

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 5

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

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; INCREASING THE MAXIMUM LIABILITY FOR CLAIMS FILED PURSUANT TO THE TORT CLAIMS ACT; 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 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

1 in which the respondent resides;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 D. service of an extreme risk firearm protection

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1 order;

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

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

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

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

14 A. A petition for an extreme risk firearm
15 protection order shall be filed only by a law enforcement
16 officer employed by a law enforcement agency, other than a law
17 enforcement agency that employs the respondent.

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

25 C. If a law enforcement officer declines to file a

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

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

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

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

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

25 (1) the name and address of the reporting

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1 party;

2 (2) the name and address of the respondent;

3 (3) a description of the number, types and
4 locations of firearms or ammunition that the petitioner
5 believes the respondent has custody of, controls, owns or
6 possesses;

7 (4) a description of the relationship between
8 the reporting party and the respondent; and

9 (5) a description of any lawsuit, complaint,
10 petition, restraining order, injunction or other legal action
11 between the reporting party and the respondent.

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

14 A. Upon the filing of a petition pursuant to the
15 Extreme Risk Firearm Protection Order Act, the court may enter
16 a temporary extreme risk firearm protection order if the court
17 finds from specific facts shown by the petition that there is
18 probable cause to believe that the respondent poses a
19 significant danger of causing imminent personal injury to self
20 or others by having in the respondent's custody or control or
21 by purchasing, possessing or receiving a firearm before notice
22 can be served and a hearing held.

23 B. If the court finds probable cause pursuant to
24 Subsection A of this section, the court shall issue a temporary
25 extreme risk firearm protection order enjoining the respondent

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1 from having in the respondent's possession, custody or control
2 a firearm and shall further enjoin the respondent from
3 purchasing, receiving or attempting to purchase or receive a
4 firearm while the order is in effect.

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

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

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

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

15 (3) a statement that the order shall continue
16 until the earlier of ten days or such time as a court considers
17 the petition at a hearing, unless an extension is granted at
18 the request of the respondent pursuant to Subsection E of this
19 section;

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

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

25 E. The court may continue the hearing at the

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1 request of the respondent, but the hearing shall be set within
2 thirty days of the respondent's request for continuance.

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

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

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

15 A. any recent act or threat of violence by the
16 respondent against self or others, regardless of whether the
17 act or threat involved a firearm;

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

21 C. the respondent's mental health history;

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

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

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

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

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

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

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

16 A. If, after hearing the matter, the court finds
17 that there is probable cause to believe that the respondent
18 poses a significant danger of causing imminent personal injury
19 to self or others by having in the respondent's custody or
20 control or by purchasing, possessing or receiving a firearm,
21 the court shall issue a one-year extreme risk firearm
22 protection order.

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

25 (1) a statement of the grounds supporting the

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1 issuance of the order;

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

3 (3) the date and time the order expires;

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

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

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

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

16 D. A respondent may request that the court
17 terminate a one-year extreme risk firearm protection order at
18 any time prior to the expiration of the order.

19 E. At any time not less than one month prior to the
20 expiration of a one-year extreme risk firearm protection order,
21 a petitioner may petition the court to extend the order. Each
22 extension of the order shall not exceed one year. A petition
23 filed pursuant to this subsection shall comply with the
24 provisions of Subsections E and F of Section 5 of the Extreme
25 Risk Firearm Protection Order Act and shall be served on the

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1 respondent as provided in Section 9 of that act.

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

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

11 A. A respondent who receives a temporary extreme
12 risk firearm protection order shall relinquish all firearms in
13 the respondent's possession, custody or control or subject to
14 the respondent's possession, custody or control in a safe
15 manner to a law enforcement officer, a law enforcement agency
16 or a federal firearms licensee within forty-eight hours of
17 service of the order.

18 B. A law enforcement officer, law enforcement
19 agency or federal firearms license that takes temporary
20 possession of a firearm pursuant to this section shall:

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

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

25 (3) provide a copy of the receipt to the

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1 petitioner within seventy-two hours of taking possession of the
2 firearms;

3 (4) file the original receipt with the court
4 that issued the temporary extreme risk firearm protection order
5 within seventy-two hours of taking possession of the firearms;
6 and

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

9 SECTION 11. [NEW MATERIAL] PENALTIES.--A person who fails
10 to relinquish, or who possesses or has custody or control over,
11 any firearm or who purchases, receives or attempts to purchase,
12 possess or receive any firearm, in violation of a temporary
13 extreme risk firearm protection order or a one-year extreme
14 risk firearm protection order is guilty of a misdemeanor
15 punishable pursuant to Section 31-19-1 NMSA 1978.

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

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

24 B. The clerk of the court shall forward a copy of
25 any order issued, renewed or terminated pursuant to the Extreme

1 Risk Firearm Protection Order Act to the petitioner and to the
2 law enforcement agency specified in Subsection A of this
3 section.

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

8 (1) the national instant criminal background
9 check system;

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

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

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

23 E. Upon the expiration of or upon receiving notice
24 of the termination of an extreme risk firearm protection order
25 issued pursuant to the Extreme Risk Firearm Protection Order

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1 Act, the law enforcement agency specified in Subsection A of
2 this section shall promptly remove the order from any state
3 computer-based system into which it was entered pursuant to
4 Subsection C of this section and shall notify the national
5 instant criminal background check system and all federal
6 computer-based systems and databases used by law enforcement or
7 others to identify prohibited purchasers of firearms.

8 F. Following the expiration or termination of an
9 order issued pursuant to the Extreme Risk Firearm Protection
10 Order Act and upon written request, the law enforcement agency
11 specified in Subsection A of this section shall provide a sworn
12 affidavit to the respondent affirming that the information
13 contained within the order has been removed from all state
14 databases and systems identified in Subsection C of this
15 section and any other state databases into which information
16 about the order was entered and that the law enforcement agency
17 has notified the national instant criminal background check
18 system and all federal computer-based systems and databases
19 used by law enforcement or others to identify prohibited
20 purchasers of firearms. The affidavit shall be provided to the
21 respondent within five days of the receipt of the request.

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

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

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

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

12 B. A respondent shall not be required to acquire
13 any court order granting the return of relinquished firearms.

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

19 D. Upon written request of the respondent, the law
20 enforcement agency storing a firearm shall transfer possession
21 of the respondent's firearm to a federally licensed firearms
22 dealer or lawful private party purchaser designated by the
23 respondent; provided that the transfer is the result of a sale,
24 that the transferee is the actual owner of the firearm
25 thereafter and, except in the case of a federally licensed

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1 firearms dealer, the law enforcement agency has conducted a
2 national criminal records check and determined that the
3 transferee is not prohibited from possessing a firearm pursuant
4 to state or federal law.

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

7 F. The law enforcement agency transferring
8 possession of a firearm to a transferee shall notify the
9 transferee that it is unlawful to transfer or return the
10 firearm to the respondent while the extreme risk firearm
11 protection order is in effect. A transferee who violates this
12 subsection is guilty of a misdemeanor and may be punished
13 pursuant to Section 31-19-1 NMSA 1978.

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

16 "41-4-12. LIABILITY--LAW ENFORCEMENT OFFICERS.--The
17 immunity granted pursuant to Subsection A of Section [~~5-14-4~~
18 ~~NMSA-1953~~] 41-4-4 NMSA 1978 does not apply to liability for
19 personal injury, bodily injury, wrongful death or property
20 damage resulting from assault, battery, false imprisonment,
21 false arrest, malicious prosecution, abuse of process, libel,
22 slander, defamation of character, violation of property rights,
23 failure to comply with duties established pursuant to statute
24 or law or deprivation of any rights, privileges or immunities
25 secured by the constitution and laws of the United States or

1 New Mexico when caused by law enforcement officers while acting
 2 within the scope of their duties. For purposes of this
 3 section, "law enforcement officer" means a public officer
 4 vested by law with the power to maintain order, to make arrests
 5 for crime or to detain persons suspected of committing a crime,
 6 whether that duty extends to all crimes or is limited to
 7 specific crimes."

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

10 "41-4-19. MAXIMUM LIABILITY.--

11 A. Unless limited by Subsection B of this section,
 12 in any action for damages against a governmental entity or a
 13 public employee while acting within the scope of the employee's
 14 duties as provided in the Tort Claims Act, the liability shall
 15 not exceed:

16 (1) the sum of two hundred thousand dollars
 17 (\$200,000) for each legally described real property for damage
 18 to or destruction of that legally described real property
 19 arising out of a single occurrence;

20 (2) the sum of [~~three hundred thousand dollars~~
 21 ~~(\$300,000)~~] one million dollars (\$1,000,000) for all past and
 22 future medical and medically related expenses arising out of a
 23 single occurrence; and

24 (3) the sum of [~~four hundred thousand dollars~~
 25 ~~(\$400,000)~~] one million dollars (\$1,000,000) to any person for

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1 any number of claims arising out of a single occurrence for all
2 damages other than real property damage and medical and
3 medically related expenses as permitted under the Tort Claims
4 Act.

5 B. The total liability for all claims pursuant to
6 Paragraphs (1) and (3) of Subsection A of this section that
7 arise out of a single occurrence shall not exceed [~~seven~~
8 ~~hundred fifty thousand dollars (\$750,000)~~] two million dollars
9 (\$2,000,000).

10 C. Interest shall be allowed on judgments against a
11 governmental entity or public employee for a tort for which
12 immunity has been waived under the Tort Claims Act at a rate
13 equal to two percentage points above the prime rate as
14 published in the *Wall Street Journal* on the date of the entry
15 of the judgment. Interest shall be computed daily from the
16 date of the entry of the judgment until the date of payment.

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