**

1. to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

2. For purposes of this paragraph, "connected device" shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address.

5. The court shall inquire as to the existence of any other orders of protection between the defendant and the person or persons for whom the order of protection is sought. An order of protection issued under this section shall plainly state the date that such order expires. Orders of protection issued to protect victims of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, shall be on uniform statewide forms that shall be promulgated by the chief administrator of the courts in a manner to ensure the compatibility of such forms with the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law. A copy of an order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, or four of this section shall be filed by the clerk of the court with the sheriff's office in the county in which such victim or victims reside, or, if the victim or victims reside within a city, with the police department of such city. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the victim or victims at the appropriate





years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed; or (C) in the case of a conviction for any other offense, shall not exceed the greater of: (i) two years from the date of sentencing, or (ii) two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

**4.** [Eff Sept 1, 2023] Upon sentencing on a conviction for any offense, where the court has not issued an order of protection pursuant to [section 530.12](#) of this article, the court may, in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions such an order may require that the defendant:

**(a)** stay away from the home, school, business or place of employment of the victim or victims, or of any witness designated by the court, of such offense;

**(b)** refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such order;

**(c)**

**1.** to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by such victim or victims or a minor child residing in such victim's or victims' household.

**2.** "Companion animal", as used in this section, shall have the same meaning as in subdivision five of [section three hundred fifty of the agriculture and markets law](#);

**(d)**

**1.** to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

**2.** For purposes of this paragraph, "connected device" shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address.

**5.** The court shall inquire as to the existence of any other orders of protection between the defendant and the person or persons for whom the order of protection is sought. An order of protection issued under this section shall plainly state the date that such order expires. Orders of protection issued to protect victims of domestic violence, as defined in [section four hundred fifty-nine-a of the social services law](#), shall be on uniform statewide forms that shall be promulgated by the chief administrator of the courts in a manner to ensure the compatibility of such forms with the statewide registry of orders of protection and warrants established pursuant to [section two hundred twenty-one-a of the executive law](#). A copy of an order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, or four of this section shall be filed by the clerk of the court with the sheriff's office in the county in which such victim or victims reside, or, if the victim or victims reside within a city, with the police department of such city. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the victim or victims at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided.

**6.** In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the victim and the defendant and defense counsel and to any other person affected by the order, a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or department of corrections and community supervision where the individual is







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issued under this section shall not affect a pending criminal action, nor reduce or diminish a sentence upon conviction for any other crimes or offenses.

**8.** If a defendant is brought before the court for failure to obey any lawful order issued under this section and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke an order of recognizance, release under non-monetary conditions or bail and commit the defendant to custody; or

(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody or impose or increase bail pending a trial of the original crime or violation; or

(c) revoke a conditional discharge in accordance with [section 410.70](#) of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation in accordance with [section 410.70](#) of this chapter and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

**9.** The chief administrator of the courts shall promulgate appropriate uniform temporary order of protection and order of protection forms to be used throughout the state.

## History

Add, L 1981, ch 575, § 1, eff Sept 1, 1981; amd, L 1984, ch 388, § 2, eff Sept 1, 1984; L 1985, ch 672, § 4; L 1986, ch 620, § 2, eff Nov 1, 1986; L 1986, ch 794, § 2, eff Nov 1, 1986; [L 1990, ch 454, § 2](#); [L 1995, ch 3, § 37](#), eff Oct 1, 1995; [L 1997, ch 589, § 2](#), eff Sept 17, 1997; [L 1998, ch 610, § 2](#), eff Oct 6, 1998; [L 2001, ch 384, §§ 3, 4](#), eff Nov 1, 2001; [L 2002, ch 462, § 1](#), eff Nov 18, 2002; [L 2006, ch 215, § 2](#), eff Aug 25, 2006; [L 2006, ch 253, § 9](#), eff July 26, 2006; [L 2007, ch 137, § 1](#), eff July 3, 2007; add, [L 2007, ch 616, § 2](#), eff Oct 1, 2007; [L 2008, ch 56, § 6](#) (Part D), eff April 23, 2008; [L 2009, ch 476, § 13](#), eff Dec 15, 2009; [L 2011, ch 9, §§ 3, 4](#), eff May 13, 2011; [L 2011, ch 62, § 82](#) (Part C, Subpart B), eff March 31, 2011; [L 2015, ch 240, § 2](#), effective October 22, 2015; [L 2019, ch 59, §§ 13, 14](#) (Part JJJ), effective January 1, 2020; [L 2020, ch 261, §§ 9, 9-a](#), effective November 11, 2020.

### ▼ Annotations

## Notes

### Editor's Notes

**Laws 1995, ch 3, § 74, sub d**, eff June 10, 1995, provides as follows:

§ 74. This act shall take effect immediately; provided, however, that:

d. Sections one-a through twenty, twenty-four through twenty-eight, thirty through thirty-nine, forty-two, forty-three and forty-four of this act shall be deemed repealed on September 1, 2023 (Amd, [L 2005, ch 56, § 20](#) (Part D), eff April 12, 2005, deemed eff on and after April 1, 2005; [L 2009, ch 56, § 21](#) (Part U), eff April 1, 2009; [L 2011, ch 57, § 20](#) (Part A), eff March 31, 2011; [L 2013, ch 55, § 19](#) (Part E), eff March 28, 2013; [L 2015, ch 55, § 19](#) (Part B), eff April 13, 2015; [L 2017, ch 55, § 19](#) (Part A), eff April 20, 2017; [L 2019, ch 55, § 19](#) (Part O), eff April 12, 2019, deemed eff on and after March 31, 2019; [L 2020, ch 55, § 19](#) (Part A), eff April 3, 2020; [L 2021, ch 55, § 19](#) (Part A), eff April 19, 2021).

**Laws 1998, ch 610, § 3**, eff Oct 6, 1998, provides as follows:

§ 3. This act shall take effect immediately and shall apply to orders of protection issued on and after such date.



**NY CLS CPL § 530.14****Copy Citation**

Current through 2022 released Chapters 1-581

**New York Consolidated Laws Service Criminal Procedure Law (Pts. ONE — THREE) Part THREE Special Proceedings and Miscellaneous Procedures (Titles P — U) Title P Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court—Recognizance, Bail and Commitment (Arts. 500 — 540) Article 530 Orders of Recognizance or Bail With Respect to Defendants in Criminal Actions and Proceedings—When and by What Courts Authorized (§§ 530.10 — 530.80).**

**§ 530.14.** Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms; order to seize firearms.

**1.** Suspension of firearms license and ineligibility for such a license upon issuance of temporary order of protection.

Whenever a temporary order of protection is issued pursuant to subdivision one of section 530.12 or subdivision one of section 530.13 of this article the court shall inquire of the defendant and the prosecutor as to the existence and location of any firearm, rifle or shotgun reasonably believed to be owned or possessed by the defendant, and the prosecutor will make reasonable efforts to obtain such information regarding the same and present it to the court and:

**(a)** the court shall suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms, rifles and shotguns owned or possessed where the court receives information that gives the court good cause to believe that (i) the defendant has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the defendant has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the defendant has a prior conviction for stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law;

**(b)** the court shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed; and

**(c)** the court shall where the defendant willfully refuses to surrender such firearm, rifle or shotgun pursuant to paragraphs (a) and (b) of this subdivision, or may for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of this part, consistent with such rights as the defendant may derive from this article or the constitution of this state or the United States.

**2.** Revocation or suspension of firearms license and ineligibility for such a license upon issuance of an order of protection. Whenever an order of protection is issued pursuant to subdivision five of section 530.12 or subdivision four of section 530.13 of this article the court shall inquire of the defendant and the prosecutor as to the existence and location of any firearm, rifle or shotgun reasonably believed to be owned or possessed by the defendant, and the prosecutor will make reasonable efforts to obtain such information regarding the same and present it to the court and:

**(a)** the court shall revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms, rifles and shotguns owned or possessed where such





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suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed; and (c) the court shall where the defendant willfully refuses to surrender such firearm, rifle or shotgun pursuant to paragraphs (a) and (b) of this subdivision, or may for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of this part, consistent with such rights as the defendant may derive from this article or the constitution of this state or the United States.

**3.** Revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a defendant has been found pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article to have willfully failed to obey an order of protection issued by a court of competent jurisdiction in this state or another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to subdivision eleven of section 530.12 or subdivision eight of section 530.13 of this article the court shall inquire of the defendant and the prosecutor as to the existence and location of any firearm, rifle or shotgun reasonably believed to be owned or possessed by the defendant, and the prosecutor will make reasonable efforts to obtain such information regarding the same and present it to the court and:

(a) the court shall revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender of any or all firearms, rifles and shotguns owned or possessed where the willful failure to obey such order involved (i) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law;

(b) the court shall where the court finds a substantial risk that the defendant may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed or (ii) suspend any such existing license possessed by the defendant, order the defendant ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed; and

(c) the court shall where the defendant willfully refuses to surrender such firearm, rifle or shotgun pursuant to paragraphs (a) and (b) of this subdivision, or may for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of this part, consistent with such rights as the defendant may derive from this article or the constitution of this state or the United States.

**4.** Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

**5.** Surrender. (a) Where an order to surrender one or more firearms, rifles and shotguns has been issued, the temporary order of protection or order of protection shall specify the place where such weapons shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such weapons to be surrendered, and shall direct the authority receiving such surrendered weapons to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms, rifles or shotguns pursuant to a court order issued pursuant to this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such weapons, including weapons ordered to be seized pursuant to this section and section eight hundred forty-two-a of the family court act, shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law; provided, however, that upon termination of any suspension order issued pursuant to this section or section eight hundred forty-two-a of the family court act, upon written application of the subject of the order, with notice and opportunity to be heard to the district attorney, the county attorney, the protected party, and every licensing officer responsible for issuance of a firearms 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





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(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all firearms, rifles and shotguns owned or possessed by a defendant pursuant to sections 530.12 or 530.13 of this article.

(d) If any other person demonstrates that such person is the lawful owner of any weapon taken into custody pursuant to this section or section eight hundred forty-two-a of the family court act, and provided that the court has made a written finding that there is no legal impediment to the person's possession of such a weapon, such court shall direct that such weapon be returned to such lawful owner.

#### 6. Notice.

(a) Where an order requiring surrender, revocation, suspension, seizure or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the defendant is ineligible for such license, as the case may be, and that the defendant is prohibited from possessing any firearm, rifle or shotgun.

(b) The court revoking or suspending the license, ordering the defendant ineligible for such a license, or ordering the surrender or seizure of any firearm, rifle or shotgun shall immediately notify the duly constituted police authorities of the locality concerning such action and, in the case of orders of protection and temporary orders of protection issued pursuant to section 530.12 of this article, shall immediately notify the statewide registry of orders of protection.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such a license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility, surrender or seizure is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The defendant shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility, surrender or seizure order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection or the timely arraignment of a defendant in custody.

## History

Add, L 1996, ch 644, § 3, eff Nov 1, 1996; amd, L 1998, ch 597, § 13, eff Dec 22, 1998; L 1999, ch 635, § 4, eff Dec 1, 1999; L 2000, ch 434, § 1, eff Oct 20, 2000; L 2007, ch 198, § 1, eff Aug 2, 2007; L 2013, ch 1, §§ 13-15, eff March 16, 2013; L 2018, ch 60, § 4, effective June 11, 2018; L 2020, ch 55, §§ 3-7 (Part M)., effective November 1, 2020; L 2022, ch 576, §§ 1-3, effective October 18, 2022; L 2022, ch 577, §§ 1-3, effective October 18, 2022.

### ▼ Annotations

#### Notes

##### Editor's Notes

Laws 1999, ch 635, §§ 1, 2 and 17, eff Dec 1, 1999, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the "clinic access and anti-stalking act of 1999."

§ 2. Legislative intent. The legislature finds and declares that criminal stalking behavior, including threatening, violent or other criminal conduct has become more prevalent in New York state in recent years. The unfortunate reality is that stalking victims have been intolerably forced to live in fear of their stalkers. Stalkers who repeatedly follow, phone, write, confront, threaten or otherwise unacceptably intrude upon their victims, often inflict



## **Temporary Orders of Protection and Firearms**

**Bill Number:** S6443B/A8105B. Chapter Number: 577.

Passed Senate: May 9, 2022; Passed Assembly: June 4, 2022; Gov. Signed: October 18, 2022.

Effective: October 18, 2022.

Amends the opening paragraphs of subdivisions 1, 2, and 3 of §530.14 of the Criminal Procedure Law.

Amends the opening paragraphs of subdivisions 1, 2, and 3 of §842-a of the Family Court Act.

### **Requires courts to inquire about the presence of firearms when granting temporary orders of protection**

- Requires criminal or family court judges to inquire of the defendant and the prosecutor or the respondent and the protected party as to the existence and location of a firearm, rifle or shotgun owned or possessed by the defendant upon issuance of a temporary order of protection.
- Prosecutor will make reasonable efforts to obtain the information and present it to the court.

# STATE OF NEW YORK

6443--B

Cal. No. 470

2021-2022 Regular Sessions

## IN SENATE

April 28, 2021

Introduced by Sens. MAYER, GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the criminal procedure law and the family court act, in relation to orders of protection

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

1 Section 1. The opening paragraph of subdivision 1 of section 530.14 of  
2 the criminal procedure law, as amended by chapter 60 of the laws of  
3 2018, is amended to read as follows:

4 Suspension of firearms license and ineligibility for such a license  
5 upon issuance of temporary order of protection. Whenever a temporary  
6 order of protection is issued pursuant to subdivision one of section  
7 530.12 or subdivision one of section 530.13 of this article the court  
8 shall inquire of the defendant and the prosecutor as to the existence  
9 and location of any firearm, rifle or shotgun reasonably believed to be  
10 owned or possessed by the defendant, and the prosecutor will make  
11 reasonable efforts to obtain such information regarding the same and  
12 present it to the court and:

13 § 2. The opening paragraph of subdivision 2 of section 530.14 of the  
14 criminal procedure law, as amended by chapter 60 of the laws of 2018, is  
15 amended to read as follows:

16 Revocation or suspension of firearms license and ineligibility for  
17 such a license upon issuance of an order of protection. Whenever an  
18 order of protection is issued pursuant to subdivision five of section

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

LBD10477-08-2

1 530.12 or subdivision four of section 530.13 of this article the court  
2 shall inquire of the defendant and the prosecutor as to the existence  
3 and location of any firearm, rifle or shotgun reasonably believed to be  
4 owned or possessed by the defendant, and the prosecutor will make  
5 reasonable efforts to obtain such information regarding the same and  
6 present it to the court and:

7 § 3. The opening paragraph of subdivision 3 of section 530.14 of the  
8 criminal procedure law, as amended by chapter 60 of the laws of 2018, is  
9 amended to read as follows:

10 Revocation or suspension of firearms license and ineligibility for  
11 such a license upon a finding of a willful failure to obey an order of  
12 protection. Whenever a defendant has been found pursuant to subdivision  
13 eleven of section 530.12 or subdivision eight of section 530.13 of this  
14 article to have willfully failed to obey an order of protection issued  
15 by a court of competent jurisdiction in this state or another state,  
16 territorial or tribal jurisdiction, in addition to any other remedies  
17 available pursuant to subdivision eleven of section 530.12 or subdivi-  
18 sion eight of section 530.13 of this article the court shall inquire of  
19 the defendant and the prosecutor as to the existence and location of any  
20 firearm, rifle or shotgun reasonably believed to be owned or possessed  
21 by the defendant, and the prosecutor will make reasonable efforts to  
22 obtain such information regarding the same and present it to the court  
23 and:

24 § 4. The opening paragraph of subdivision 1 of section 842-a of the  
25 family court act, as amended by chapter 60 of the laws of 2018, is  
26 amended to read as follows:

27 Suspension of firearms license and ineligibility for such a license  
28 upon the issuance of a temporary order of protection. Whenever a tempo-  
29 rary order of protection is issued pursuant to section eight hundred  
30 twenty-eight of this article, or pursuant to article four, five, six,  
31 seven or ten of this act the court shall inquire of the respondent and,  
32 outside of the presence of the respondent, the petitioner or, if the  
33 petitioner is not the protected party, any party protected by such  
34 order, if the court has reason to believe that such petitioner or  
35 protected party would have actual knowledge or reason to know such  
36 information, as to the existence and location of any firearm, rifle or  
37 shotgun owned or possessed by the respondent and:

38 § 5. The opening paragraph of subdivision 2 of section 842-a of the  
39 family court act, as amended by chapter 60 of the laws of 2018, is  
40 amended to read as follows:

41 Revocation or suspension of firearms license and ineligibility for  
42 such a license upon the issuance of an order of protection. Whenever an  
43 order of protection is issued pursuant to section eight hundred forty-  
44 one of this part, or pursuant to article four, five, six, seven or ten  
45 of this act the court shall inquire of the respondent and, outside of  
46 the presence of the respondent, the petitioner or, if the petitioner is  
47 not the protected party, any party protected by such order, if the court  
48 has reason to believe that such petitioner or protected party would have  
49 actual knowledge or reason to know such information, as to the existence  
50 and location of any firearm, rifle or shotgun owned or possessed by the  
51 respondent and:

52 § 6. The opening paragraph of subdivision 3 of section 842-a of the  
53 family court act, as amended by chapter 60 of the laws of 2018, is  
54 amended to read as follows:

55 Revocation or suspension of firearms license and ineligibility for  
56 such a license upon a finding of a willful failure to obey an order of



1 protection or temporary order of protection. Whenever a respondent has  
2 been found, pursuant to section eight hundred forty-six-a of this part  
3 to have willfully failed to obey an order of protection or temporary  
4 order of protection issued pursuant to this act or the domestic  
5 relations law, or by this court or by a court of competent jurisdiction  
6 in another state, territorial or tribal jurisdiction, in addition to any  
7 other remedies available pursuant to section eight hundred forty-six-a  
8 of this part the court shall inquire of the respondent and, outside the  
9 presence of the respondent, the petitioner or, if the petitioner is not  
10 the protected party, any party protected by such order, if the court has  
11 reason to believe that such petitioner or protected party would have  
12 actual knowledge or reason to know such information, as to the existence  
13 and location of any firearm, rifle or shotgun owned or possessed by the  
14 respondent and:

15 § 7. This act shall take effect immediately.

BILL NUMBER: S6443B

SPONSOR: MAYER

TITLE OF BILL:

An act to amend the criminal procedure law and the family court act, in relation to orders of protection

PURPOSE:

To protect victims of domestic violence by requiring criminal or family court judges to inquire as to the defendant's or respondent's possession of a firearm when orders of protection are issued.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1. Amends the opening paragraph of subdivision 1 of section 530.14 of the Criminal Procedure Law by requiring the court to inquire of the defendant and the prosecutor as to the existence and location of a firearm owned or possessed by the defendant upon issuance of a temporary order of protection.

Section 2. of Amends the opening paragraph of subdivision 2 of section 530.14 of the Criminal Procedure Law by requiring the court to inquire of the defendant and the prosecutor as to the existence and location of a firearm owned or possessed by the defendant upon issuance of a temporary order of protection.

Section 3. Amends the opening paragraph of subdivision 3 of section 530.14 of the Criminal Procedure Law by requiring the court to inquire of the defendant and the prosecutor as to the existence and location of a firearm owned or possessed by the defendant upon issuance of a temporary order of protection.

Section 4. Amends the opening paragraph of subdivision 1 of section 842-a of the Family Court Act by requiring the court to inquire of the respondent and the protected party as to the existence and location of a firearm owned or possessed by the defendant upon issuance of a temporary order of protection.

Section 5. Amends the opening paragraph of subdivision 2 of section 842-a of the Family Court Act by requiring the court to inquire of the respondent and the protected party as to the existence and location of a firearm owned or possessed by the defendant upon issuance of a temporary order of protection.

Section 6. Amends the opening paragraph of subdivision 3 of section 842-a of the Family Court Act by requiring the court to inquire of the respondent and the protected party as to the existence and location of a firearm owned or possessed by the defendant upon issuance of a temporary order of protection.

Section 7. Sets the effective date.

JUSTIFICATION:

Current law provides for revocation or suspension of firearms licenses, ineligibility for such licenses, and surrender (and in some cases, seizure) of firearms upon issuance of orders of protection. However,

the statutes do not require the court to actually inquire as to the existence and location of any firearms owned or possessed by the defendant or respondent. Currently, some judges do make such an inquiry, while others do not. Posing the question helps flush out the existence of firearms when disclosure may have otherwise been avoided. Accordingly, this bill will help ensure that judges have information they need to make the decisions already required by existing statutes by mandating that this inquiry be made on issuance of orders of protection or upon willful failure to obey previous orders. Courts will then have, as a matter of record, disclosure regarding the existence and location of any and all firearms owned or possessed by a defendant or respondent in these matters.

PRIOR LEGISLATIVE HISTORY:

2021: Passed Senate

2013-14: S34 (Enacting clause stricken)

2011-12: S.1003-A

2009-10: A.4320-A/S.1647-A (Passed Assembly)

2007-08: A.1497/S.4416 (Passed Assembly)

2005-06: A.2404/S.1929 (Passed Assembly)

2004:A.6820 (Passed Assembly)

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately and shall apply to orders of protection issued on or after the date of effectiveness.

CHAPTER 577

1 AN ACT to amend the criminal procedure law and the family court act, in  
2 relation to orders of protection

3  
4 Became a law October 18, 2022, with the approval of the Governor.  
5 Passed by a majority vote, three-fifths being present.  
6

7 The People of the State of New York, represented in Senate and Assem-  
8 bly, do enact as follows:  
9

10 Section 1. The opening paragraph of subdivision 1 of section 530.14 of  
11 the criminal procedure law, as amended by chapter 60 of the laws of  
12 2018, is amended to read as follows:

13 Suspension of firearms license and ineligibility for such a license  
14 upon issuance of temporary order of protection. Whenever a temporary  
15 order of protection is issued pursuant to subdivision one of section  
16 530.12 or subdivision one of section 530.13 of this article the court  
17 shall inquire of the defendant and the prosecutor as to the existence  
18 and location of any firearm, rifle or shotgun reasonably believed to be  
19 owned or possessed by the defendant, and the prosecutor will make  
20 reasonable efforts to obtain such information regarding the same and  
21 present it to the court and:

22 § 2. The opening paragraph of subdivision 2 of section 530.14 of the  
23 criminal procedure law, as amended by chapter 60 of the laws of 2018, is  
24 amended to read as follows:

25 Revocation or suspension of firearms license and ineligibility for  
26 such a license upon issuance of an order of protection. Whenever an  
27 order of protection is issued pursuant to subdivision five of section  
28 530.12 or subdivision four of section 530.13 of this article the court  
29 shall inquire of the defendant and the prosecutor as to the existence  
30 and location of any firearm, rifle or shotgun reasonably believed to be  
31 owned or possessed by the defendant, and the prosecutor will make  
32 reasonable efforts to obtain such information regarding the same and  
33 present it to the court and:

34 § 3. The opening paragraph of subdivision 3 of section 530.14 of the  
35 criminal procedure law, as amended by chapter 60 of the laws of 2018, is  
36 amended to read as follows:

37 Revocation or suspension of firearms license and ineligibility for  
38 such a license upon a finding of a willful failure to obey an order of  
39 protection. Whenever a defendant has been found pursuant to subdivision  
40 eleven of section 530.12 or subdivision eight of section 530.13 of this  
41 article to have willfully failed to obey an order of protection issued  
42 by a court of competent jurisdiction in this state or another state,  
43 territorial or tribal jurisdiction, in addition to any other remedies  
44 available pursuant to subdivision eleven of section 530.12 or subdivi-  
45 sion eight of section 530.13 of this article the court shall inquire of  
46 the defendant and the prosecutor as to the existence and location of any  
47 firearm, rifle or shotgun reasonably believed to be owned or possessed  
48 by the defendant, and the prosecutor will make reasonable efforts to  
49

50 EXPLANATION--Matter in italics is new; matter in brackets [-] is old law  
51 to be omitted.

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2

3 obtain such information regarding the same and present it to the court  
4 and:

5 § 4. The opening paragraph of subdivision 1 of section 842-a of the

6 family court act, as amended by chapter 60 of the laws of 2018, is  
7 amended to read as follows:

8 Suspension of firearms license and ineligibility for such a license  
9 upon the issuance of a temporary order of protection. Whenever a tempo-  
10 rary order of protection is issued pursuant to section eight hundred  
11 twenty-eight of this article, or pursuant to article four, five, six,  
12 seven or ten of this act the court shall inquire of the respondent and,  
13 outside of the presence of the respondent, the petitioner or, if the  
14 petitioner is not the protected party, any party protected by such  
15 order, if the court has reason to believe that such petitioner or  
16 protected party would have actual knowledge or reason to know such  
17 information, as to the existence and location of any firearm, rifle or  
18 shotgun owned or possessed by the respondent and:

19 § 5. The opening paragraph of subdivision 2 of section 842-a of the  
20 family court act, as amended by chapter 60 of the laws of 2018, is  
21 amended to read as follows:

22 Revocation or suspension of firearms license and ineligibility for  
23 such a license upon the issuance of an order of protection. Whenever an  
24 order of protection is issued pursuant to section eight hundred forty-  
25 one of this part, or pursuant to article four, five, six, seven or ten  
26 of this act the court shall inquire of the respondent and, outside of  
27 the presence of the respondent, the petitioner or, if the petitioner is  
28 not the protected party, any party protected by such order, if the court  
29 has reason to believe that such petitioner or protected party would have  
30 actual knowledge or reason to know such information, as to the existence  
31 and location of any firearm, rifle or shotgun owned or possessed by the  
32 respondent and:

33 § 6. The opening paragraph of subdivision 3 of section 842-a of the  
34 family court act, as amended by chapter 60 of the laws of 2018, is  
35 amended to read as follows:

36 Revocation or suspension of firearms license and ineligibility for  
37 such a license upon a finding of a willful failure to obey an order of  
38 protection or temporary order of protection. Whenever a respondent has  
39 been found, pursuant to section eight hundred forty-six-a of this part  
40 to have willfully failed to obey an order of protection or temporary  
41 order of protection issued pursuant to this act or the domestic  
42 relations law, or by this court or by a court of competent jurisdiction  
43 in another state, territorial or tribal jurisdiction, in addition to any  
44 other remedies available pursuant to section eight hundred forty-six-a  
45 of this part the court shall inquire of the respondent and, outside the  
46 presence of the respondent, the petitioner or, if the petitioner is not  
47 the protected party, any party protected by such order, if the court has  
48 reason to believe that such petitioner or protected party would have  
49 actual knowledge or reason to know such information, as to the existence  
50 and location of any firearm, rifle or shotgun owned or possessed by the  
51 respondent and:

52 § 7. This act shall take effect immediately.

3 The Legislature of the STATE OF NEW YORK ss:

4 Pursuant to the authority vested in us by section 70-b of the Public  
5 Officers Law, we hereby jointly certify that this slip copy of this  
6 session law was printed under our direction and, in accordance with such  
7 section, is entitled to be read into evidence.

8  
9 ANDREA STEWART-COUSINS  
10 Temporary President of the Senate

CARL E. HEASTIE  
Speaker of the Assembly