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HOUSE BILL 193

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Daymon Ely and Joy Garratt

AN ACT

RELATING TO EXTREME RISK FIREARM PROTECTION ORDERS; ALLOWING CERTAIN LAW ENFORCEMENT OFFICERS TO CONSTITUTE A REPORTING PARTY PURSUANT TO THE EXTREME RISK FIREARM PROTECTION ORDER ACT; REQUIRING LAW ENFORCEMENT TO TAKE POSSESSION OF RELINQUISHED FIREARMS UNDER CERTAIN CIRCUMSTANCES; CHANGING REPORTING REQUIREMENTS; PROHIBITING USE IN CRIMINAL PROCEEDINGS OF CERTAIN EVIDENCE ESTABLISHING OWNERSHIP OR POSSESSION OF FIREARMS.

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

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

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

A. "court" means the district court in the county

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1 in which the respondent resides;

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

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

9 D. "law enforcement agency" means the police
10 department of any city or town, the sheriff's office of any
11 county and the New Mexico state police [~~and a district~~
12 ~~attorney's office in the state and the office of the attorney~~
13 ~~general~~];

14 E. "law enforcement officer" means a public
15 official or public officer vested by law with the power to
16 maintain order, to make arrests for crime or to detain persons
17 suspected of committing a crime, whether that duty extends to
18 all crimes or is limited to specific crimes [~~and includes an~~
19 ~~attorney employed by a district attorney or the attorney~~
20 ~~general~~];

21 F. "one-year extreme risk firearm protection order"
22 means an extreme risk firearm protection order granted for up
23 to one year following a hearing pursuant to the provisions of
24 Section [~~7 of the Extreme Risk Firearm Protection Order Act]~~
25 40-17-7 NMSA 1978;

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

3 H. "reporting party" means a person who requests
4 that a law enforcement officer file a petition for an extreme
5 risk firearm protection order and includes a spouse, former
6 spouse, parent, present or former stepparent, present or former
7 parent-in-law, grandparent, grandparent-in-law, co-parent of a
8 child, child, person with whom a respondent has or had a
9 continuing personal relationship, employer [or], public or
10 private school administrator or a law enforcement officer,
11 absent receipt of credible information from a reporting party
12 pursuant to Subsection D of Section 40-17-5 NMSA 1978, who
13 personally has probable cause to believe that a respondent
14 poses a significant danger of causing imminent personal injury
15 to self or others by the respondent having custody or control
16 of a firearm that the respondent purchased, possessed or
17 received;

18 I. "respondent" means the person identified in or
19 subject to an extreme risk firearm protection order petition;
20 and

21 J. "temporary extreme risk firearm protection
22 order" means an extreme risk firearm protection order issued
23 prior to a hearing pursuant to the provisions of Section [6 of
24 the ~~Extreme Risk Firearm Protection Order Act~~] 40-17-6 NMSA
25 1978."

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1 SECTION 2. Section 40-17-10 NMSA 1978 (being Laws 2020,
2 Chapter 5, Section 10) is amended to read:

3 "40-17-10. RELINQUISHMENT OF FIREARMS.--

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

12 B. A law enforcement officer or law enforcement
13 agency shall take possession of all firearms subject to the
14 extreme risk firearm protection order that are relinquished by
15 the respondent or are in plain sight or are discovered pursuant
16 to a lawful search.

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

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

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

24 (3) provide a copy of the receipt to the
25 petitioner within seventy-two hours of taking possession of the

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1 firearms;

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

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

8 SECTION 3. Section 40-17-12 NMSA 1978 (being Laws 2020,
9 Chapter 5, Section 12) is amended to read:

10 "40-17-12. EXTREME RISK FIREARM PROTECTION ORDER--
11 REPORTING OF ORDERS--AVAILABILITY OF DATA.--

12 ~~[A. The clerk of the court shall provide a copy of~~
13 ~~a one-year extreme risk firearm protection order or temporary~~
14 ~~extreme risk firearm protection order issued pursuant to the~~
15 ~~Extreme Risk Firearm Protection Order Act to any law~~
16 ~~enforcement agency designated to provide information to the~~
17 ~~national instant criminal background check system.]~~

18 A. No later than one business day after a court
19 issues, extends, dissolves or terminates a one-year extreme
20 risk firearm protection order, the administrative office of the
21 courts or other authorized entity shall obtain and
22 electronically transmit information from the court proceedings
23 relating to the respondent's eligibility to receive or possess
24 a firearm or ammunition to the federal bureau of
25 investigation's national instant criminal background check

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1 system pursuant to Section 34-9-19 NMSA 1978.

2 B. The clerk of the court shall forward a copy of
3 any order issued, ~~[renewed]~~ extended, dissolved or terminated
4 pursuant to the Extreme Risk Firearm Protection Order Act to
5 the petitioner and to the ~~[law enforcement agency specified in~~
6 ~~Subsection A of this section]~~ federal bureau of investigation's
7 national instant criminal background check system.

8 ~~[C. Upon receipt of a copy of a one-year extreme~~
9 ~~risk firearm protection order or temporary extreme risk firearm~~
10 ~~protection order, the law enforcement agency specified in~~
11 ~~Subsection A of this section shall enter the order into:~~

12 ~~(1) the national instant criminal background~~
13 ~~check system;~~

14 ~~(2) all federal or state computer-based~~
15 ~~systems and databases used by law enforcement or others to~~
16 ~~identify prohibited purchasers of firearms; and~~

17 ~~(3) all computer-based criminal intelligence~~
18 ~~information systems and databases available in this state used~~
19 ~~by law enforcement agencies.~~

20 ~~D.]~~ C. An extreme risk firearm protection order
21 shall remain in each state system for the period stated in the
22 order. Entry into the computer-based criminal intelligence
23 information system constitutes notice to all law enforcement
24 agencies of the existence of the order. The extreme risk
25 firearm protection order shall be fully enforceable in any

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1 county, city or town in the state.

2 ~~[E. Upon the expiration of or upon receiving notice~~
3 ~~of the termination of an extreme risk firearm protection order~~
4 ~~issued pursuant to the Extreme Risk Firearm Protection Order~~
5 ~~Act, the law enforcement agency specified in Subsection A of~~
6 ~~this section shall promptly remove the order from any state~~
7 ~~computer-based system into which it was entered pursuant to~~
8 ~~Subsection C of this section and shall notify the national~~
9 ~~instant criminal background check system and all federal~~
10 ~~computer-based systems and databases used by law enforcement or~~
11 ~~others to identify prohibited purchasers of firearms.~~

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

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