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AN ACT

RELATING TO DOMESTIC AFFAIRS; CREATING THE EXTREME RISK
FIREARM PROTECTION ORDER ACT; PROVIDING FOR THE ISSUANCE OF
COURT ORDERS TO REQUIRE THE RELINQUISHMENT OF FIREARMS FOR
SOME PERIOD UNDER CERTAIN CIRCUMSTANCES; CLARIFYING DUTIES OF
A LAW ENFORCEMENT OFFICER IN THE TORT CLAIMS ACT; PROVIDING
PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. SHORT TITLE.--Sections 1 through 13 of this
act may be cited as the "Extreme Risk Firearm Protection
Order Act".

SECTION 2. DEFINITIONS.--As used in the Extreme Risk
Firearm Protection Order Act:

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

B. "extreme risk firearm protection order" means
either a temporary extreme risk firearm protection order or a
one-year extreme risk firearm protection order granted
pursuant to the Extreme Risk Firearm Protection Order Act;

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

D. "law enforcement agency" means the police
department of any city or town, the sheriff's office of any

1 county, the New Mexico state police and a district attorney's
2 office in the state and the office of the attorney general;

3 E. "law enforcement officer" means a public
4 official or public officer vested by law with the power to
5 maintain order, to make arrests for crime or to detain
6 persons suspected of committing a crime, whether that duty
7 extends to all crimes or is limited to specific crimes and
8 includes an attorney employed by a district attorney or the
9 attorney general;

10 F. "one-year extreme risk firearm protection
11 order" means an extreme risk firearm protection order granted
12 for up to one year following a hearing pursuant to the
13 provisions of Section 7 of the Extreme Risk Firearm
14 Protection Order Act;

15 G. "petitioner" means a law enforcement officer
16 who files an extreme risk firearm protection order petition;

17 H. "reporting party" means a person who requests
18 that a law enforcement officer file a petition for an extreme
19 risk firearm protection order and includes a spouse, former
20 spouse, parent, present or former stepparent, present or
21 former parent-in-law, grandparent, grandparent-in-law,
22 co-parent of a child, child, person with whom a respondent
23 has or had a continuing personal relationship, employer or
24 public or private school administrator;

25 I. "respondent" means the person identified in or

1 subject to an extreme risk firearm protection order petition;
2 and

3 J. "temporary extreme risk firearm protection
4 order" means an extreme risk firearm protection order issued
5 prior to a hearing pursuant to the provisions of Section 6 of
6 the Extreme Risk Firearm Protection Order Act.

7 SECTION 3. FORBEARANCE OF COSTS ASSOCIATED WITH EXTREME
8 RISK FIREARM PROTECTION ORDERS.--A reporting party who
9 requests that a petitioner seek an extreme risk firearm
10 protection order shall not be required to bear the cost of:

11 A. the filing, issuance or service of a petition
12 for an extreme risk firearm protection order;

13 B. the filing, issuance or service of a warrant;

14 C. the filing, issuance or service of a witness
15 subpoena;

16 D. service of an extreme risk firearm protection
17 order;

18 E. obtaining law enforcement reports or
19 photographs or copies of photographs relating to the
20 allegations in the petition; or

21 F. any cost associated with the confiscation,
22 storage or destruction of a firearm.

23 SECTION 4. EXTREME RISK FIREARM PROTECTION
24 ORDERS--VENUE.--Proceedings pursuant to the Extreme Risk
25 Firearm Protection Order Act shall be filed, heard and

1 determined in the district court for the county in which the
2 respondent resides.

3 SECTION 5. PETITION FOR EXTREME RISK FIREARM PROTECTION
4 ORDER--CONTENTS.--

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

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

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

24 D. A law enforcement officer shall file a petition
25 for an extreme risk firearm protection order upon receipt of

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

7 E. A petition for an extreme risk firearm
8 protection order shall state the specific statements, actions
9 or facts that support the belief that the respondent poses a
10 significant danger of causing imminent personal injury to
11 self or others by having in the respondent's custody or
12 control or by purchasing, possessing or receiving a firearm.

13 F. A petition for an extreme risk firearm
14 protection order shall be made under oath and shall be
15 accompanied by a sworn affidavit signed by the reporting
16 party setting forth specific facts supporting the order.

17 G. A petition for an extreme risk firearm
18 protection order shall include:

19 (1) the name and address of the reporting
20 party;

21 (2) the name and address of the respondent;

22 (3) a description of the number, types and
23 locations of firearms or ammunition that the petitioner
24 believes the respondent has custody of, controls, owns or
25 possesses;

1 (4) a description of the relationship
2 between the reporting party and the respondent; and

3 (5) a description of any lawsuit, complaint,
4 petition, restraining order, injunction or other legal action
5 between the reporting party and the respondent.

6 SECTION 6. PETITION FOR TEMPORARY EXTREME RISK FIREARM
7 PROTECTION ORDER--TEMPORARY ORDERS--PROCEEDINGS.--

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

17 B. If the court finds probable cause pursuant to
18 Subsection A of this section, the court shall issue a
19 temporary extreme risk firearm protection order enjoining the
20 respondent from having in the respondent's possession,
21 custody or control a firearm and shall further enjoin the
22 respondent from purchasing, receiving or attempting to
23 purchase or receive a firearm while the order is in effect.

24 C. The court shall conduct a hearing within ten
25 days of the issuance of a temporary extreme risk firearm

1 protection order to determine if a one-year extreme risk
2 firearm protection order should be issued pursuant to this
3 section.

4 D. A temporary extreme risk firearm protection
5 order shall include:

6 (1) a statement of the grounds supporting
7 the issuance of the order;

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

9 (3) a statement that the order shall
10 continue until the earlier of ten days or such time as a
11 court considers the petition at a hearing, unless an
12 extension is granted at the request of the respondent
13 pursuant to Subsection E of this section;

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

17 (5) the date and time of the scheduled
18 hearing, to be held within ten days of the issuance of the
19 order.

20 E. The court may continue the hearing at the
21 request of the respondent, but the hearing shall be set
22 within thirty days of the respondent's request for
23 continuance.

24 F. A temporary extreme risk firearm protection
25 order shall be served by the petitioner along with supporting

1 documents that formed the basis of the order, the notice of
2 hearing and the petition for a one-year extreme risk firearm
3 protection order.

4 G. If the court declines to issue a temporary
5 extreme risk firearm protection order, the court shall enter
6 an order that includes the reasons for the denial.

7 SECTION 7. HEARINGS ON PETITION--GROUNDS FOR
8 ISSUANCE--CONTENTS OF ORDER.--In determining whether grounds
9 for any extreme risk firearm protection order exist, the
10 court shall consider, at a minimum, the following:

11 A. any recent act or threat of violence by the
12 respondent against self or others, regardless of whether the
13 act or threat involved a firearm;

14 B. a pattern of acts or threats of violence by the
15 respondent within the past twelve months, including acts or
16 threats of violence against self or others;

17 C. the respondent's mental health history;

18 D. the respondent's abuse of controlled substances
19 or alcohol;

20 E. the respondent's previous violations of any
21 court order;

22 F. previous extreme risk firearm protection orders
23 issued against the respondent;

24 G. the respondent's criminal history, including
25 arrests and convictions for violent felony offenses, violent

1 misdemeanor offenses, crimes involving domestic violence or
2 stalking;

3 H. the respondent's history of the use, attempted
4 use or threatened use of physical violence against another
5 person; of stalking another person; or of cruelty to animals;
6 and

7 I. any recent acquisition or attempts at
8 acquisition of a firearm by the respondent.

9 SECTION 8. ONE-YEAR EXTREME RISK FIREARM PROTECTION
10 ORDER--GROUNDS FOR ISSUANCE--CONTENTS OF ORDER--TERMINATION--
11 EXPIRATION--RENEWAL OF ORDERS.--

12 A. If, after hearing the matter, the court finds
13 by a preponderance of the evidence that the respondent poses
14 a significant danger of causing imminent personal injury to
15 self or others by having in the respondent's custody or
16 control or by purchasing, possessing or receiving a firearm,
17 the court shall issue a one-year extreme risk firearm
18 protection order.

19 B. A one-year extreme risk firearm protection
20 order shall include:

21 (1) a statement of the grounds supporting
22 the issuance of the order;

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

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

25 (4) information pertaining to any

1 recommendation by the court for mental health or substance
2 abuse evaluations, if applicable;

3 (5) the address of the court that issued the
4 order; and

5 (6) notice that the respondent is entitled
6 to request termination of the order prior to the expiration
7 of the order.

8 C. If the court declines to issue a one-year
9 extreme risk firearm protection order, the court shall state
10 in writing the reasons for the court's denial and shall order
11 the return of any firearms to the respondent.

12 D. A respondent may request that the court
13 terminate a one-year extreme risk firearm protection order at
14 any time prior to the expiration of the order.

15 E. At any time not less than one month prior to
16 the expiration of a one-year extreme risk firearm protection
17 order, a petitioner may petition the court to extend the
18 order. Each extension of the order shall not exceed one
19 year. A petition filed pursuant to this subsection shall
20 comply with the provisions of Subsections E and F of Section
21 5 of the Extreme Risk Firearm Protection Order Act and shall
22 be served on the respondent as provided in Section 9 of that
23 act.

24 F. A one-year extreme risk firearm protection
25 order is a final, immediately appealable order.

1 SECTION 9. SERVICE OF EXTREME RISK FIREARM PROTECTION
2 ORDERS.--A one-year extreme risk firearm protection order
3 issued pursuant to the Extreme Risk Firearm Protection Order
4 Act shall be personally served upon the respondent by the
5 sheriff's office in the county in which the respondent
6 resides; provided that if the respondent resides in a city or
7 town that has a police department, the police department
8 shall serve the order.

9 SECTION 10. RELINQUISHMENT OF FIREARMS.--

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

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

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

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

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

1 petitioner within seventy-two hours of taking possession of
2 the firearms;

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

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

9 SECTION 11. PENALTIES.--A person who fails to
10 relinquish, or who possesses or has custody or control over,
11 any firearm or who purchases, receives or attempts to
12 purchase, possess or receive any firearm, in violation of a
13 temporary extreme risk firearm protection order or a one-year
14 extreme risk firearm protection order is guilty of a
15 misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978.

16 SECTION 12. EXTREME RISK FIREARM PROTECTION
17 ORDER--REPORTING OF ORDERS--AVAILABILITY OF DATA.--

18 A. The clerk of the court shall provide a copy of
19 a one-year extreme risk firearm protection order or temporary
20 extreme risk firearm protection order issued pursuant to the
21 Extreme Risk Firearm Protection Order Act to any law
22 enforcement agency designated to provide information to the
23 national instant criminal background check system.

24 B. The clerk of the court shall forward a copy of
25 any order issued, renewed or terminated pursuant to the

1 Extreme Risk Firearm Protection Order Act to the petitioner
2 and to the law enforcement agency specified in Subsection A
3 of this section.

4 C. Upon receipt of a copy of a one-year extreme
5 risk firearm protection order or temporary extreme risk
6 firearm protection order, the law enforcement agency
7 specified in Subsection A of this section shall enter the
8 order into:

9 (1) the national instant criminal background
10 check system;

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

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

17 D. An extreme risk firearm protection order shall
18 remain in each state system for the period stated in the
19 order. Entry into the computer-based criminal intelligence
20 information system constitutes notice to all law enforcement
21 agencies of the existence of the order. The extreme risk
22 firearm protection order shall be fully enforceable in any
23 county, city or town in the state.

24 E. Upon the expiration of or upon receiving notice
25 of the termination of an extreme risk firearm protection

1 order issued pursuant to the Extreme Risk Firearm Protection
2 Order Act, the law enforcement agency specified in Subsection
3 A of this section shall promptly remove the order from any
4 state computer-based system into which it was entered
5 pursuant to Subsection C of this section and shall notify the
6 national instant criminal background check system and all
7 federal computer-based systems and databases used by law
8 enforcement or others to identify prohibited purchasers of
9 firearms.

10 F. Following the expiration or termination of an
11 order issued pursuant to the Extreme Risk Firearm Protection
12 Order Act and upon written request, the law enforcement
13 agency specified in Subsection A of this section shall
14 provide a sworn affidavit to the respondent affirming that
15 the information contained within the order has been removed
16 from all state databases and systems identified in Subsection
17 C of this section and any other state databases into which
18 information about the order was entered and that the law
19 enforcement agency has notified the national instant criminal
20 background check system and all federal computer-based
21 systems and databases used by law enforcement or others to
22 identify prohibited purchasers of firearms. The affidavit
23 shall be provided to the respondent within five days of the
24 receipt of the request.

25 G. If any extreme risk firearm protection order is

1 terminated before its expiration date, the clerk of the court
2 shall forward a copy of the termination order to the office
3 of the attorney general and the petitioner.

4 H. Aggregate statistical data indicating the
5 number of extreme risk firearm protection orders issued,
6 renewed, denied or terminated shall be maintained by the
7 issuing court and the administrative office of the courts and
8 shall be available to the public upon request.

9 SECTION 13. EXTREME RISK FIREARM PROTECTION
10 ORDERS--FIREARMS RETURN--DISPOSITION.--

11 A. Any firearm relinquished in accordance with the
12 Extreme Risk Firearm Protection Order Act shall be returned
13 to the respondent within ten days following the expiration or
14 termination of an extreme risk firearm protection order.

15 B. A respondent shall not be required to acquire
16 any court order granting the return of relinquished firearms.

17 C. The law enforcement agency in possession of the
18 firearms shall conduct a national criminal records check and
19 shall return the firearms if the agency determines that the
20 respondent is not prohibited from possessing firearms
21 pursuant to state or federal law.

22 D. Upon written request of the respondent, the law
23 enforcement agency storing a firearm shall transfer
24 possession of the respondent's firearm to a federally
25 licensed firearms dealer or lawful private party purchaser

1 designated by the respondent; provided that the transfer is
2 the result of a sale, that the transferee is the actual owner
3 of the firearm thereafter and, except in the case of a
4 federally licensed firearms dealer, the law enforcement
5 agency has conducted a national criminal records check and
6 determined that the transferee is not prohibited from
7 possessing a firearm pursuant to state or federal law.

8 E. No fee shall be charged for background checks
9 required pursuant to Subsections C and D of this section.

10 F. The law enforcement agency transferring
11 possession of a firearm to a transferee shall notify the
12 transferee that it is unlawful to transfer or return the
13 firearm to the respondent while the extreme risk firearm
14 protection order is in effect. A transferee who violates
15 this subsection is guilty of a misdemeanor and may be
16 punished pursuant to Section 31-19-1 NMSA 1978.

17 SECTION 14. Section 41-4-12 NMSA 1978 (being Laws 1976,
18 Chapter 58, Section 12, as amended) is amended to read:

19 "41-4-12. LIABILITY--LAW ENFORCEMENT OFFICERS.--The
20 immunity granted pursuant to Subsection A of Section 41-4-4
21 NMSA 1978 does not apply to liability for personal injury,
22 bodily injury, wrongful death or property damage resulting
23 from assault, battery, false imprisonment, false arrest,
24 malicious prosecution, abuse of process, libel, slander,
25 defamation of character, violation of property rights, failure

1 to comply with duties established pursuant to statute or law
2 or deprivation of any rights, privileges or immunities secured
3 by the constitution and laws of the United States or
4 New Mexico when caused by law enforcement officers while
5 acting within the scope of their duties. For purposes of this
6 section, "law enforcement officer" means a public officer
7 vested by law with the power to maintain order, to make
8 arrests for crime or to detain persons suspected of committing
9 a crime, whether that duty extends to all crimes or is limited
10 to specific crimes." _____

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