

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 27

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

INTRODUCED BY

Joy Garratt and Christine Chandler

(**Emerge NM 2016**) (**Emerge NM 2018**)

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 (NO DUE  
PROCESS, Violation of US Constitution 14<sup>th</sup> (state specific) 5<sup>th</sup>  
Amendment (Federally specific; NM Constitution Art.II sec 18)  
; 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"."

underscored material = new  
~~[bracketed material] = delete~~

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~~ (or?) the office of  
19 the 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 (why  
full-time salaried? Are there no hourly or part-time law

underscoring material = new  
[bracketed material] = delete

25 enforcement/attorneys in the district or A/G office employees)  
salaried  
and commissioned or certified law enforcement officer of a

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~~]; (not the same definition as within the body)

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 (could be anyone, too  
much ambiguity) and an employer, [~~or~~]

18 public or private school administrator, licensed health care  
19 professional (Must be defined) or law enforcement officer; and

20 [~~F.~~] H. "respondent" (this is a civil term, this is a  
misdemeanor which is in criminal law should be  
defendant) 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~~

underscoring material = new  
~~[bracketed material]~~ = delete

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

.226818.1

underscored material = new  
[bracketed material] = delete

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

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

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

23 ~~F.~~ D. A petition for an extreme risk firearm  
24 protection order shall be made under oath and shall be  
25 accompanied by a sworn affidavit (by penalty of perjury) signed  
26 by the reporting party  
27 setting forth specific facts supporting the order.

.226818.1

underscored material = new  
~~[bracketed material]~~ = delete

24                    ~~[G-]~~ E. A petition for an extreme risk firearm  
25 protection order shall include:  
(1) party; the name and address of the reporting  
(2) the name and address of the **respondent** (civil term if a  
misdemeanor should be defendant);  
(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. (No oral petitions when removing constitutional  
rights, need to have accountability)

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 (def.) ; provided that the chief judge of a district court  
may

1 appoint a domestic violence special commissioner (def. and give  
2 qualifications) to also review  
3 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** (Def.) EXTREME RISK  
6 FIREARM

7 PROTECTION ORDER--~~[TEMPORARY]~~ CONTENTS OF ORDERS--  
8 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 (def.) and shall  
11 issue a

12 temporary extreme risk firearm protection order if the court  
13 finds from specific facts shown by the petition that there is  
14 probable cause to believe that the respondent poses a  
15 significant danger of causing imminent personal injury to self  
16 or others by having in the respondent's custody or control or  
17 by purchasing, possessing or receiving a firearm before notice  
18 can be served and a hearing held.

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

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

(2) enjoin the respondent from purchasing,

.226818.1



underscored material = new  
~~[bracketed material]~~ = delete

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

.226818.1

underscored material = new  
[bracketed material] = delete

1 hearing, to be held within ten days (why10 days, pursuant to law  
if less than 11 days doesn't include weekends and holidays) of  
the issuance of the order;

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

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

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

9 F. A temporary extreme risk firearm protection  
10 order shall be served by the petitioner along with supporting  
11 documents that formed the basis of the order and the notice of  
12 hearing (no due process, logistically impossible to provide a  
notice of hearing with the extreme protection order) [~~and the~~  
~~petition for a one-year extreme risk firearm~~  
13 ~~protection order~~].

14 G. If the court declines to issue a temporary  
15 extreme risk firearm protection order, the court shall dismiss  
16 the petition without prejudice and enter an order that includes  
17 the reasons for the [~~denial~~] dismissal." (Sec 5 F using this  
information even if it was dismissed without prejudice, double  
jeopardy)

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

20 "40-17-7. HEARINGS ON PETITION--GROUNDS FOR ISSUANCE--  
21 CONTENTS OF ORDER.--In determining whether grounds for [~~any~~] an

.226818.1

underscored material = new  
~~[bracketed material] = delete~~

22 extreme risk firearm protection order exist, the court shall  
23 consider, at a minimum, the following:

24 A. any recent act or threat of violence by the  
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; (Very  
sensitive medical information protected by HIPPA,  
should require a court order to obtain not given out  
willy-nilly)

7 D. the respondent's abuse of controlled substances  
8 or alcohol; (If medical information must have court order,  
HIPPA)

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; (Judicial Hx, if previous order  
was ended without findings or incident is using that information  
double jeopardy?)

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."

.226818.1

underscored material = new  
[bracketed material] = delete

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

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** (civil laws) that the respondent  
5 poses a 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. (Burden of proof? Right for representation?)

10           B. An extreme risk firearm protection order shall  
11 expire three hundred sixty-five days after issuance. (No due  
12 process or mention of trial by jury)

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

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

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

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

19           (4) **information pertaining to any**  
20 **recommendation by the court for mental health or substance**  
21 **abuse evaluations, if applicable;** (if your rights are violated  
people need to be compelled to have mental health/ substance  
abuse evaluations and tx) (If the defendant is ordered to  
relinquish weapons, they should be compelled to at least have  
mental evaluation it is abdication of the responsibility by the  
court if they are an "imminent personal injury to self or others")

21           (5) the address of the court that issued the

.226818.1

underscoring material = new  
~~[bracketed material] = delete~~

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

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

3 ~~[E.]~~ 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** (limits to the extensions without full  
hearing/trial. Perpetual/Indefinite?) 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."  
(Will the defendant receive representation and be told their  
rights? )

23 **SECTION 7.** Section 40-17-9 NMSA 1978 (being Laws 2020,  
.226818.1

**24** Chapter 5, Section 9) is amended to read:

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

underscored material = new  
~~[bracketed material]~~ = delete

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 (are there any other examples  
18       where someone who has not been proven guilty is allowed or told  
19       they can give their weapons to a dealer?) ~~[within forty eight-~~  
20       ~~hours of]~~ immediately upon (Due process) service of the order or  
21       ~~[sooner at the~~  
22       ~~discretion of]~~ as directed by the court.

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:

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

.226818.1

underscored material = new  
[bracketed material] = delete

24  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

(3) provide a copy of the receipt to the petitioner within **seventy-two hours** (why?) of taking possession of the firearms; (Why does the petitioner get a copy of the receipt?)

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

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

**C.** If a law enforcement officer has **probable cause** to believe that a respondent is in violation of an extreme risk firearm protection order, the officer may request, **orally** or in writing, a search warrant from the court that issued the order." (A written request for the search warrant is a must. No oral request should be allowed. If they "insist" on the ability to use an oral request for a search warrant there must be a recording or some sort of oversight)

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

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

**SECTION 10.** Section 40-17-12 NMSA 1978 (being Laws 2020, .226818.1



underscored material = new  
[bracketed material] = delete

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 ~~C.] 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 (no due process) of an  
order pursuant to the Extreme Risk Firearm Protection Order Act,  
the court~~

19 shall enter the order into:

20 (1) the national instant criminal background  
21 check system; (no due process preponderance of evidence is  
civil, this is criminal so the burden of proof is different)

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

.226818.1

underscored material = new  
~~[bracketed material] = delete~~

1 (3) all computer-based criminal intelligence  
2 information systems and databases available in this state used  
3 by law enforcement agencies. (Why put on federal information  
4 systems and databases if you haven't been convicted of a crime?)

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 ~~[E]~~ 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. (Feds will be notified but will not be removed)

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~~  
.226818.1

underscored material = new  
~~[bracketed material] = delete~~

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

.226818.1

underscoring material = new  
[bracketed material] = delete

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

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

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

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

25 E. No fee shall be charged for ~~background~~  
national criminal records checks required pursuant to  
.226818.1

underscoring material = new  
~~[bracketed material]~~ = delete

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."

## Notes

2022 New York State Rifle and Pistol Association v. Bruen decision, the Supreme Court ruled that, to be constitutional, **new gun laws must match the plain text of the Constitution and the “history and tradition” of the United States.** (Epoch Times 1/19/24)

US Constitution: 14<sup>th</sup> Amendment, ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

US Constitution: 5<sup>th</sup> Amendment,...

NM Constitution Article II sec.18,... No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person. The effective date of this amendment shall be July 1, 1973. (As amended November 7, 1972, effective July 1, 1973).

### **NM Constitution: Sec. 6. [Right to bear arms.]**

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. (As amended November 2, 1971 and November 2, 1986.)

### NEEDED DEFINITIONS:

Extreme Risk

Credible Information

Significant Danger

Imminent Personal Injury

Licensed Healthcare Professional

Continuing Personal Relationship and an Employee

Temporary

Preponderance of the Evidence

Federal Firearms Licensee

Probable Cause

Personal Relationship

Domestic Violence Special Commissioner

Immediately (in relation to court)

This bill is specifically targeting males, black, native American, biracial and Hispanic populations (see the SUD data for New Mexico) there for it should be considered racially and gender biased.

Miranda rights should be read to the respondent. They need to be informed of

their rights if they are being charged with a misdemeanor.

Did they make it a misdemeanor, so they don't have to provide an attorney?  
Who will this really affect? The poor, people of color?

Is this a criminal offense (misdemeanor) or a civil offense (respondent). This bill is mixing civil procedure with criminal consequences. Shifting the burden of proof?

Why is there an attempt to apply criminal consequences for a civil matter?

This bill is not written according to Uniform Statute Construction 12-2-1-20