

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 193

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO EXTREME RISK FIREARM PROTECTION ORDERS; AMENDING
THE DEFINITION OF "REPORTING PARTY"; ALLOWING CERTAIN LAW
ENFORCEMENT OFFICERS TO CONSTITUTE A REPORTING PARTY PURSUANT
TO THE EXTREME RISK FIREARM PROTECTION ORDER ACT; REQUIRING LAW
ENFORCEMENT TO TAKE POSSESSION OF RELINQUISHED FIREARMS UNDER
CERTAIN CIRCUMSTANCES; CHANGING REPORTING REQUIREMENTS;
PROHIBITING USE IN CRIMINAL PROCEEDINGS OF CERTAIN EVIDENCE
ESTABLISHING OWNERSHIP OR POSSESSION OF FIREARMS.

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

SECTION 1. Section 40-17-2 NMSA 1978 (being Laws 2020,
Chapter 5, Section 2) is amended to read:

"40-17-2. DEFINITIONS.--As used in the Extreme Risk
Firearm Protection Order Act:

A. "court" means the district court in the county

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underscoring material = new
[bracketed material] = delete

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 40-17-7 NMSA 1978;

25 G. "petitioner" means a law enforcement officer who

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1 files an extreme risk firearm protection order petition;

2 H. "reporting party" means a person who has
 3 firsthand, credible information that a respondent poses a
 4 significant danger of causing imminent personal injury to self
 5 or others by the respondent having custody or control of a
 6 firearm and requests that a law enforcement officer file a
 7 petition for an extreme risk firearm protection order [~~and~~
 8 ~~includes a spouse, former spouse, parent, present or former~~
 9 ~~stepparent, present or former parent-in-law, grandparent,~~
 10 ~~grandparent-in-law, co-parent of a child, child, person with~~
 11 ~~whom a respondent has or had a continuing personal~~
 12 ~~relationship, employer or public or private school~~
 13 ~~administrator];~~

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

17 J. "temporary extreme risk firearm protection
 18 order" means an extreme risk firearm protection order issued
 19 prior to a hearing pursuant to the provisions of Section [~~6 of~~
 20 ~~the Extreme Risk Firearm Protection Order Act]~~ 40-17-6 NMSA
 21 1978."

22 SECTION 2. Section 40-17-5 NMSA 1978 (being Laws 2020,
 23 Chapter 5, Section 5) is amended to read:

24 "40-17-5. PETITION FOR EXTREME RISK FIREARM PROTECTION
 25 ORDER--CONTENTS.--

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1 A. A petition for an extreme risk firearm
2 protection order shall be filed only by a law enforcement
3 officer employed by a law enforcement agency; provided that, if
4 the respondent is a law enforcement officer, the petition shall
5 be filed by the district attorney or the attorney general.

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

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

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

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1 receiving a firearm.

2 E. A law enforcement officer, absent receipt of
3 credible information from a reporting party pursuant to
4 Subsection D of this section, who personally has probable cause
5 to believe that a respondent poses a significant danger of
6 causing imminent personal injury to self or others by the
7 respondent having custody or control of a firearm that the
8 respondent purchased, possessed or received may file a petition
9 for an extreme risk firearm protection order.

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

16 [~~F.~~] G. A petition for an extreme risk firearm
17 protection order shall be made under oath and shall be
18 accompanied by a sworn affidavit signed by the reporting party
19 setting forth specific facts supporting the order.

20 [~~G.~~] H. A petition for an extreme risk firearm
21 protection order shall include:

- 22 (1) the name and address of the reporting
23 party;
- 24 (2) the name and address of the respondent;
- 25 (3) a description of the number, types and

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1 locations of firearms or ammunition that the petitioner
2 believes the respondent has custody of, controls, owns or
3 possesses;

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

6 (5) a description of any lawsuit, complaint,
7 petition, restraining order, injunction or other legal action
8 between the reporting party and the respondent."

9 SECTION 3. Section 40-17-10 NMSA 1978 (being Laws 2020,
10 Chapter 5, Section 10) is amended to read:

11 "40-17-10. RELINQUISHMENT OF FIREARMS.--

12 A. A respondent who receives a temporary or one-
13 year extreme risk firearm protection order shall relinquish all
14 firearms in the respondent's possession, custody or control or
15 subject to the respondent's possession, custody or control in a
16 safe manner to a law enforcement officer, a law enforcement
17 agency or a federal firearms licensee within forty-eight hours
18 of service of the order or sooner at the discretion of the
19 court. That law enforcement officer or a law enforcement
20 agency shall also take possession of any firearms that are
21 discovered by a law enforcement officer in plain view or are
22 discovered pursuant to a lawful search.

23 B. A law enforcement officer, law enforcement
24 agency or federal firearms licensee that takes temporary
25 possession of a firearm pursuant to this section shall:

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[bracketed material] = delete

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

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

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

8 (4) file the original receipt with the court
9 that issued the temporary or one-year extreme risk firearm
10 protection order within seventy-two hours of taking possession
11 of the firearms [~~and~~

12 ~~(5) ensure that the law enforcement agency~~
13 ~~retains a copy of the receipt]."~~

14 SECTION 4. Section 40-17-12 NMSA 1978 (being Laws 2020,
15 Chapter 5, Section 12) is amended to read:

16 "40-17-12. EXTREME RISK FIREARM PROTECTION ORDER--
17 REPORTING OF ORDERS--AVAILABILITY OF DATA.--

18 [~~A. The clerk of the court shall provide a copy of~~
19 ~~a 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 A. Within ten days of when a court issues, extends
25 or terminates a one-year extreme risk firearm protection order,

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1 the administrative office of the courts shall obtain and
2 electronically transmit information from the court proceedings
3 relating to the respondent's eligibility to receive or possess
4 a firearm to the federal bureau of investigation's national
5 instant criminal background check system pursuant to Section
6 34-9-19 NMSA 1978.

7 B. The clerk of the court shall ~~[forward]~~ provide a
8 copy of any order issued, ~~[renewed]~~ extended or terminated
9 pursuant to the Extreme Risk Firearm Protection Order Act to
10 the petitioner and to the ~~[law enforcement agency specified in~~
11 ~~Subsection A of this section]~~ respondent.

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

16 ~~(1) the national instant criminal background~~
17 ~~check system;~~

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

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

24 D. ~~An extreme risk firearm protection order~~
25 ~~shall remain in each state system for the period stated in the~~

1 ~~order. Entry into the computer-based criminal intelligence~~
2 ~~information system constitutes notice to all law enforcement~~
3 ~~agencies of the existence of the order. The extreme risk~~
4 ~~firearm protection order shall be fully enforceable in any~~
5 ~~county, city or town in the state.~~

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

16 ~~F. Following the expiration or termination of an~~
17 ~~order issued pursuant to the Extreme Risk Firearm Protection~~
18 ~~Order Act and upon written request, the law enforcement agency~~
19 ~~specified in Subsection A of this section shall provide a sworn~~
20 ~~affidavit to the respondent affirming that the information~~
21 ~~contained within the order has been removed from all state~~
22 ~~databases and systems identified in Subsection C of this~~
23 ~~section and any other state databases into which information~~
24 ~~about the order was entered and that the law enforcement agency~~
25 ~~has notified the national instant criminal background check~~

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1 ~~system and all federal computer-based systems and databases~~
2 ~~used by law enforcement or others to identify prohibited~~
3 ~~purchasers of firearms. The affidavit shall be provided to the~~
4 ~~respondent within five days of the receipt of the request.~~

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

9 ~~H.]~~ C. Aggregate statistical data indicating the
10 number of extreme risk firearm protection orders issued,
11 [~~renewed~~] extended, denied or terminated shall be maintained by
12 the issuing court and the administrative office of the courts
13 and shall be available to the public upon request."

14 SECTION 5. [NEW MATERIAL] PROHIBITING USE OF EVIDENCE IN
15 CRIMINAL PROCEEDINGS.--Evidence establishing ownership or
16 possession of a firearm presented in a hearing pursuant to the
17 Extreme Risk Firearm Protection Order Act shall not be
18 admissible as evidence in any criminal proceeding.