

Duplicates/Conflicts with/Companion to/Relates to: N/A
Duplicates/Relates to Appropriation in the General Appropriation Act – N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 67 amends portions of the Family Violence Protection Act, requiring all restrained parties under an Order of Protection to relinquish their firearms immediately upon service of an Order of Protection to law enforcement or a federal firearms licensee.

House Bill 67 does not contain an effective date and would become effective 90 days following adjournment of the Legislature, or on May 20, 2026, if signed into law.

FISCAL IMPLICATIONS

There will be significant administrative cost for statewide update, distribution and documentation of these proposed statutory changes. The additional fiscal impact on the Judiciary would be proportional to the increased time judges would need to address firearm ownership and relinquishment, and the time required to confirm compliance with the firearm relinquishment order. The changes proposed in HB67 will likely result in longer hearings and the need for additional compliance hearings which will require additional hearing officers, judges and staff to handle the increased burden imposed by these legislative changes.

SIGNIFICANT ISSUES

In 2019, New Mexico enacted firearm relinquishment requirements for restrained parties subject to orders of protection issued under the Family Violence Protection Act. Currently, firearm relinquishment applies only when a judge makes an additional finding that the restrained party “presents a credible threat to the physical safety of the household member.” HB67 eliminates this separate judicial determination and would require all respondents to surrender their firearms upon being served with an order of protection.

In *United States v. Rahimi*, the United States Supreme Court determined that a domestic violence restraining order satisfies 18 U.S.C. §922(g)(8) if it either contains a judicial finding that the defendant “represents a credible threat to the physical safety” of an intimate partner or the partner’s child, §922(g)(8)(C)(i), or, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against those individuals, §922(g)(8)(C)(ii). Accordingly, under this recent decision, the elimination of a “credible threat” finding in HB67 would not undermine the constitutionality of New Mexico orders of protection, as such orders uniformly prohibit future use or threatened use of physical force against the protected party.

HB67 deletes the phrase “after the restrained party has received notice and had an opportunity to be heard” from Section 40-13-5(A)(2). Federal law, however, requires that a court order be “issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate.” 18 U.S.C. § 922(g)(8)(A). Eliminating this language may raise constitutional concerns and create potential conflicts with federal law.

On January 12, 2024, the New Mexico Supreme Court issued an order directing that domestic violence proceedings be conducted remotely whenever possible. As a result, the vast majority of

hearings on orders of protection are now held virtually rather than in person, in order to enhance the safety and security of judges, court staff, attorneys, litigants, and the public. Prior to Supreme Court Order S-1-AO-2024-00002 being issued, when hearings were conducted in person, court staff were able to facilitate personal service of the order immediately following the hearing. Under the current virtual hearing process, service must be completed by law enforcement, which has resulted in frequent and sometimes significant delays. As currently drafted, HB67 requires a restrained party to “immediately relinquish all firearms . . . in a safe manner” upon service of an order of protection. If law enforcement is unable to promptly effect service, the firearm relinquishment requirement is not triggered. Requiring firearm relinquishment to be associated with service of the order may limit the practical implementation and effectiveness and of this proposed legislation.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill will likely have a significant impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

If HB67 is passed, there are significant changes that must be made to court rules forms to comply with the mandatory firearm relinquishment for all restrained parties subject to an order of protection. If passed, HB67 does not contain an effective date and would become effective 90 days following adjournment of the Legislature, or on May 20, 2026, if signed into law. Realistically, the Judiciary would need a year to ensure changes to existing court rules and forms could be made and approved for use by the Supreme Court.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – none identified.

TECHNICAL ISSUES

When the Family Violence Protection Act was amended in 2019, the Legislature also enacted changes to NMSA 1978, Section 30-7-16. These amendments expanded the category of individuals prohibited from receiving, transporting, or possessing a firearm to include “a person subject to an order of protection pursuant to Section 40-13-5.” Accordingly, the Family Violence Protection Act should be amended to expressly state that all restrained parties subject to an order of protection are prohibited from receiving, transporting, or possessing a firearm pursuant to NMSA 1978, Section 30-7-16.

OTHER SUBSTANTIVE ISSUES

The automatic loss of the Second Amendment right to bear arms that is proposed by HB67 would likely have significant impact on the Judiciary. First, there are likely to be less stipulations to order of protections, resulting in an increase in the number of evidentiary hearings. Currently, judges and hearing officers in all district courts manage extremely busy dockets in order to comply with the statutory requirement of holding a hearing on the merits of the allegations of a petition within ten business days. The changes proposed in HB67 will require additional time during the hearing to ascertain whether the restrained party has firearms, and if so, the steps the

restrained party must take to ensure compliance with the relinquishment of the firearms. Ensuring compliance with firearm relinquishment is an essential element of carrying out the intent of the statutory changes proposed by HB67. For the Judiciary, additional staff will be required to ensure the relinquishment of firearms. Even in smaller judicial districts, this important post-adjudication function is essential but an extremely time consuming process and will require additional resources.

ALTERNATIVES – none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None. Judges will still be able to use the existing provisions under the Family Violence Protection Act to order respondents who are found to be a credible threat to the physical safety of the household member to relinquish their firearms while the order of protection is in effect.

AMENDMENTS – none.