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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>1/29/2024</u>
	ORIGINAL DATE <u>1/23/2024</u>
SHORT TITLE <u>Extreme Risk Protection Order Changes</u>	BILL NUMBER <u>CS/CS/House Bill 27/HCPACS/HJCS</u>
	ANALYST <u>Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DPS	No fiscal impact	No fiscal impact	No fiscal impact		Nonrecurring	General Fund
Total	No fiscal impact	No fiscal impact	No fiscal impact		Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Office of the Attorney General (NMAG)
 Department of Public Safety (DPS)
 Law Office of the Public Defender (LOPD)
 Administrative Office of the Courts (AOC)
 Department of Health (DOH)

Agency Analysis was Solicited but Not Received From
 Administrative Office of District Attorneys (AODA)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis of HJC Committee Substitute for House Bill 27

The House Judiciary Committee substitute for the House Consumer and Public Affairs Committee substitute for House Bill 27 amends Section 40-17 NMSA 1978, the “Extreme Risk Firearm Protection Order Act.”

The amendments:

- Remove all references to a “one-year extreme risk firearm protection order” and add an explicit timeframe under the newly retitled Section 40-17-8 NMSA 1978, which specifies “an extreme risk firearm protection order shall expire 365 days after issuance;”
- Add licensed healthcare professionals to the list of individuals who can request law

enforcement, or an attorney employed by a district attorney or the attorney general to file a petition for an extreme risk firearm protection order (ERFPO), and specifying “healthcare professionals” means a person licensed by the state to provide medical or mental health care services pursuant to the Medical Practice Act, the Nursing Practice Act, the Physician Assistant Act, the Professional Psychologist Act, the Counseling and Therapy Practice Act or the Social Work Practice Act;

- Deletes a list of designated family members who can petition for an ERFPO and replaces the language designating a petitioner as anyone with a “continuing personal relationship” with the respondent;
- Specifies that a respondent must surrender *all* firearms if an ERFPO is approved;
- Create an expedited process to obtain an ERFPO;
- Require respondents to request the return of any firearm relinquished under the act prior to its return; and
- Allow law enforcement agencies to destroy, sell, or transfer unclaimed firearms if they remain unclaimed after 365 days.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Neither the Department of Public Safety nor the Office of the Attorney General reported any anticipated fiscal impact from the enactment of this bill. Any additional costs related to the hearings process or potential increases in the number of ERFPOs filed in district courts.

Analysis from the Law Office of the Public Defender indicates the fiscal implications of the proposed bill are uncertain due to its expansion of a previously sparingly used law. As of November 2023, only 48 petitions related to Section 40-17 NMSA 1978, the “Extreme Risk Firearm Protection Order Act,” were filed in New Mexico, primarily in Bernalillo County.

Overall, the bill aims to broaden the application of ERFPO petitions, potentially leading to more arrests and legal cases, especially for misdemeanors related to firearm possession violating the order. This increase in legal cases could strain the resources of the Law Offices of the Public Defender (LOPD), which already faces heavy workloads and could necessitate increased funding for indigent defense. Increased arrests and potential incarcerations could also increase costs for the judiciary, law enforcement, prosecutors, and correctional facilities. However, predicting the exact fiscal impact is challenging and would require assessment after the bill's implementation.

SIGNIFICANT ISSUES

Analysis from the Department of Public Safety and the Office of the Attorney General express concerns regarding the new section on returning or destroying firearms seized under an ERFPO. The bill does not specify the process or timeline for a law enforcement agency possessing a firearm to notify a respondent or include any additional guidance regarding what information such notice needs to contain.

In its analysis, NMAG expressed concerns regarding confidentiality protections for reporting parties, specifically in cases where the reporting party fears for their safety or is concerned about

retaliation. The agency analysis states:

The proposed amendments do not address confidentiality. As with domestic violence situations, victims are less likely to report or cooperate if they fear retaliation. In situations calling for an order under this act, there is the chance that the reporting party and respondent may have a relationship in which domestic violence is present. Domestic Violence Restraining Orders allow for redaction of personal information like the address of the protected party to help ensure their safety and to avoid retaliation. A similar provision for this statute would help effectuate the security of the reporting party and effectiveness of the order to ensure reporting parties feel comfortable reporting the risk to law enforcement.

Analysis from LOPD explains that although the bill aims to prevent violent crimes by allowing the seizure of firearms from potentially dangerous individuals, it raises several concerns. First, adding healthcare workers as requesting parties could infringe on privacy rights protected by HIPAA and New Mexico's constitution. The bill also introduces a warrant provision for searching and seizing firearms, which could violate constitutional rights due to its invasive nature, especially since possessing a firearm in contravention of this act is only a misdemeanor.

LOPD's analysis also expresses concern over ambiguity regarding the return of firearms after a temporary ERFPO is terminated and whether respondents can have multiple extensions of a 365-day ERFPO without legal representation. This lack of representation could disproportionately affect respondents based on their financial or educational status, making them more vulnerable to misunderstanding or unjust application of the law.

LOPD mentions that other states, like Colorado, mandate attorney representation for respondents in similar hearings, highlighting a potential inequality in this bill. Lastly, the bill might face state constitutional challenges in New Mexico, as the state's constitution has broader protections for firearm possession than the federal constitution.

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