

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 5

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO DOMESTIC AFFAIRS; CREATING THE EXTREME RISK FIREARM PROTECTION ORDER ACT; PROVIDING FOR THE ISSUANCE OF COURT ORDERS TO REQUIRE THE RELINQUISHMENT OF FIREARMS FOR SOME PERIOD UNDER CERTAIN CIRCUMSTANCES; Sf1→~~INCREASING THE MAXIMUM LIABILITY FOR CLAIMS FILED PURSUANT TO THE TORT CLAIMS ACT~~←Sf1 Sf1→~~CLARIFYING DUTIES OF A LAW ENFORCEMENT OFFICER IN THE TORT CLAIMS ACT~~←Sf1; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

.217276.5AIC February 7, 2020 (4:33pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Extreme Risk Firearm Protection Order Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Extreme Risk Firearm Protection Order Act:

A. "court" means the district court in the county in which the respondent resides;

B. "extreme risk firearm protection order" means either a temporary extreme risk firearm protection order or a one-year extreme risk firearm protection order granted pursuant to the Extreme Risk Firearm Protection Order Act;

C. "firearm" means any weapon that is designed to expel a projectile by an explosion or the frame or receiver of any such weapon;

D. "law enforcement agency" means the police department of any city or town, the sheriff's office of any county, the New Mexico state police and a district attorney's office in the state and the office of the attorney general;

E. "law enforcement officer" means a public official or public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes and includes an attorney employed by a district attorney or the attorney general;

F. "one-year extreme risk firearm protection order" means an extreme risk firearm protection order granted for up to one year following a hearing pursuant to the provisions of Section 7 of the Extreme Risk Firearm Protection Order Act;

G. "petitioner" means a law enforcement officer who files an extreme risk firearm protection order petition;

H. "reporting party" means a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order and includes a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, person with whom a respondent has or had a continuing personal relationship, employer or public or private school Sf12→**principal**←Sf12 Sf12→**administrator**←Sf12;

I. "respondent" means the person identified in or subject to an extreme risk firearm protection order petition; and

J. "temporary extreme risk firearm protection order" means an extreme risk firearm protection order issued prior to a hearing pursuant to the provisions of Section 6 of the Extreme Risk Firearm Protection Order Act.

SECTION 3. [NEW MATERIAL] FORBEARANCE OF COSTS ASSOCIATED WITH EXTREME RISK FIREARM PROTECTION ORDERS.--A reporting party who requests that a petitioner seek an extreme risk firearm protection order shall not be required to bear the cost of:

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A. the filing, issuance or service of a petition for an extreme risk firearm protection order;

B. the filing, issuance or service of a warrant;

C. the filing, issuance or service of a witness subpoena;

D. service of an extreme risk firearm protection order;

E. obtaining law enforcement reports or photographs or copies of photographs relating to the allegations in the petition; or

F. any cost associated with the confiscation, storage or destruction of a firearm.

SECTION 4. [NEW MATERIAL] EXTREME RISK FIREARM PROTECTION ORDERS--VENUE.--Proceedings pursuant to the Extreme Risk Firearm Protection Order Act shall be filed, heard and determined in the district court for the county in which the respondent resides.

SECTION 5. [NEW MATERIAL] PETITION FOR EXTREME RISK FIREARM PROTECTION ORDER--CONTENTS.--

A. A petition for an extreme risk firearm protection order shall be filed only by a law enforcement officer employed by a law enforcement agency Sf15→, ~~other than a law enforcement agency that employs the respondent~~←Sf15 Sf15→; provided that, if the respondent is a law enforcement officer, the petition shall be filed by the district attorney

or the attorney general←Sf15.

B. A petitioner may file a petition with the court requesting an extreme risk firearm protection order that shall enjoin the respondent from having in the respondent's possession, custody or control any firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase, possess or receive any firearm while the order is in effect.

C. If a law enforcement officer declines to file a requested petition for an extreme risk firearm protection order, the law enforcement officer shall file with the sheriff of the county in which the respondent resides a notice that the law enforcement officer is declining to file a petition pursuant to this section.

D. A law enforcement officer shall file a petition for an extreme risk firearm protection order upon receipt of credible information from a reporting party that gives the agency or officer probable cause to believe that a respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.

E. A petition for an extreme risk firearm protection order shall state the specific statements, actions or facts that support the belief that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or

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by purchasing, possessing or receiving a firearm.

F. A petition for an extreme risk firearm protection order shall be made under oath and shall be accompanied by a sworn affidavit signed by the reporting party setting forth specific facts supporting the order.

G. A petition for an extreme risk firearm protection order shall include:

- (1) the name and address of the reporting party;
- (2) the name and address of the respondent;
- (3) a description of the number, types and locations of firearms or ammunition that the petitioner believes the respondent has custody of, controls, owns or possesses;
- (4) a description of the relationship between the reporting party and the respondent; and
- (5) a description of any lawsuit, complaint, petition, Sfl6→retraining←Sfl6 Sfl6→restraining←Sfl6 order, injunction or other legal action between the reporting party and the respondent.

SECTION 6. [NEW MATERIAL] PETITION FOR TEMPORARY EXTREME RISK FIREARM PROTECTION ORDER--TEMPORARY ORDERS--PROCEEDINGS.--

A. Upon the filing of a petition pursuant to the Extreme Risk Firearm Protection Order Act, the court may enter a temporary extreme risk firearm protection order if the court

finds from specific facts shown by the petition that there is probable cause to believe that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm before notice can be served and a hearing held.

B. If the court finds probable cause pursuant to Subsection A of this section, the court shall issue a temporary extreme risk firearm protection order enjoining the respondent from having in the respondent's possession, custody or control a firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase or receive a firearm while the order is in effect.

C. The court shall conduct a hearing within ten days of the issuance of a temporary extreme risk firearm protection order to determine if a one-year extreme risk firearm protection order should be issued pursuant to this section.

D. A temporary extreme risk firearm protection order shall include:

- (1) a statement of the grounds supporting the issuance of the order;
- (2) the date and time the order was issued;
- (3) a statement that the order shall continue until the earlier of ten days or such time as a court considers

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the petition at a hearing, unless an extension is granted at the request of the respondent pursuant to Subsection E of this section;

(4) the address of the court that issued the order and in which any responsive pleading should be filed; and

(5) the date and time of the scheduled hearing, to be held within ten days of the issuance of the order.

E. The court may continue the hearing at the request of the respondent, but the hearing shall be set within thirty days of the respondent's request for continuance.

F. A temporary extreme risk firearm protection order shall be served by the petitioner along with supporting documents that formed the basis of the order, the notice of hearing and the petition for a one-year extreme risk firearm protection order.

G. If the court declines to issue a temporary extreme risk firearm protection order, the court shall enter an order that includes the reasons for the denial.

SECTION 7. [NEW MATERIAL] HEARINGS ON PETITION--GROUNDS FOR ISSUANCE--CONTENTS OF ORDER.--In determining whether grounds for any extreme risk firearm protection order exist, the court shall consider, at a minimum, the following:

A. any recent act or threat of violence by the respondent against self or others, regardless of whether the

act or threat involved a firearm;

B. a pattern of acts or threats of violence by the respondent within the past twelve months, including acts or threats of violence against self or others;

C. the respondent's mental health history;

D. the respondent's abuse of controlled substances or alcohol;

E. the respondent's previous violations of any court order;

F. previous extreme risk firearm protection orders issued against the respondent;

G. the respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking;

H. the respondent's history of the use, attempted use or threatened use of physical violence against another person; of stalking another person; or of cruelty to animals; and

I. any recent acquisition or attempts at acquisition of a firearm by the respondent.

SECTION 8. [NEW MATERIAL] ONE-YEAR EXTREME RISK FIREARM PROTECTION ORDER--GROUNDS FOR ISSUANCE--CONTENTS OF ORDER--TERMINATION--EXPIRATION--RENEWAL OF ORDERS.--

A. If, after hearing the matter, the court finds

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Sf14→~~that there is probable cause to believe~~←Sf14 Sf14→by a
preponderance of the evidence←Sf14 that the respondent poses a
significant danger of causing imminent personal injury to self
or others by having in the respondent's custody or control or
by purchasing, possessing or receiving a firearm, the court
shall issue a one-year extreme risk firearm protection order.

B. A one-year extreme risk firearm protection order
shall include:

(1) a statement of the grounds supporting the
issuance of the order;

(2) the date and time the order was issued;

(3) the date and time the order expires;

(4) information pertaining to any
recommendation by the court for mental health or substance
abuse evaluations, if applicable;

(5) the address of the court that issued the
order; and

(6) notice that the respondent is entitled to
request termination of the order prior to the expiration of the
order.

C. If the court declines to issue a one-year
extreme risk firearm protection order, the court shall state in
writing the reasons for the court's denial and shall order the
return of any firearms to the respondent.

D. A respondent may request that the court

terminate a one-year extreme risk firearm protection order at any time prior to the expiration of the order.

E. At any time not less than one month prior to the expiration of a one-year extreme risk firearm protection order, a petitioner may petition the court to extend the order. Each extension of the order shall not exceed one year. A petition filed pursuant to this subsection shall comply with the provisions of Subsections E and F of Section 5 of the Extreme Risk Firearm Protection Order Act and shall be served on the respondent as provided in Section 9 of that act.

Sf12→**F. A one-year extreme risk firearm protection order is a final, immediately appealable order.**←Sf12

SECTION 9. [NEW MATERIAL] SERVICE OF EXTREME RISK FIREARM PROTECTION ORDERS.--A one-year extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act shall be personally served upon the respondent by the sheriff's office in the county in which the respondent resides; provided that if the respondent resides in a city or town that has a police department, the police department shall serve the order.

SECTION 10. [NEW MATERIAL] RELINQUISHMENT OF FIREARMS.--

A. A respondent who receives a temporary Sf13→**or one-year**←Sf13 extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody or control or subject to the respondent's possession, custody

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or control in a safe manner to a law enforcement officer, a law enforcement agency or a federal firearms licensee within forty-eight hours of service of the order Sfl4→**or sooner at the discretion of the court**←Sfl4.

B. A law enforcement officer, law enforcement agency or federal firearms Sfl3→**license**←Sfl3 Sfl3→**licensee**←Sfl3 that takes temporary possession of a firearm pursuant to this section shall:

(1) prepare a receipt identifying all firearms that have been relinquished or taken;

(2) provide a copy of the receipt to the respondent;

(3) provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearms;

(4) file the original receipt with the court that issued the temporary Sfl3→**or one-year**←Sfl3 extreme risk firearm protection order within seventy-two hours of taking possession of the firearms; and

(5) ensure that the law enforcement agency retains a copy of the receipt.

SECTION 11. [NEW MATERIAL] PENALTIES.--A person who fails to relinquish, or who possesses or has custody or control over, any firearm or who purchases, receives or attempts to purchase, possess or receive any firearm, in violation of a temporary

extreme risk firearm protection order or a one-year extreme risk firearm protection order is guilty of a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978.

SECTION 12. [NEW MATERIAL] EXTREME RISK FIREARM PROTECTION ORDER--REPORTING OF ORDERS--AVAILABILITY OF DATA.--

A. The clerk of the court shall provide a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act to any law enforcement agency designated to provide information to the national instant criminal background check system.

B. The clerk of the court shall forward a copy of any order issued, renewed or terminated pursuant to the Extreme Risk Firearm Protection Order Act to the petitioner and to the law enforcement agency specified in Subsection A of this section.

C. Upon receipt of a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order, the law enforcement agency specified in Subsection A of this section shall enter the order into:

(1) the national instant criminal background check system;

(2) all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and

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(3) all computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

D. An extreme risk firearm protection order shall remain in each state system for the period stated in the order. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The extreme risk firearm protection order shall be fully enforceable in any county, city or town in the state.

E. Upon the expiration of or upon receiving notice of the termination of an extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act, the law enforcement agency specified in Subsection A of this section shall promptly remove the order from any state computer-based system into which it was entered pursuant to Subsection C of this section and shall notify the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms.

F. Following the expiration or termination of an order issued pursuant to the Extreme Risk Firearm Protection Order Act and upon written request, the law enforcement agency specified in Subsection A of this section shall provide a sworn affidavit to the respondent affirming that the information

contained within the order has been removed from all state databases and systems identified in Subsection C of this section and any other state databases into which information about the order was entered and that the law enforcement agency has notified the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms. The affidavit shall be provided to the respondent within five days of the receipt of the request.

G. If any extreme risk firearm protection order is terminated before its expiration date, the clerk of the court shall forward a copy of the termination order to the office of the attorney general and the petitioner.

H. Aggregate statistical data indicating the number of extreme risk firearm protection orders issued, renewed, denied or terminated shall be maintained by the issuing court and the administrative office of the courts and shall be available to the public upon request.

SECTION 13. [NEW MATERIAL] EXTREME RISK FIREARM PROTECTION ORDERS--FIREARMS RETURN--DISPOSITION.--

A. Any firearm relinquished in accordance with the Extreme Risk Firearm Protection Order Act shall be returned to the respondent within ten days following the expiration or termination of an extreme risk firearm protection order.

B. A respondent shall not be required to acquire

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any court order granting the return of relinquished firearms.

C. The law enforcement agency in possession of the firearms shall conduct a national criminal records check and shall return the firearms if the agency determines that the respondent is not prohibited from possessing firearms pursuant to state or federal law.

D. Upon written request of the respondent, the law enforcement agency storing a firearm shall transfer possession of the respondent's firearm to a federally licensed firearms dealer or lawful private party purchaser designated by the respondent; provided that the transfer is the result of a sale, that the transferee is the actual owner of the firearm thereafter and, except in the case of a federally licensed firearms dealer, the law enforcement agency has conducted a national criminal records check and determined that the transferee is not prohibited from possessing a firearm pursuant to state or federal law.

E. No fee shall be charged for background checks required pursuant to Subsections C and D of this section.

F. The law enforcement agency transferring possession of a firearm to a transferee shall notify the transferee that it is unlawful to transfer or return the firearm to the respondent while the extreme risk firearm protection order is in effect. A transferee who violates this subsection is guilty of a misdemeanor and may be punished

pursuant to Section 31-19-1 NMSA 1978.

SECTION 14. Section 41-4-12 NMSA 1978 (being Laws 1976, Chapter 58, Section 12, as amended) is amended to read:

"41-4-12. LIABILITY--LAW ENFORCEMENT OFFICERS.--The immunity granted pursuant to Subsection A of Section [5-14-4 NMSA 1953] 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, failure to comply with duties established pursuant to statute or law or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties. For purposes of this section, "law enforcement officer" means a public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes."

Sf1→~~SECTION 15. Section 41-4-19 NMSA 1978 (being Laws 1976, Chapter 58, Section 17, as amended) is amended to read:~~

~~"41-4-19. MAXIMUM LIABILITY.--~~

~~A. Unless limited by Subsection B of this section, in any action for damages against a governmental entity or a~~

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~~public employee while acting within the scope of the employee's duties as provided in the Tort Claims Act, the liability shall not exceed:~~

~~(1) the sum of two hundred thousand dollars (\$200,000) for each legally described real property for damage to or destruction of that legally described real property arising out of a single occurrence;~~

~~(2) the sum of [three hundred thousand dollars (\$300,000)] one million dollars (\$1,000,000) for all past and future medical and medically related expenses arising out of a single occurrence; and~~

~~(3) the sum of [four hundred thousand dollars (\$400,000)] one million dollars (\$1,000,000) to any person for any number of claims arising out of a single occurrence for all damages other than real property damage and medical and medically related expenses as permitted under the Tort Claims Act.~~

~~B. The total liability for all claims pursuant to Paragraphs (1) and (3) of Subsection A of this section that arise out of a single occurrence shall not exceed [seven hundred fifty thousand dollars (\$750,000)] two million dollars (\$2,000,000).~~

~~G. Interest shall be allowed on judgments against a governmental entity or public employee for a tort for which immunity has been waived under the Tort Claims Act at a rate~~

~~equal to two percentage points above the prime rate as published in the *Wall Street Journal* on the date of the entry of the judgment. Interest shall be computed daily from the date of the entry of the judgment until the date of payment.~~

~~D. No judgment against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act shall include an award for exemplary or punitive damages or for interest prior to judgment."~~ ←Sf1

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