

LFC Requester:	Scott Sanchez
-----------------------	----------------------

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 22, 2024

Bill No: House Bill 27

Sponsor: Reps. Joy Garratt and Christine Chandler
Short Title: Extreme Risk Protection Order Changes

Agency Name and Code Number: 218 AOC
Person Writing Patricia M. Galindo
Phone: 505-670-2656 **Email** aocpmg@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
None	None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 27 amends various sections of the Extreme Risk Firearm Protection Act by: changing the definition of a “reporting party” to include a licensed health care professional or law enforcement officer; creating a new 24/7 process to petition for an Extreme Risk Firearm Protection Order; creating an alternate “oral” petition and warrant process; requiring the immediate relinquishment of firearms upon service of the Extreme Risk Firearm Protection Order; shifting the burden of reporting Extreme Risk Firearm Protection Orders to the court; and allowing law enforcement to dispose of relinquished firearms one year after the expiration of an Extreme Risk Firearm Protection Order.

House Bill 27 does not contain an effective date and would be effective on May 15, 2024, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

HB 27 changes the definition of a reporting party by removing the list of “household members” and leaving “with whom a respondent has or had a continuing personal relationship” without defining a “continuing personal relationship”. This change may actually make it more confusing as to who can be a reporting party.

Section 3 of HB 27, clarifies that a petition for an Extreme Risk Firearm Protection Order can only be filed by a law enforcement officer but if the respondent is “an officer of a police or sheriff’s department” the petition shall be filed by the district attorney or attorney general’s office. This section fails to outline the process for when a law enforcement officer serves in the role of a reporting party whether that same officer, and the same law enforcement agency, can also serve as the petitioner for an Extreme Risk Firearm Protection Order.

HB 27 creates an entirely new process that requires the court to have a district court judge available 24 hours a day, 7 days a week, to review a petition for an Extreme Risk Firearm

Protection Order. This expansion of the Extreme Risk Firearm Protection Order process would likely have a significant impact on the resources necessary to approve these Orders after hours and on weekends. This legislation also allows the Chief Judge of a district court to “appoint a domestic violence special commissioner to also review a petition”. Section 40-13-10 NMSA 1978 defines the powers and duties of a domestic violence special commissioner under the Family Violence Protection Act. These powers and duties include: reviewing petitions, motions and orders, conducting hearings and “preparing recommendations to the district judges . . .” and requires that all orders must be signed by a district court judge before the recommendations of domestic violence special commissioner become effective. This legislation creates two significant issues: first, the special commissioners identified in HB 27 only have the authority to act on cases filed under the Family Violence Protection Act. A secondary issue is any orders issued by the special commissioner require a district court judge to review and approve the order before the order can become effective. If the intent of this legislation is to expedite or improve the issuance of an Extreme Risk Firearm Protection Order, the additional requirement that a district court judge must review and countersign any order would actually delay the process.

HB 27 also creates a provision that allows a law enforcement officer to orally petition the court for an Extreme Risk Firearm Protection Order and for a search warrant if the officer believes the respondent is in violation of the terms of the Order. It is important to stress that an Extreme Risk Firearm Protection Order impacts an individual’s Second Amendment right to bear arms and any process to remove this right, even temporarily, must ensure adequate protections and procedures are in place. Eliminating the need for a written petition or warrant would be a departure from current court procedures and could severely impact the established protocols for the issuance of these Orders.

Finally, HB 27 shifts the burden of reporting Extreme Risk Firearm Protection Orders entirely to the courts. It is important to note that the judiciary does not enter data into any state databases used by law enforcement to “identify prohibited purchasers or firearms” or “criminal intelligence information systems” used by law enforcement agencies. The FBI has established the Criminal Justice Information Systems (CJIS) division for criminal justice agencies who enter information into the Law Enforcement Enterprise Portal (LEEP), National Crime Information Center (NCIC) and the National Instant Criminal Background Check System (NICS). <https://le.fbi.gov/cjis-division/the-cjis-advisory-process>. In New Mexico, the CJIS System Officer (CSO) is with the Department of Public Safety. This legislative change would be unenforceable since the judiciary is not the appropriate entity to enter Extreme Risk Firearm Protection Orders into databases primarily used by law enforcement.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an 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 – none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – none identified.

TECHNICAL ISSUES

The Extreme Risk Firearm Protection Order Act refers to a violation of the Act as being a

“misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978”. Section 31-1-19 NMSA 1978 describes the sentencing authority when “the defendant has been convicted of a crime constituting a misdemeanor” but it should be noted that there is no corresponding criminal offense created in this Act.

OTHER SUBSTANTIVE ISSUES

Since the Extreme Risk Firearm Protection Order (ERFPO) Act became effective on May 20, 2020 through December 31, 2023, a total of 70 ERFPO petitions have been filed statewide. The most significant increase in filings occurred in 2023 which saw 47 petitions filed, constituting 67% of all ERFPO petitions filed since May 2020. Research published by John Hopkins states that increased awareness of Extreme Risk Protection Orders is a critical step to ensure it is a useful gun violence prevention tool and there has definitely been an increased awareness of ERFPOs in New Mexico following the mass shooting in Maine this past fall.

<https://publichealth.jhu.edu/sites/default/files/2023-02/research-on-extreme-risk-protection-orders.pdf>

Attached is the cumulative ERFPO data reporting compiled by the AOC. In addition, a breakdown of the annual ERFPO filings:

- May to December 2020 – four petitions filed;
- CY 2021 – three petitions filed;
- CY 2022 – 16 petitions filed;
- CY 2023 – 47 petitions filed; and
- January 1 to 22, 2024 – five petitions filed.

ALTERNATIVES – none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – none.

AMENDMENTS

The issue of who is able to serve in the role of a “reporting party” has been criticized as being too narrow or not clear. The proposed definition of a reporting party in HB 27 would likely further complicate this issue. If the intent of this HB 27 is to clarify that only individuals with credible first-hand knowledge of the respondent may serve as a reporting party, then this definition could be simplified to read:

A “reporting party” means a person who has credible information and knowledge about the respondent, due to their relationship with the respondent, who requests that a law enforcement officer file a petition for an Extreme Risk Firearm Protection Order; or a law enforcement officer who in the course of their investigation receives credible information about a respondent.

Recently, there have been instances where the same law enforcement officer that petitions for an Extreme Risk Firearm Protection Order also prepares and signs an affidavit as a “reporting party”. The following amendment is recommended to clarify that there should be two separate individuals serving in these roles:

A reporting party may not also serve as a petitioner when filing a petition for an Extreme Risk Firearm Protection Order.

Extreme Risk Firearm Protection Order (ERFPO) Data

For the period of 5/20/2020 - 12/31/2023

COUNTY	Initial Filings	Temporary ERFPO Results		One-Year ERFPO Results			Additional Actions	
	ERFPO Petitions Filed	Temporary ERFPO Granted	Temporary ERFPO Denied	One-Year ERFPO Granted	One-Year ERFPO Denied	ERFPO Petition Dismissed	Early Termination of One-Year ERFPO	One-Year ERFPO Extended
Bernalillo	36	34	2	29	2	3	1	0
Catron	0	0	0	0	0	0	0	0
Chaves	1	1	0	1	0	0	0	0
Cibola	2	2	0	2	0	0	0	0
Colfax	0	0	0	0	0	0	0	0
Curry	0	0	0	0	0	0	0	0
De Baca	0	0	0	0	0	0	0	0
Dona Ana	3	2	1	2	0	0	0	0
Eddy	2	2	0	2	0	0	0	0
Grant	1	1	0	0	0	0	0	0
Guadalupe	0	0	0	0	0	0	0	0
Harding	0	0	0	0	0	0	0	0
Hidalgo	0	0	0	0	0	0	0	0
Lea	0	0	0	0	0	0	0	0
Lincoln	1	1	0	1	0	0	0	0
Los Alamos	0	0	0	0	0	0	0	0
Luna	0	0	0	0	0	0	0	0
McKinley	0	0	0	0	0	0	0	0
Mora	0	0	0	0	0	0	0	0
Otero	0	0	0	0	0	0	0	0
Quay	1	1	0	1	0	0	0	0
Rio Arriba	3	3	0	0	2	1	0	0
Roosevelt	0	0	0	0	0	0	0	0
San Juan	5	5	0	3	0	1	0	0
San Miguel	0	0	0	0	0	0	0	0
Sandoval	1	1	0	0	0	0	0	0
Santa Fe	8	5	3	2	2	1	0	0
Sierra	0	0	0	0	0	0	0	0
Socorro	0	0	0	0	0	0	0	0
Taos	3	3	0	3	0	0	1	0
Torrance	2	2	0	2	0	0	0	0
Union	0	0	0	0	0	0	0	0
Valencia	1	1	0	1	0	0	0	0
Totals	70	64	6	49	6	6	2	0

This data complies with the aggregate statistical data requirements of Section 40-17-12(H) of the Extreme Risk Firearm Protection Order Act.