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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DOMESTIC AFFAIRS; CREATING THE EXTREME RISK PROTECTION ORDER ACT; PROVIDING FOR THE ISSUANCE OF COURT ORDERS TO REQUIRE THE RELINQUISHMENT OF FIREARMS FOR SOME PERIOD UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 16 of this act may be cited as the "Extreme Risk Protection Order Act".

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

A. "extreme risk protection order" means an order issued by a court pursuant to Section 5, 6 or 7 of the Extreme Risk Protection Order Act;

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1 B. "firearm" means any weapon that will or is
2 designed to or may readily be converted to expel a projectile
3 by the action of an explosion; the frame or receiver of any
4 such weapon; or any firearm muffler or firearm silencer.

5 "Firearm" includes any handgun, rifle or shotgun;

6 C. "household member" means a spouse, former
7 spouse, parent, present or former stepparent, present or former
8 parent-in-law, grandparent, grandparent-in-law, child,
9 stepchild, grandchild, a person who has a child in common with
10 another person, regardless of whether they have been married or
11 have lived together at any time, or a person with whom the
12 petitioner has been in a dating or intimate relationship.
13 Cohabitation is not necessary to be deemed a household member
14 for purposes of this section;

15 D. "law enforcement officer" means a public
16 official or public officer vested by law with a duty to
17 maintain public order or to make arrests for crime, whether
18 that duty extends to all crimes or is limited to specific
19 crimes;

20 E. "petitioner" means a household member as defined
21 in Subsection C of this section or law enforcement officer as
22 defined in Subsection D of this section;

23 F. "respondent" means the person identified in an
24 extreme risk protection order petition, or subject to an
25 extreme risk protection order, issued pursuant to Section 5, 6

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1 or 7 of the Extreme Risk Protection Order Act;

2 G. "safety device" means a device that, when
3 installed on a firearm, is designed to prevent the firearm from
4 being operated without first deactivating the device; and

5 H. "secure gun storage" means a safe, gun safe, gun
6 case, lock box or other device that is designed to, or can be
7 used to, store a firearm and that is designed to be unlocked
8 only by means of a key, a combination or other similar means.

9 SECTION 3. [NEW MATERIAL] PETITION FOR EXTREME RISK
10 PROTECTION ORDER--CONTENTS--STANDARD FORMS.--

11 A. A petitioner may seek an extreme risk protection
12 order by filing a petition in the district court of the
13 judicial district where either the petitioner or respondent
14 resides or is sheltered. Law enforcement agencies and the
15 clerk of the court shall make available upon request standard
16 simplified petition forms with instructions for completion
17 approved by the administrative office of the courts.

18 B. A petition for an extreme risk protection order
19 shall be made under oath and shall be accompanied by a sworn
20 affidavit setting out specific facts demonstrating the grounds
21 for the order.

22 C. A petition for an extreme risk protection order
23 shall contain:

24 (1) the name and address of the petitioner;
25 provided that upon the request of the petitioner, the address

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1 shall not be listed on the petition but shall be disclosed to
2 the court for purposes of service. Whether or not the court
3 issues an extreme risk protection order, an address not listed
4 on a petition shall not be disclosed except as ordered by the
5 court;

6 (2) the respondent's name and address, if
7 known;

8 (3) a description of the number, types and
9 locations of firearms or ammunition that the petitioner
10 believes the respondent has custody of, controls, owns or
11 possesses;

12 (4) a description of the relationship between
13 the parties;

14 (5) notice of whether there has been issued an
15 extreme risk protection order pursuant to the Extreme Risk
16 Protection Order Act, an order of protection pursuant to the
17 Family Violence Protection Act, a civil restraining order
18 pursuant to Rule 1-066 NMRA or a similar order under the laws
19 of another state between the parties or against the respondent;
20 and

21 (6) notice of whether there is a pending
22 lawsuit, complaint, petition or other action between the
23 parties under the laws of this state.

24 D. The court administrator shall verify the terms
25 of any order disclosed pursuant to Subsection C of this

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1 section. The court shall not delay granting relief because of
2 the existence of an order or legal action between the parties
3 or the requirement to verify the terms of an existing order.

4 E. If a law enforcement officer alleges in a
5 petition that a respondent poses an immediate and present
6 danger of causing personal injury to a household member, or
7 alleges that a household member is or has been the target of a
8 threat or act of violence by the respondent, the law
9 enforcement officer shall make a good faith effort to notify
10 each adult household member of the respondent:

11 (1) that the law enforcement officer intends
12 to petition, or has petitioned, a court for an extreme risk
13 protection order; and

14 (2) of the availability of relevant domestic
15 violence or stalking advocacy or counseling resources, as
16 appropriate.

17 F. The requirement to provide notice to household
18 members of the respondent pursuant to Subsection E of this
19 section shall not delay the issuance of an emergency or
20 temporary extreme risk protection order.

21 G. Health records and other health information
22 provided in a petition or considered as evidence in a
23 proceeding under the Extreme Risk Protection Order Act shall
24 not be disclosed to the extent that they identify a respondent
25 or petitioner; provided that the information shall be provided

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1 to a law enforcement agency as necessary to fulfill the
2 requirements of the Extreme Risk Protection Order Act.
3 Aggregate statistical data indicating the number of extreme
4 risk protection orders issued, renewed, denied, dissolved or
5 terminated shall be available to the public upon request.

6 H. Remedies granted pursuant to the Extreme Risk
7 Protection Order Act are in addition to and shall not limit
8 other civil or criminal remedies available to the parties.

9 SECTION 4. [NEW MATERIAL] FORBEARANCE OF COSTS ASSOCIATED
10 WITH EXTREME RISK PROTECTION ORDERS.--

11 A. Except as provided in Subsection B of this
12 section, a petitioner for an extreme risk protection order
13 shall not be required to bear the cost of:

14 (1) the filing, issuance or service of a
15 petition for an extreme risk protection order;

16 (2) the filing, issuance or service of a
17 warrant;

18 (3) the filing, issuance or service of a
19 witness subpoena;

20 (4) service of an extreme risk protection
21 order issued pursuant to Section 5, 6, 7 or 8 of the Extreme
22 Risk Protection Order Act;

23 (5) obtaining law enforcement reports or
24 photographs or copies of photographs relating to the
25 allegations in the petition; or

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1 (6) any cost associated with the confiscation,
2 storage or destruction of a firearm confiscated pursuant to the
3 Extreme Risk Protection Order Act.

4 B. The court may impose the costs described in
5 Subsection A of this section against the petitioner if the
6 court determines that the petitioner filed the petition in bad
7 faith or with malicious purpose.

8 SECTION 5. [NEW MATERIAL] EMERGENCY EXTREME RISK
9 PROTECTION ORDERS.--

10 A. A district court may issue an emergency extreme
11 risk protection order when a law enforcement officer states to
12 the court in person or by telephone, facsimile, electronic mail
13 or other reliable electronic means the need for an emergency
14 extreme risk protection order if the court finds reasonable
15 grounds to believe that the respondent poses an immediate
16 danger of causing personal injury to self or others by having
17 custody, control or possession of a firearm or ammunition. The
18 statement shall include the location and telephone number of
19 the respondent, if known.

20 B. A law enforcement officer who receives an
21 emergency extreme risk protection order from the court, whether
22 in writing, by telephone or by facsimile transmission, shall:

23 (1) if necessary, pursuant to the judge's oral
24 approval, write and sign the order on an approved form;

25 (2) if possible, immediately serve a signed

1 copy of the order on the respondent and complete the
2 appropriate affidavit of service; and

3 (3) after service, provide the original order
4 to the court by the close of business on the next business day.

5 C. A district judge shall be available as
6 determined by each judicial district to hear petitions for an
7 emergency extreme risk protection order when the court is
8 closed.

9 D. An emergency extreme risk protection order shall
10 expire ten days after issuance. The court shall conduct a
11 hearing within ten days of the issuance of an emergency extreme
12 risk protection order to determine if a one-year extreme risk
13 protection order shall be issued pursuant to Section 7 of the
14 Extreme Risk Protection Order Act; provided that if notice of
15 hearing cannot be served within seventy-two hours of issuance,
16 the emergency extreme risk protection order shall be
17 automatically extended for ten days. A respondent may seek an
18 extension of the hearing date at any time before the hearing;
19 provided that the emergency extreme risk protection order shall
20 automatically be extended for any extension of time granted the
21 respondent.

22 E. An emergency extreme risk protection order shall
23 include:

24 (1) a statement that the respondent shall not
25 have custody or control of, purchase, possess or receive or

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1 attempt to purchase or receive a firearm or ammunition while
2 the order is in effect;

3 (2) a description of the requirements for
4 relinquishment of firearms and ammunition under Section 10 of
5 the Extreme Risk Protection Order Act;

6 (3) a statement of the grounds asserted for
7 the order;

8 (4) a notice of the hearing required under
9 Section 7 of the Extreme Risk Protection Order Act to determine
10 whether the court shall issue a one-year extreme risk
11 protection order, including the address of the court and the
12 date and time when the hearing is scheduled;

13 (5) a statement that at the hearing the court
14 may extend the order for one year;

15 (6) a statement that the respondent may seek
16 the advice of an attorney as to any matter connected with the
17 order and that the attorney should be consulted promptly so
18 that the attorney may assist the person in any matter connected
19 with the order; and

20 (7) a statement that violation of a provision
21 of the order is a misdemeanor punishable pursuant to Section
22 31-19-1 NMSA 1978.

23 F. An emergency extreme risk protection order shall
24 be personally served on the respondent by a law enforcement
25 officer in accordance with Rule 1-004(f) NMRA. If personal

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1 service by a law enforcement officer is not possible, service
2 may be effected in any manner directed by the court issuing the
3 order in accordance with Rule 1-004 NMRA.

4 SECTION 6. [NEW MATERIAL] TEMPORARY EXTREME RISK
5 PROTECTION ORDERS.--

6 A. A petitioner may request that a temporary
7 extreme risk protection order be issued ex parte prior to a
8 hearing for a one-year extreme risk protection order by
9 including in the petition detailed allegations based on
10 personal knowledge that the respondent poses an immediate
11 danger of causing personal injury to self or others by having
12 custody, control or possession of a firearm or ammunition.

13 B. Upon the filing of a petition for a temporary
14 extreme risk protection order, which shall expire ten days
15 after issuance, the court shall:

16 (1) grant a temporary extreme risk protection
17 order if the court finds reasonable grounds to believe that the
18 respondent poses an immediate danger of causing personal injury
19 to self or others by having custody, control or possession of a
20 firearm or ammunition;

21 (2) issue or deny a temporary extreme risk
22 protection order on the same day that the petition is submitted
23 to the court unless the petition is filed too late in the day
24 to permit effective review, in which case the order shall be
25 issued or denied on the next business day;

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1 (3) cause the temporary extreme risk
2 protection order together with notice of hearing to be served
3 immediately on the respondent;

4 (4) conduct a hearing within ten days of the
5 issuance of a temporary extreme risk protection order to
6 determine if a one-year extreme risk protection order shall be
7 issued pursuant to Section 7 of the Extreme Risk Protection
8 Order Act; provided that if notice of hearing cannot be served
9 within seventy-two hours, the temporary extreme risk protection
10 order shall be automatically extended for ten days. A
11 respondent may seek an extension of the hearing date at any
12 time before the hearing; provided that the temporary extreme
13 risk protection order shall automatically be extended for any
14 extension of time granted the respondent; and

15 (5) if a temporary extreme risk protection
16 order is not granted, serve notice to appear upon the parties
17 and hold a hearing on the petition for a one-year extreme risk
18 protection order pursuant to Section 7 of the Extreme Risk
19 Protection Order Act within ten days of the denial of the
20 temporary extreme risk protection order petition. A petitioner
21 may seek an extension of time before the hearing.

22 C. Prior to issuing a temporary extreme risk
23 protection order, the court should ensure that a reasonable
24 search is conducted for:

25 (1) criminal history records related to the

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1 respondent; and

2 (2) civil orders of protection or restraining
3 orders related to the respondent.

4 D. In determining whether grounds for a temporary
5 extreme risk protection order exist, the judge may consider all
6 relevant evidence presented by the petitioner and other
7 relevant evidence regarding the respondent, including evidence
8 of facts relating to any:

9 (1) act or threat of violence against self or
10 another, whether or not involving a firearm;

11 (2) unlawful, reckless or negligent use,
12 display, storage, possession or brandishing of a firearm;

13 (3) violation of an order of protection issued
14 pursuant to the Family Violence Protection Act, a civil
15 harassment restraining order issued pursuant to Rule 1-066 NMRA
16 or a similar law in another state;

17 (4) misuse of controlled substances or alcohol
18 or any arrest for a criminal offense that involves controlled
19 substances or alcohol; or

20 (5) the recent acquisition of a firearm,
21 ammunition or other deadly weapon.

22 E. The court may also consider the time that has
23 elapsed since an event described in Subsection D of this
24 section.

25 F. A temporary extreme risk protection order shall

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1 include:

2 (1) a statement that the respondent may not
3 have custody or control of, purchase, possess, or receive or
4 attempt to purchase or receive a firearm or ammunition while
5 the order is in effect;

6 (2) a description of the requirements for
7 relinquishment of firearms and ammunition under Section 10 of
8 the Extreme Risk Protection Order Act;

9 (3) a statement of the grounds asserted for
10 the order;

11 (4) a notice of the hearing required under
12 Section 7 of the Extreme Risk Protection Order Act to determine
13 whether the court shall issue a one-year extreme risk
14 protection order, including the address of the court and the
15 date and time when the hearing is scheduled;

16 (5) a statement that at the hearing the court
17 may extend the order for one year;

18 (6) a statement that the respondent may seek
19 the advice of an attorney as to any matter connected with the
20 order and that the respondent should consult an attorney
21 promptly so that the attorney may assist the respondent in any
22 matter connected with the order; and

23 (7) a statement that violation of any
24 provision of the order is a misdemeanor punishable pursuant to
25 Section 31-19-1 NMSA 1978.

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1 G. A temporary extreme risk protection order shall
2 be personally served on the respondent by a law enforcement
3 officer in accordance with Rule 1-004(f) NMRA. If personal
4 service by a law enforcement officer is not possible, service
5 may be effected in any manner directed by the court issuing the
6 order in accordance with Rule 1-004 NMRA.

7 **SECTION 7. [NEW MATERIAL] ONE-YEAR EXTREME RISK**
8 **PROTECTION ORDERS.--**

9 A. A petitioner requesting a one-year extreme risk
10 protection order shall include in the petition detailed
11 allegations based on personal knowledge that the respondent
12 poses a significant danger of causing personal injury to self
13 or others by having in the respondent's custody or control,
14 purchasing, possessing or receiving a firearm or ammunition.

15 B. Before issuing a one-year extreme risk
16 protection order, the court shall examine under oath the
17 petitioner and any witness the petitioner may produce. The
18 court shall also ensure that a reasonable search has been
19 conducted for:

- 20 (1) criminal history records related to the
- 21 respondent; and
- 22 (2) civil orders of protection or restraining
- 23 orders related to the respondent.

24 C. In determining whether to issue a one-year
25 extreme risk protection order under this section, the court

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1 shall consider all relevant evidence presented by the
2 petitioner and shall also consider other relevant evidence,
3 including evidence of the facts identified in Subsection D of
4 Section 6 of the Extreme Risk Protection Order Act.

5 D. If the court finds by a preponderance of the
6 evidence at the hearing that the respondent poses a significant
7 danger of personal injury to self or others by having custody
8 or control, purchasing, possessing or receiving a firearm or
9 ammunition, the court shall issue a one-year extreme risk
10 protection order.

11 E. The court shall dissolve any emergency or
12 temporary extreme risk protection order in effect against the
13 respondent when the court grants or denies a one-year extreme
14 risk protection order.

15 F. A one-year extreme risk protection order shall
16 include:

17 (1) a statement that the respondent shall not
18 have custody or control of, purchase, possess or receive or
19 attempt to purchase or receive a firearm or ammunition while
20 the order is in effect;

21 (2) a description of the requirements for
22 relinquishment of firearms and ammunition under Section 10 of
23 the Extreme Risk Protection Order Act;

24 (3) a statement of the grounds for the order;

25 (4) the date and time the order expires;

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1 (5) the address of the court that issued the
2 order;

3 (6) a statement that the respondent shall have
4 the right to request one hearing to terminate the order at any
5 time during its effective period;

6 (7) a statement that the respondent may seek
7 the advice of an attorney as to any matter connected with the
8 order; and

9 (8) a statement that violation of any
10 provision of the order is a misdemeanor punishable pursuant to
11 Section 31-19-1 NMSA 1978.

12 G. If the respondent fails to appear at the
13 hearing, a one-year extreme risk protection order issued
14 pursuant to this section shall be personally served on the
15 respondent by a law enforcement officer in accordance with Rule
16 1-004(f) NMRA. If personal service by a law enforcement
17 officer is not possible, service may be effected in any manner
18 directed by the court issuing the order in accordance with Rule
19 1-004 NMRA.

20 **SECTION 8. [NEW MATERIAL] TERMINATION OF ONE-YEAR EXTREME**
21 **RISK PROTECTION ORDERS.--**

22 A. A respondent to a one-year extreme risk
23 protection order issued under Section 7 of the Extreme Risk
24 Protection Order Act may submit one written request for a
25 hearing to terminate the order at any time during the effective

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1 period of the order.

2 B. Upon receipt of the request for termination, the
3 court shall set a date for a hearing. Notice of the request
4 shall be served on the petitioner in accordance with Rule 1-004
5 NMRA. The hearing shall occur no sooner than fourteen days and
6 no later than thirty days from the date of service of the
7 request upon the petitioner.

8 C. The respondent seeking termination of the one-
9 year extreme risk protection order shall have the burden of
10 proving by a preponderance of the evidence that the respondent
11 does not pose a significant danger of causing personal injury
12 to self or others by having custody or control of, purchasing,
13 possessing or receiving a firearm or ammunition.

14 D. If the court finds after the hearing that the
15 respondent has met the burden of proof, the court shall
16 terminate the order.

17 SECTION 9. [NEW MATERIAL] EXTENSION OF ONE-YEAR EXTREME
18 RISK PROTECTION ORDERS.--

19 A. A petitioner may request extension of a one-year
20 extreme risk protection order at any time within the three
21 months before the expiration of the order.

22 B. Upon receipt of the request for extension, the
23 court shall set a date for a hearing. Notice of the request
24 shall be served on the respondent in accordance with Rule 1-004
25 NMRA. If a petition to extend an order is filed within

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1 fourteen days prior to the expiration of a one-year extreme
2 risk protection order, the court shall set a hearing to occur
3 as soon as is practicable. If the court is unable to set a
4 hearing on the petition to extend the extreme risk protection
5 order before the expiration of the one-year order, the court
6 may extend the one-year order for thirty days or until the date
7 of the hearing, whichever occurs first.

8 C. A court may, after notice and hearing, extend a
9 one-year extreme risk protection order if the court finds by a
10 preponderance of the evidence that the respondent continues to
11 pose a significant danger of causing personal injury to self or
12 another by having in custody or control, purchasing, possessing
13 or receiving a firearm or ammunition.

14 D. In determining whether to extend a one-year
15 extreme risk protection order issued under this section, the
16 court shall consider all relevant evidence presented by the
17 petitioner and may also consider other relevant evidence,
18 including evidence of the facts identified in Subsection D of
19 Section 6 of the Extreme Risk Protection Order Act.

20 E. A one-year extreme risk protection order
21 extended pursuant to this section shall expire one year from
22 the date of the order granting the extension, subject to
23 termination by further order of the court at a hearing held
24 pursuant to Subsection B of this section.

25 SECTION 10. [NEW MATERIAL] RELINQUISHMENT OF FIREARMS AND

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1 AMMUNITION.--

2 A. Upon issuance of an emergency or temporary
3 extreme risk protection order and a finding of probable cause
4 that the respondent has custody or control of, owns or
5 possesses a firearm or ammunition, the court shall issue, and
6 there shall be executed, a search warrant pursuant to Rule
7 5-211 NMRA describing the firearm or ammunition and authorizing
8 a search of the location where the firearm or ammunition is
9 reasonably believed to be and authorizing the seizure of any
10 firearm or ammunition discovered pursuant to the search.

11 B. Upon issuance of a one-year extreme risk
12 protection order, the court shall order the respondent to
13 surrender to the local law enforcement agency all firearms and
14 ammunition in the respondent's custody or control or that the
15 respondent possesses or owns.

16 C. A law enforcement officer serving a one-year
17 extreme risk protection order shall request that all firearms
18 and ammunition in the respondent's custody or control or that
19 the respondent possesses or owns be immediately surrendered.
20 The officer shall take possession of all firearms and
21 ammunition that are surrendered, in plain sight or discovered
22 pursuant to a lawful search. If a respondent does not
23 surrender to a law enforcement officer a firearm or ammunition
24 in the respondent's custody or control or that the respondent
25 possesses or owns at the time of service of a one-year extreme

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1 risk protection order because the respondent was not present
2 when service was effected, was served at the hearing on the
3 one-year extreme risk protection order or because the firearm
4 or ammunition was at another location at the time of service or
5 lawful search, the respondent shall surrender the firearm and
6 ammunition in a safe manner to the local law enforcement
7 official within twenty-four hours of being served with the
8 order.

9 D. A law enforcement officer taking possession of
10 firearms or ammunition pursuant to a one-year extreme risk
11 protection order shall give to the respondent a copy of the
12 inventory of firearms and ammunition taken. Within seventy-two
13 hours of serving the respondent with the order, the law
14 enforcement officer serving the order shall file the original
15 inventory with the court that issued the one-year extreme risk
16 protection order and shall ensure that the law enforcement
17 agency retains a copy of the inventory.

18 E. A court that has probable cause to believe a
19 respondent has custody or control of, owns or possesses
20 firearms or ammunition that the respondent failed to surrender
21 pursuant to this section, or who has received or purchased a
22 firearm or ammunition while subject to an extreme risk
23 protection order, shall issue, and there shall be executed, a
24 search warrant pursuant to Rule 5-211 NMRA describing the
25 firearm or ammunition and authorizing a search of the location

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1 where the firearm or ammunition is reasonably believed to be
2 and authorizing the seizure of any firearm or ammunition
3 discovered pursuant to the search.

4 F. A law enforcement agency may charge the
5 respondent a reasonable fee not to exceed the actual cost
6 incurred by the law enforcement agency for storing a firearm or
7 ammunition surrendered pursuant to this section for the
8 duration of the extreme risk protection order and any
9 additional periods necessary to comply with the requirements of
10 the Extreme Risk Protection Order Act or as directed by the
11 court. The law enforcement agency may retain the firearm and
12 ammunition until the fee is paid.

13 G. Evidence establishing ownership or possession of
14 a firearm or ammunition pursuant to this section shall not be
15 admissible as evidence in any unrelated criminal proceeding.

16 SECTION 11. [NEW MATERIAL] RETURN AND DISPOSAL OF
17 FIREARMS AND AMMUNITION.--

18 A. Thirty days prior to the expiration of a one-
19 year extreme risk protection order, the law enforcement agency
20 holding a firearm or ammunition relinquished pursuant to the
21 order shall notify the petitioner of the date that the order
22 will expire. The notice shall advise the petitioner of the
23 procedures for seeking an extension of the order pursuant to
24 Section 9 of the Extreme Risk Protection Order Act.

25 B. The law enforcement agency shall make a

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1 firearm available within thirty days of receipt of a request
2 from a respondent who is then currently eligible to own
3 and possess a firearm.

4 C. A respondent who has relinquished a firearm or
5 ammunition to a law enforcement agency pursuant to the Extreme
6 Risk Protection Order Act and who does not wish the firearm or
7 ammunition returned or who is no longer eligible to own or
8 possess a firearm or ammunition may sell or transfer the
9 firearm or ammunition to a licensed firearms dealer. The law
10 enforcement agency shall not release the firearm or ammunition
11 to a licensed firearms dealer until:

12 (1) the licensed firearms dealer has displayed
13 proof that the respondent has transferred the firearm or
14 ammunition to the dealer; and

15 (2) the law enforcement agency has verified
16 the transfer with the respondent.

17 D. If a person other than the respondent claims
18 ownership of a firearm or ammunition relinquished pursuant to
19 the Extreme Risk Protection Order Act and the law enforcement
20 agency determines that the person is the lawful owner of the
21 firearm or ammunition, the firearm or ammunition shall be
22 released to that person.

23 E. A law enforcement agency holding a firearm or
24 ammunition relinquished pursuant to the Extreme Risk Protection
25 Order Act may dispose of the firearm or ammunition six months

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1 from the date of proper notice to the respondent of the intent
2 to dispose of the firearm or ammunition unless the firearm or
3 ammunition is claimed by the lawful owner. If the firearm or
4 ammunition remains unclaimed after six months from the date of
5 notice, no party may assert ownership and the law enforcement
6 agency may dispose of the firearm or ammunition.

7 F. For the purposes of this section:

8 (1) "dispose" means to destroy a firearm or
9 ammunition or to sell or transfer the firearm or ammunition to
10 a licensed firearms dealer; and

11 (2) "licensed firearms dealer" means a person
12 licensed pursuant to 18 U.S.C. Section 921, et seq.

13 SECTION 12. [NEW MATERIAL] REPORTING OF EXTREME RISK
14 PROTECTION ORDERS.--No later than one business day after a
15 court issues, extends, dissolves or terminates an emergency,
16 temporary or one-year extreme risk protection order relating to
17 an adult respondent, the administrative office of the courts
18 shall obtain and electronically transmit information from the
19 court proceedings relating to the respondent's eligibility to
20 receive or possess a firearm or ammunition to the federal
21 bureau of investigation's national instant criminal background
22 check system.

23 SECTION 13. [NEW MATERIAL] PENALTIES.--

24 A. A person who files a petition, provides
25 information or otherwise participates in proceedings authorized

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1 by the Extreme Risk Protection Order Act is presumed to be
2 acting in good faith and shall be immune from civil or criminal
3 liability unless the person acted in bad faith or with
4 malicious purpose.

5 B. A person who has custody or control of, owns,
6 purchases, possesses or receives a firearm or ammunition in
7 violation of an extreme risk protection order is guilty of a
8 misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978
9 and upon conviction shall be prohibited from having custody or
10 control of, owning, purchasing, possessing or receiving or
11 attempting to purchase or receive a firearm or ammunition for a
12 period of five years from the date of conviction.

13 SECTION 14. [NEW MATERIAL] LAW ENFORCEMENT TO RETAIN
14 OTHER AUTHORITY.--The Extreme Risk Protection Order Act shall
15 not affect the authority of a law enforcement officer to remove
16 a firearm or ammunition from a person pursuant to other lawful
17 authority.

18 SECTION 15. [NEW MATERIAL] LACK OF LIABILITY FOR FAILURE
19 TO SEEK ORDER.--The Extreme Risk Protection Order Act shall not
20 be construed to impose criminal or civil liability on a person
21 who does not seek an extreme risk protection order pursuant to
22 that act.

23 SECTION 16. [NEW MATERIAL] SAFE STORAGE OF FIREARMS.--

24 A. A person who has custody of, controls or
25 possesses a firearm and who resides with a respondent subject

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1 to an extreme risk protection order issued under the Extreme
2 Risk Protection Order Act or the laws of another state shall
3 safely secure the firearm by:

4 (1) locking the firearm in a secure gun
5 storage or rendering the firearm inoperable by the use of a
6 safety device; or

7 (2) having the firearm on the person or in
8 close proximity so that the firearm is readily accessible for
9 use by the person and is not readily accessible by the
10 respondent.

11 B. A person who violates this section is guilty of:

12 (1) a misdemeanor; or

13 (2) a felony if the violation results in the
14 respondent using the firearm to cause bodily injury to the
15 respondent or another.

16 SECTION 17. Section 29-19-4 NMSA 1978 (being Laws 2003,
17 Chapter 255, Section 4, as amended) is amended to read:

18 "29-19-4. APPLICANT QUALIFICATIONS.--

19 A. The department shall issue a concealed handgun
20 license to an applicant who:

21 (1) is a citizen of the United States;

22 (2) is a resident of New Mexico or is a member
23 of the armed forces whose permanent duty station is located in
24 New Mexico or is a dependent of such a member;

25 (3) is twenty-one years of age or older;

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[bracketed material] = delete

1 (4) is not a fugitive from justice;

2 (5) has not been convicted of a felony in New
3 Mexico or any other state or pursuant to the laws of the United
4 States or any other jurisdiction;

5 (6) is not currently under indictment for a
6 felony criminal offense in New Mexico or any other state or
7 pursuant to the laws of the United States or any other
8 jurisdiction;

9 (7) is not otherwise prohibited by federal law
10 or the law of any other jurisdiction from purchasing or
11 possessing a firearm;

12 (8) has not been adjudicated mentally
13 incompetent or committed to a mental institution;

14 (9) is not addicted to alcohol or controlled
15 substances; ~~and~~

16 (10) has satisfactorily completed a firearms
17 training course approved by the department for the category and
18 the largest caliber of handgun that the applicant wants to be
19 licensed to carry as a concealed handgun; and

20 (11) is not subject to an extreme risk
21 protection order issued pursuant to the Extreme Risk Protection
22 Order Act.

23 B. The department shall deny a concealed handgun
24 license to an applicant who has:

25 (1) received a conditional discharge, a

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1 diversion or a deferment or has been convicted of, pled guilty
2 to or entered a plea of nolo contendere to a misdemeanor
3 offense involving a crime of violence within ten years
4 immediately preceding the application;

5 (2) been convicted of a misdemeanor offense
6 involving driving while under the influence of intoxicating
7 liquor or drugs within five years immediately preceding the
8 application for a concealed handgun license;

9 (3) been convicted of a misdemeanor offense
10 involving the possession or abuse of a controlled substance
11 within ten years immediately preceding the application; or

12 (4) been convicted of a misdemeanor offense
13 involving assault, battery or battery against a household
14 member.

15 C. Firearms training course instructors who are
16 approved by the department shall not be required to complete a
17 firearms training course pursuant to Paragraph (10) of
18 Subsection A of this section."

19 SECTION 18. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2019.