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HOUSE BILL 27

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

Joy Garratt and Christine Chandler and Cristina Parajón and  
Katy M. Duhigg

AN ACT

RELATING TO FIREARMS; AMENDING THE EXTREME RISK FIREARM  
PROTECTION ORDER ACT; ALLOWING HEALTH CARE PROFESSIONALS AND  
LAW ENFORCEMENT OFFICERS TO REQUEST PETITIONS FOR EXTREME RISK  
FIREARM PROTECTION ORDERS; PROVIDING AN EXPEDITED PROCESS FOR  
TEMPORARY ORDERS TO BE ISSUED AT ALL TIMES; REQUIRING IMMEDIATE  
RELINQUISHMENT OF FIREARMS UPON SERVICE OF AN ORDER; ALLOWING  
LAW ENFORCEMENT AGENCIES TO DESTROY, SELL OR TRANSFER UNCLAIMED  
FIREARMS; MAKING CONFORMING AMENDMENTS.

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

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

"40-17-1. SHORT TITLE.--~~[Sections 1 through 13 of this  
act]~~ Chapter 40, Article 17 NMSA 1978 may be cited as the  
"Extreme Risk Firearm Protection Order Act"."

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

3           "40-17-2. DEFINITIONS.--As used in the Extreme Risk  
4 Firearm Protection Order Act:

5           A. "court" means the district court in the county  
6 in which the respondent resides;

7           B. "extreme risk firearm protection order" means  
8 ~~[either a temporary extreme risk firearm protection order or a~~  
9 ~~one-year extreme risk firearm protection]~~ an order granted  
10 pursuant to the Extreme Risk Firearm Protection Order Act and  
11 includes a temporary extreme risk firearm protection order;

12           C. "firearm" means ~~[any]~~ a weapon that is designed  
13 to expel a projectile by an explosion or the frame or receiver  
14 of any such weapon;

15           D. "law enforcement agency" means the police  
16 department of ~~[any city or town]~~ a municipality, the sheriff's  
17 office of ~~[any]~~ a county, the New Mexico state police ~~[and]~~, a  
18 district attorney's office in the state and the office of the  
19 attorney general;

20           E. "law enforcement officer" means a ~~[public~~  
21 ~~official or public officer vested by law with the power to~~  
22 ~~maintain order, to make arrests for crime or to detain persons~~  
23 ~~suspected of committing a crime, whether that duty extends to~~  
24 ~~all crimes or is limited to specific crimes]~~ full-time salaried  
25 and commissioned or certified law enforcement officer of a

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1 police or sheriff's department and [~~includes~~] an attorney  
2 employed by a district attorney or the attorney general;

3 [~~F. "one-year extreme risk firearm protection~~  
4 ~~order" means an extreme risk firearm protection order granted~~  
5 ~~for up to one year following a hearing pursuant to the~~  
6 ~~provisions of Section 7 of the Extreme Risk Firearm Protection~~  
7 ~~Order Act;~~

8 ~~G.]~~ F. "petitioner" means a law enforcement officer  
9 who files a petition for an extreme risk firearm protection  
10 order [~~petition~~];

11 [~~H.]~~ G. "reporting party" means a person who  
12 requests that a law enforcement officer file a petition for an  
13 extreme risk firearm protection order [~~and includes a spouse,~~  
14 ~~former spouse, parent, present or former stepparent, present or~~  
15 ~~former parent-in-law, grandparent, grandparent-in-law, co-~~  
16 ~~parent of a child, child, person]~~ with whom a respondent has or  
17 had a continuing personal relationship and an employer, [~~or~~]  
18 public or private school administrator, licensed health care  
19 professional or law enforcement officer; and

20 [~~H.]~~ H. "respondent" means the person identified in  
21 a reporting party's request or a petitioner's petition or  
22 subject to an extreme risk firearm protection order [~~petition;~~  
23 ~~and~~

24 ~~J. "temporary extreme risk firearm protection~~  
25 ~~order" means an extreme risk firearm protection order issued~~

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1 ~~prior to a hearing pursuant to the provisions of Section 6 of~~  
2 ~~the Extreme Risk Firearm Protection Order Act]."~~

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

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

7 ~~[A. A petition for an extreme risk firearm~~  
8 ~~protection order shall be filed only by a law enforcement~~  
9 ~~officer employed by a law enforcement agency; provided that, if~~  
10 ~~the respondent is a law enforcement officer, the petition shall~~  
11 ~~be filed by the district attorney or the attorney general.~~

12 ~~B. A petitioner may file a petition with the court~~  
13 ~~requesting an extreme risk firearm protection order that shall~~  
14 ~~enjoin the respondent from having in the respondent's~~  
15 ~~possession, custody or control any firearm and shall further~~  
16 ~~enjoin the respondent from purchasing, receiving or attempting~~  
17 ~~to purchase, possess or receive any firearm while the order is~~  
18 ~~in effect.~~

19 ~~C. If a law enforcement officer declines to file a~~  
20 ~~requested petition for an extreme risk firearm protection~~  
21 ~~order, the law enforcement officer shall file with the sheriff~~  
22 ~~of the county in which the respondent resides a notice that the~~  
23 ~~law enforcement officer is declining to file a petition~~  
24 ~~pursuant to this section.~~

25 ~~D.]~~ A. A law enforcement officer shall file a

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1 petition for an extreme risk firearm protection order upon  
2 receipt of credible information from a reporting party that  
3 gives the agency or officer probable cause to believe that a  
4 respondent poses a significant danger of causing imminent  
5 personal injury to self or others by having in the respondent's  
6 custody or control or by purchasing, possessing or receiving a  
7 firearm.

8 B. A petition for an extreme risk firearm  
9 protection order shall be filed only by a law enforcement  
10 officer employed by a law enforcement agency; provided that, if  
11 the respondent is an officer of a police or sheriff's  
12 department, the petition shall be filed by an attorney employed  
13 by a district attorney or the attorney general.

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

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

24 [~~G.~~] E. A petition for an extreme risk firearm  
25 protection order shall include:

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- 1 (1) the name and address of the reporting  
2 party;
- 3 (2) the name and address of the respondent;
- 4 (3) a description of the number, types and  
5 locations of firearms or ammunition that the petitioner  
6 believes the respondent has custody of, controls, owns or  
7 possesses;
- 8 (4) a description of the relationship between  
9 the reporting party and the respondent; and
- 10 (5) a description of any lawsuit, complaint,  
11 petition, restraining order, injunction or other legal action  
12 between the reporting party and the respondent.

13 F. If the law enforcement officer has good cause,  
14 the officer may petition the court orally; provided that a  
15 written petition shall be filed within twenty-four hours of the  
16 oral petition.

17 G. When a law enforcement officer declines to file  
18 a requested petition for an extreme risk firearm protection  
19 order, the law enforcement officer shall immediately notify the  
20 reporting party of the officer's decision and provide the  
21 reporting party with a written notice within forty-eight hours  
22 thereafter.

23 H. A district judge shall be available to review a  
24 petition for an extreme risk firearm protection order at all  
25 times; provided that the chief judge of a district court may

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1 appoint a domestic violence special commissioner to also review  
2 a petition."

3 SECTION 4. Section 40-17-6 NMSA 1978 (being Laws 2020,  
4 Chapter 5, Section 6) is amended to read:

5 "40-17-6. [~~PETITION FOR~~] TEMPORARY EXTREME RISK FIREARM  
6 PROTECTION ORDER--[~~TEMPORARY~~] CONTENTS OF ORDERS--  
7 PROCEEDINGS.--

8 A. Upon the filing of a petition pursuant to the  
9 Extreme Risk Firearm Protection Order Act, the court [~~may~~  
10 enter] shall review the petition immediately and shall issue a  
11 temporary extreme risk firearm protection order if the court  
12 finds from specific facts shown by the petition that there is  
13 probable cause to believe that the respondent poses a  
14 significant danger of causing imminent personal injury to self  
15 or others by having in the respondent's custody or control or  
16 by purchasing, possessing or receiving a firearm before notice  
17 can be served and a hearing held.

18 B. If the court finds probable cause [~~pursuant to~~  
19 ~~Subsection A of this section~~], the court shall issue a  
20 temporary extreme risk firearm protection order [~~enjoining~~] and  
21 shall, at a minimum:

22 (1) enjoin the respondent from having in the  
23 respondent's possession, custody or control a firearm; [~~and~~  
24 ~~shall further~~]

25 (2) enjoin the respondent from purchasing,

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1 receiving or attempting to purchase or receive a firearm [~~while~~  
2 ~~the order is in effect~~]; and

3 (3) order the respondent to immediately, upon  
4 service of the order, relinquish the firearm the court found  
5 probable cause to believe is in the respondent's custody or  
6 control.

7 C. The court shall conduct a hearing on the  
8 petition within ten days of the issuance of a temporary extreme  
9 risk firearm protection order [~~to determine if a one-year~~  
10 ~~extreme risk firearm protection order should be issued pursuant~~  
11 ~~to this section~~].

12 D. A temporary extreme risk firearm protection  
13 order shall include:

14 (1) a statement of the grounds supporting the  
15 issuance of the order;

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

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

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

24 [~~and~~]

25 (5) the date and time of the scheduled

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1 hearing, to be held within ten days of the issuance of the  
2 order;

3 (6) when appropriate, a sufficient description  
4 of the firearm subject to relinquishment; and

5 (7) notice that a violation of the order is a  
6 misdemeanor.

7 E. The court may continue the hearing at the  
8 request of the respondent, but the hearing shall be set within  
9 thirty days of the respondent's request for continuance.

10 F. A temporary extreme risk firearm protection  
11 order shall be served by the petitioner along with supporting  
12 documents that formed the basis of the order and the notice of  
13 hearing [~~and the petition for a one-year extreme risk firearm~~  
14 ~~protection order~~].

15 G. If the court declines to issue a temporary  
16 extreme risk firearm protection order, the court shall dismiss  
17 the petition without prejudice and enter an order that includes  
18 the reasons for the [~~denial~~] dismissal."

19 SECTION 5. Section 40-17-7 NMSA 1978 (being Laws 2020,  
20 Chapter 5, Section 7) is amended to read:

21 "40-17-7. HEARINGS ON PETITION--GROUNDS FOR ISSUANCE--  
22 CONTENTS OF ORDER.--In determining whether grounds for [~~any~~] an  
23 extreme risk firearm protection order exist, the court shall  
24 consider, at a minimum, the following:

25 A. any recent act or threat of violence by the

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1 respondent against self or others, regardless of whether the  
2 act or threat involved a firearm;

3 B. a pattern of acts or threats of violence by the  
4 respondent within the past twelve months, including acts or  
5 threats of violence against self or others;

6 C. the respondent's mental health history;

7 D. the respondent's abuse of controlled substances  
8 or alcohol;

9 E. the respondent's previous violations of any  
10 court order;

11 F. previous extreme risk firearm protection orders  
12 issued against the respondent;

13 G. the respondent's criminal history, including  
14 arrests and convictions for violent felony offenses, violent  
15 misdemeanor offenses, crimes involving domestic violence or  
16 stalking;

17 H. the respondent's history of the use, attempted  
18 use or threatened use of physical violence against another  
19 person; of stalking another person; or of cruelty to animals;  
20 and

21 I. any recent acquisition or attempts at  
22 acquisition of a firearm by the respondent."

23 SECTION 6. Section 40-17-8 NMSA 1978 (being Laws 2020,  
24 Chapter 5, Section 8) is amended to read:

25 "40-17-8. [~~ONE-YEAR~~] EXTREME RISK FIREARM PROTECTION

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1 ORDER--GROUNDS FOR ISSUANCE--CONTENTS OF ORDER--TERMINATION--  
2 EXPIRATION--RENEWAL OF ORDERS.--

3 A. If, after hearing the matter, the court finds by  
4 a preponderance of the evidence that the respondent poses a  
5 significant danger of causing imminent personal injury to self  
6 or others by having in the respondent's custody or control or  
7 by purchasing, possessing or receiving a firearm, the court  
8 shall issue [~~a one-year~~] an extreme risk firearm protection  
9 order.

10 B. An extreme risk firearm protection order shall  
11 expire three hundred sixty-five days after issuance.

12 [~~B. A one-year~~] C. An extreme risk firearm  
13 protection order shall include:

14 (1) a statement of the grounds supporting the  
15 issuance of the order;

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

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

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

21 (5) the address of the court that issued the  
22 order; [~~and~~]

23 (6) notice that the respondent is entitled to  
24 request termination of the order prior to the expiration of the  
25 order; and

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1                    (7) notice that a violation of the order is a  
2 misdemeanor.

3                    [~~G.~~] D. If the court declines to issue [~~a one-year~~]  
4 an extreme risk firearm protection order, the court shall state  
5 in writing the reasons for the court's denial and shall order  
6 the return of any firearms to the respondent.

7                    [~~D.~~] E. A respondent may request that the court  
8 terminate [~~a one-year~~] an extreme risk firearm protection order  
9 at any time prior to the expiration of the order.

10                    [~~E.~~] F. At any time not less than one month prior  
11 to the expiration of [~~a one-year~~] an extreme risk firearm  
12 protection order, a petitioner may petition the court to extend  
13 the order. Each extension of the order shall not exceed [~~one~~  
14 year] three hundred sixty-five days. A petition [~~filed~~  
15 ~~pursuant to this subsection shall comply with the provisions of~~  
16 ~~Subsections E and F of Section 5 of the Extreme Risk Firearm~~  
17 ~~Protection Order Act and shall be served on the respondent as~~  
18 ~~provided in Section 9 of that act~~] for an extension of the  
19 order shall meet the same requirements as the original  
20 petition.

21                    [~~F. A one-year~~] G. An extreme risk firearm  
22 protection order is a final, immediately appealable order."

23                    SECTION 7. Section 40-17-9 NMSA 1978 (being Laws 2020,  
24 Chapter 5, Section 9) is amended to read:

25                    "40-17-9. SERVICE OF EXTREME RISK FIREARM PROTECTION

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1       ORDERS.--~~[A one-year extreme risk firearm protection]~~ An order  
2       issued pursuant to the Extreme Risk Firearm Protection Order  
3       Act shall be personally served upon the respondent by the  
4       sheriff's office in the county in which the respondent resides;  
5       provided that if the respondent resides in a ~~[city or town]~~  
6       municipality that has a police department, the police  
7       department shall serve the order."

8               SECTION 8. Section 40-17-10 NMSA 1978 (being Laws 2020,  
9       Chapter 5, Section 10) is amended to read:

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

11              A. A respondent ~~[who receives a temporary or one-~~  
12       ~~year extreme risk firearm protection]~~ subject to an extreme  
13       risk firearm protection order shall relinquish all firearms in  
14       the respondent's possession, custody or control or subject to  
15       the respondent's possession, custody or control in a safe  
16       manner to a law enforcement officer, a law enforcement agency  
17       or a federal firearms licensee ~~[within forty-eight hours of]~~  
18       immediately upon service of the order or ~~[sooner at the~~  
19       ~~discretion of]~~ as directed by the court.

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

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

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

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1 respondent;

2 (3) provide a copy of the receipt to the  
3 petitioner within seventy-two hours of taking possession of the  
4 firearms;

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

9 (5) ensure that the law enforcement agency  
10 retains a copy of the receipt.

11 C. If a law enforcement officer has probable cause  
12 to believe that a respondent is in violation of an extreme risk  
13 firearm protection order, the officer may request, orally or in  
14 writing, a search warrant from the court that issued the  
15 order."

16 SECTION 9. Section 40-17-11 NMSA 1978 (being Laws 2020,  
17 Chapter 5, Section 11) is amended to read:

18 "40-17-11. PENALTIES.--A person who fails to relinquish,  
19 or who possesses or has custody or control over, [any] a  
20 firearm or who purchases, receives or attempts to purchase,  
21 possess or receive [any] a firearm, in violation of [~~a~~  
22 ~~temporary extreme risk firearm protection order or a one-year~~]  
23 an extreme risk firearm protection order is guilty of a  
24 misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978."

25 SECTION 10. Section 40-17-12 NMSA 1978 (being Laws 2020,

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1 Chapter 5, Section 12) is amended to read:

2 "40-17-12. EXTREME RISK FIREARM PROTECTION ORDER--  
3 REPORTING OF ORDERS--AVAILABILITY OF DATA.--

4 ~~[A. The clerk of the court shall provide a copy of~~  
5 ~~a one-year extreme risk firearm protection order or temporary~~  
6 ~~extreme risk firearm protection order issued pursuant to the~~  
7 ~~Extreme Risk Firearm Protection Order Act to any law~~  
8 ~~enforcement agency designated to provide information to the~~  
9 ~~national instant criminal background check system.~~

10 ~~B. The clerk of the court shall forward a copy of~~  
11 ~~any order issued, renewed or terminated pursuant to the Extreme~~  
12 ~~Risk Firearm Protection Order Act to the petitioner and to the~~  
13 ~~law enforcement agency specified in Subsection A of this~~  
14 ~~section.~~

15 ~~G.]~~ A. Upon ~~[receipt of a copy of a one-year~~  
16 ~~extreme risk firearm protection order or temporary extreme risk~~  
17 ~~firearm protection order, the law enforcement agency specified~~  
18 ~~in Subsection A of this section]~~ issuance of an order pursuant  
19 to the Extreme Risk Firearm Protection Order Act, the court  
20 shall enter the order into:

21 (1) the national instant criminal background  
22 check system;

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

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

4 ~~[D.]~~ B. An extreme risk firearm protection order  
5 shall remain in each state system for the period stated in the  
6 order. Entry into the computer-based criminal intelligence  
7 information system constitutes notice to all law enforcement  
8 agencies of the existence of the order. The extreme risk  
9 firearm protection order shall be fully enforceable in any  
10 county ~~[city or town]~~ or municipality in the state.

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

22 ~~[F. Following the expiration or termination of an~~  
23 ~~order issued pursuant to the Extreme Risk Firearm Protection~~  
24 ~~Order Act and upon written request, the law enforcement agency~~  
25 ~~specified in Subsection A of this section shall provide a sworn~~

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1 ~~affidavit to the respondent affirming that the information~~  
2 ~~contained within the order has been removed from all state~~  
3 ~~databases and systems identified in Subsection C of this~~  
4 ~~section and any other state databases into which information~~  
5 ~~about the order was entered and that the law enforcement agency~~  
6 ~~has notified the national instant criminal background check~~  
7 ~~system and all federal computer-based systems and databases~~  
8 ~~used by law enforcement or others to identify prohibited~~  
9 ~~purchasers of firearms. The affidavit shall be provided to the~~  
10 ~~respondent within five days of the receipt of the request.~~

11 ~~G.]~~ D. If ~~[any]~~ an extreme risk firearm protection  
12 order is terminated before its expiration date, the clerk of  
13 the court shall forward a copy of the termination order to the  
14 office of the attorney general and the petitioner.

15 ~~[H.]~~ E. Aggregate statistical data indicating the  
16 number of extreme risk firearm protection orders issued,  
17 renewed, denied or terminated shall be maintained by the  
18 issuing court and the administrative office of the courts and  
19 shall be available to the public ~~[upon request]."~~

20 SECTION 11. Section 40-17-13 NMSA 1978 (being Laws 2020,  
21 Chapter 5, Section 13) is amended to read:

22 "40-17-13. EXTREME RISK FIREARM PROTECTION ORDERS--  
23 FIREARMS RETURN--DISPOSITION.--

24 A. ~~[Any]~~ A firearm relinquished in accordance with  
25 the Extreme Risk Firearm Protection Order Act shall be returned

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1 to the respondent within ten days following the expiration or  
2 termination of ~~an~~ the extreme risk firearm protection order  
3 upon the respondent's request.

4 B. A respondent shall not be required to acquire  
5 ~~any~~ a court order granting the return of relinquished  
6 firearms.

7 C. The law enforcement agency in possession of the  
8 firearms shall conduct a national criminal records check and  
9 shall return the firearms if the agency determines that the  
10 respondent is not prohibited from possessing firearms pursuant  
11 to state or federal law.

12 D. Upon written request of the respondent, the law  
13 enforcement agency storing a firearm shall transfer possession  
14 of the respondent's firearm to a federally licensed firearms  
15 dealer or lawful private party purchaser designated by the  
16 respondent; provided that, if the transfer is the result of a  
17 sale, ~~that~~ the transferee ~~is~~ shall be the actual owner of  
18 the firearm thereafter and, except in the case of a federally  
19 licensed firearms dealer, prior to the transfer, the law  
20 enforcement agency ~~has conducted~~ shall conduct a national  
21 criminal records check ~~and determined~~ to determine that the  
22 transferee is not prohibited from possessing a firearm pursuant  
23 to state or federal law.

24 E. No fee shall be charged for ~~background~~  
25 national criminal records checks required pursuant to

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1     ~~[Subsections C and D of]~~ this section.

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

9             G. A law enforcement agency in possession of a  
10 firearm pursuant to this section may destroy, sell or otherwise  
11 transfer the firearm if it remains unclaimed after three  
12 hundred sixty-five days from the date of the notice to the  
13 respondent of the agency's intent to destroy, sell or otherwise  
14 transfer the firearm. If a person other than the respondent  
15 claims to be the lawful owner of the firearm, the agency shall  
16 provide the firearm to that person only upon receipt of written  
17 proof of ownership."