

**A10502 Rules (Cahill) Same as S 9113-A SKOUFIS**

## Civil Practice Law and Rules

TITLE. ..Authorizes certain health care providers to file an application for an extreme risk protection order against a person examined by such health care provider in certain circumstances

05/30/22 referred to codes

06/02/22 reported referred to rules

06/02/22 reported

06/02/22 rules report cal.667

06/02/22 substituted by s9113a

**S09113 SKOUFIS AMEND=A**

05/09/22 REFERRED TO JUDICIARY

05/30/22 AMEND (T) AND RECOMMIT TO JUDICIARY

05/30/22 PRINT NUMBER 9113A

06/02/22 COMMITTEE DISCHARGED AND COMMITTED TO RULES

06/02/22 ORDERED TO THIRD READING CAL.1868

06/02/22 PASSED SENATE

06/02/22 DELIVERED TO ASSEMBLY

06/02/22 referred to codes

06/02/22 substituted for a10502

06/02/22 ordered to third reading rules cal.667

06/02/22 passed assembly

06/02/22 returned to senate

06/03/22 DELIVERED TO GOVERNOR

06/06/22 SIGNED CHAP.208

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RULES COM (Request of Cahill, O'Donnell, Simon, Jacobson, Burgos, Otis, Griffin, Burdick, Carroll, Glick, Solages, Dinowitz, Cymbrowitz, L. Rosenthal, Ramos, McMahon, Walker, Benedetto, Fernandez, Lavine, Abinanti, Darling, Bichotte Hermelyn, J. Rivera, Peoples-Stokes, Meeks)

Amd §§6340 & 6341, add §6348, CPLR; add §214-h, amd §840, Exec L; amd §400.00, Pen L; amd §9.46, Ment Hyg L

Authorizes the filing of an application for an extreme risk protection order by a 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 who has examined the person against whom the order is sought.

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# STATE OF NEW YORK

10502

## IN ASSEMBLY

May 30, 2022

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

AN ACT to amend the civil practice law and rules, the executive law, the penal law and the mental hygiene law, in relation to authorizing certain health care providers to file an application for an extreme risk protection order against a person who was examined by such health care provider in certain circumstances

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

1 Section 1. Subdivision 2 of section 6340 of the civil practice law and  
2 rules, as added by chapter 19 of the laws of 2019, is amended to read as  
3 follows:

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

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

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1 er, school nurse, or other school personnel required to hold a teaching  
2 or administrative license or certificate, and full or part-time compen-  
3 sated school employee required to hold a temporary coaching license or  
4 professional coaching certificate.

5 § 2. Section 6341 of the civil practice law and rules, as added by  
6 chapter 19 of the laws of 2019, is amended to read as follows:

7 § 6341. Application for an extreme risk protection order. In accord-  
8 ance with this article, a petitioner may file an application, which  
9 shall be sworn, and accompanying supporting documentation, setting forth  
10 the facts and circumstances justifying the issuance of an extreme risk  
11 protection order. Provided, however, that a petitioner who is a police  
12 officer or district attorney shall file such application upon the  
13 receipt of credible information that an individual is likely to engage  
14 in conduct that would result in serious harm to himself, herself or  
15 others, as defined in paragraph one or two of subdivision (a) of section  
16 9.39 of the mental hygiene law, unless such petitioner determines that  
17 there is no probable cause for such filing. Such application and  
18 supporting documentation shall be filed in the supreme court in the  
19 county in which the respondent resides. The chief administrator of the  
20 courts shall adopt forms that may be used for purposes of such applica-  
21 tions and the court's consideration of such applications. Such applica-  
22 tion form shall include inquiry as to whether the petitioner knows, or  
23 has reason to believe, that the respondent owns, possesses or has access  
24 to a firearm, rifle or shotgun and if so, a request that the petitioner  
25 list or describe such firearms, rifles and shotguns, and the respective  
26 locations thereof, with as much specificity as possible.

27 § 3. The civil practice law and rules is amended by adding a new  
28 section 6348 to read as follows:

29 § 6348. Protections for health care providers applying for an extreme  
30 risk protection order. 1. (a) Notwithstanding the privileges set forth  
31 in article forty-five of this chapter, or any other provision of law to  
32 the contrary, a health care provider authorized under paragraph (d) of  
33 subdivision two of section sixty-three hundred forty of this article to  
34 file an application for an extreme risk protection order against a  
35 person such health care provider has examined shall, upon filing any  
36 application for an extreme risk protection order, be authorized to  
37 disclose protected health information, of the person against whom such  
38 order is sought as are necessary for the full investigation and disposi-  
39 tion of such application for an extreme risk protection order under this  
40 article. When disclosing protected health information, such health care  
41 provider shall make reasonable efforts to limit protected health infor-  
42 mation to the minimum necessary to accomplish the filing of the applica-  
43 tion.

44 (b) Upon receipt of a petition by any health care provider identified  
45 in paragraph (a) of this subdivision and for good cause shown, the court  
46 may issue orders as may be necessary to obtain any records or documents  
47 relating to diagnosis, prognosis or treatment, and clinical records, of  
48 the patient against whom the order is sought as are necessary for the  
49 full investigation and disposition of an application for an extreme risk  
50 protection order under this article. All such records and other health  
51 information provided shall be sealed by the court.

52 2. The decision of any health care provider described in subdivision  
53 one of this section to disclose or not to disclose records or documents  
54 relating to the diagnosis, prognosis or treatment, and clinical records  
55 of a patient under paragraphs (a) and (b) of subdivision one of this  
56 section, when made reasonably and in good faith, shall not be the

1 basis for any civil or criminal liability with respect to such health  
2 care provider.

3 § 4 The executive law is amended by adding a new section 214-h to read  
4 as follows:

5 § 214-h. Extreme risk protection orders. The superintendent shall  
6 for all members of the division of state police, including new and  
7 veteran officers, develop, maintain and disseminate written policies and  
8 procedures and educational materials regarding the availability of and  
9 procedure for filing extreme risk protection orders under article  
10 sixty-three-A of the civil practice law and rules, including the  
11 requirements for police officers under section six thousand forty-one of  
12 such law.

13 § 5. Paragraphs (g) and (h) of subdivision 3 of section 840 of the  
14 executive law, paragraph (g) as amended and paragraph (h) as added by  
15 section 5 of part Q of chapter 56 of the laws of 2009, are amended and a  
16 new paragraph (i) is added to read as follows:

17 (g) Develop, maintain and disseminate, in consultation with the state  
18 division of human rights and the state civil service department, written  
19 policies and procedures to enhance police and correctional officer  
20 recruitment efforts and to increase police and correctional officer  
21 awareness of racial, ethnic, religious and gender differences, and other  
22 diversity issues, in communities served by such police and in correc-  
23 tional facilities; ~~and~~

24 (h) Consult with the state commission of correction regarding correc-  
25 tional training programs~~+~~; and

26 (i) Develop, maintain and disseminate written policies and procedures  
27 and educational materials regarding the availability of and procedure  
28 for filing extreme risk protection orders under article sixty-three-A of  
29 the civil practice law and rules, including the requirements for police  
30 officers under section six thousand forty-one of such article, appropri-  
31 ately instruct any agency that employs police or peace officers regard-  
32 ing article sixty-three-A of the civil practice law and rules.

33 § 6. Paragraph (j) of subdivision 1 of section 400.00 of the penal  
34 law, as amended by chapter 1 of the laws of 2013, is amended to read as  
35 follows:

36 (j) who has not been involuntarily committed to a facility under the  
37 jurisdiction of an office of the department of mental hygiene pursuant  
38 to article nine or fifteen of the mental hygiene law, article seven  
39 hundred thirty or section 330.20 of the criminal procedure law, section  
40 four hundred two or five hundred eight of the correction law, section  
41 322.2 or 353.4 of the family court act, ~~or~~ has not been civilly  
42 confined in a secure treatment facility pursuant to article ten of the  
43 mental hygiene law, or has not been the subject of a report made pursu-  
44 ant to section 9.46 of the mental hygiene law;

45 § 7. Subdivision (a) of section 9.46 of the mental hygiene law, as  
46 added by chapter 1 of the laws of 2013, is amended to read as follows:

47 (a) For purposes of this section, the term "mental health profes-  
48 sional" shall include a physician, psychiatrist, psychologist, regis-  
49 tered nurse ~~or~~, licensed clinical social worker, licensed master  
50 social worker, licensed mental health counselor, clinical nurse  
51 specialist, certified nurse practitioner, licensed clinical marriage and  
52 family therapist, or a licensed professional nurse.

53 § 8. This act shall take effect on the thirtieth day after it shall  
54 have become a law.

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A10502

**SPONSOR:** Rules (Cahill)

**TITLE OF BILL:**

An act to amend the civil practice law and rules, the executive law, the penal law and the mental hygiene law, in relation to authorizing certain health care providers to file an application for an extreme risk protection order against a person who was examined by such health care provider in certain circumstances

**PURPOSE OR GENERAL IDEA OF THE BILL:**

This legislation authorizes additional healthcare providers to apply for an extreme risk protection order of someone whom they recently examined and believe are likely to harm themselves or others.

**SUMMARY OF SPECIFIC PROVISIONS:**

Section 1: amends Subdivision 2 of section 6340 of the civil practice law and rules, by adding a list of various medical professions.

Section 2: amends Section 6341 of the civil practice law and rules, regarding a police officer or district attorney, upon being presented with credible evidence, being required to file an application for an extreme risk protection order.

Section 3: amends the civil practice law and rules by adding a new section 6348, Protections for healthcare providers applying for an extreme risk protection order.

Section 4: amends the executive law is amended by adding a new section 214-h, Extreme risk protection orders.

Section 5: amends subdivision 3 of section 840 of the executive law by adding a new paragraph (i), concerning the development and dissemination of policies and procedures for police and peaceofficers.

Section 6: amends the penal law section 400.00, subdivision 1, paragraph (j), concerning licenses and persons whom has not been subject of a report made pursuant to section 9.46 of the mental hygiene law.

Section 7: amends mental hygiene law section 9.46, subdivision (a), regarding the list of professionals.

Section 8: This act shall take effect on the thirtieth day after it shall have become a law.

**JUSTIFICATION:**

In the wake of the horrific tragedy in Buffalo, there has been a focus on the mental health of an individual who could commit such an act of senseless violence. New York can help prevent potential tragedies from occurring, by authorizing additional health care providers to file an application for an extreme risk protection order (ERPO) against a person whom they have recently examined and have reason to believe may be likely to harm themselves or others. Although New York has had ERPOs available since 2019, this procedure failed to prevent the act of domestic terrorism that took the lives of ten innocent victims at a supermarket in Buffalo, injured three more, and has left permanent scars on a community. It is essential we update New York's red flag law procedures so that additional health care practitioners who assist the public are able to fairly assess health needs can also request an ERPO.

It is also vitally important to have and disseminate the red flag law policies, procedures, and education materials to New York's police agencies so that we can bring attention to services and orders of protection available. If no one is aware of the services or protections that are available, they could go unnoticed and unused. We must do everything in our power to avoid another tragedy.

#### PRIOR LEGISLATIVE HISTORY:

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT:

#### EFFECTIVE DATE:

This bill will take effect the thirtieth day after becoming law.