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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/21

SPONSOR HCPAC LAST UPDATED _____ HB 193/HCPACS

SHORT TITLE Extreme Risk Protection Order Changes SB _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS) (original bill)
 Attorney General (NMAG)
 Administrative Office of the District Attorneys (AODA)
 Law Offices of the Public Defender (LOPD)
 Department of Health (DOH) (original bill)

SUMMARY

Synopsis of Bill

The House Consumer and Public Affairs Committee Substitute for House Bill 193 amends the Extreme Risk Firearm Protection Order Act. The amendments:

- Change the definition of a “reporting party” who may request the filing of a petition for an extreme risk firearm protection order (ERFPO) to a person with firsthand credible information that a respondent poses a significant danger of causing imminent personal injury with a firearm;
- Absent receipt of credible information from a reporting party, allow a law enforcement officer who personally has probable cause to believe a respondent poses a significant danger of causing imminent personal injury with a firearm to file a petition for an ERFPO;

- Provide that a law enforcement officer or law enforcement agency shall take possession of all firearms subject to an ERFPO that are discovered by a law enforcement officer in plain sight or pursuant to a lawful search;
- Provide that within 10 days of a court’s issuance, extension, or termination of a one-year ERFPO, AOC shall transmit information from the court proceedings relating to a respondent’s eligibility to receive or possess a firearm to the FBI’s national instant criminal background check system (NICS);
- Require a court clerk to provide copies of ERFPOs issued, extended, or terminated to the petitioner and respondent;
- Remove the requirements that law enforcement officers enter ERFPOs into NICS and federal and state digital criminal information systems and that the orders remain in state criminal information systems for a period stated in the orders;
- Remove the provision requiring the clerk of the court to forward copies of orders terminating an ERFPO before its expiration date to NMAG and the petitioner; and
- Provide that evidence establishing ownership or possession of a firearm presented in a hearing under the act shall not be admissible as evidence in any criminal proceeding.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

No fiscal implications were reported for HB193.

SIGNIFICANT ISSUES

HB193’s amendments clarify ambiguities in the Extreme Risk Firearm Protection Order Act enacted in 2020.

LOPD notes ERFPO hearings are civil proceedings. Because civil proceedings are not subject to the right to counsel under the Sixth Amendment of the U.S. Constitution and other safeguards associated with a criminal proceeding, the bill’s bar to the use of evidence presented in an ERFPO hearing in any criminal proceeding ensures that evidence presented in criminal proceedings is subject to stringent constitutional and evidentiary standards.

AOC notes the Extreme Risk Firearm Protection Act took effect on May 20, 2020. AOC reports that, to date, there have only been four petitions for an extreme risk firearm protection order filed statewide. Of these, two were filed by a district attorney and two were filed by law enforcement. Of the four petitions filed, three one-year ERFPOs were issued.

According to AOC, one of the reasons for the low number of petitions may have been the current definition of “reporting party,” which is limited to specifically listed individuals. HB193 broadly expands the current definition to include any person with firsthand, credible information that a respondent poses a significant danger of causing personal injury with a firearm.

In its analysis for the original bill, DPS points out the act currently requires AOC to provide information to a law enforcement agency for purposes of reporting to NICS. DPS states giving AOC direct responsibility for reporting ERFPO information to NICS is appropriate because it will cut off an unnecessary bureaucratic step and speed up the recording of ERFPOs in the NICS system.

OTHER SUBSTANTIVE ISSUES

AODA notes that, in contrast to the original bill, the HCPAC Substitute for HB193 does not eliminate district attorney offices and the Attorney General from the Extreme Risk Firearm Protection Order Act’s definitions of “law enforcement agency” and “law enforcement officer.” AODA states prosecutors have concerns about the inclusion of the Attorney General and district attorneys in those definitions, particularly in regard to compliance with the duties and responsibilities charged to law enforcement agencies and officers under the act. District attorneys generally do not patrol communities, arrest or detain persons suspected of committing a crime, seize or take possession of firearms, or otherwise enforce the law other than through prosecutions.

AOC suggests excluding the Attorney General and district attorneys from the definitions of “law enforcement agency” and “law enforcement officer” and including them in the definition of “petitioner” and Section 40-17-5’s provisions related to filing an ERFPO petition.

BG/sb