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HOUSE BILL 27

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

INTRODUCED BY

Joy Garratt and Christine Chandler

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; 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"."

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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 the office of the
19 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 salaried
25 and commissioned or certified law enforcement officer of a

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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~~];

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 and an employer, [~~or~~]
18 public or private school administrator, licensed health care
19 professional or law enforcement officer; and

20 [~~H.]~~ H. "respondent" 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~~

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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

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

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

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

20 [~~F.~~] D. A petition for an extreme risk firearm
21 protection order shall be made under oath and shall be
22 accompanied by a sworn affidavit signed by the reporting party
23 setting forth specific facts supporting the order.

24 [~~G.~~] E. A petition for an extreme risk firearm
25 protection order shall include:

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- 1 (1) the name and address of the reporting
2 party;
- 3 (2) the name and address of the respondent;
- 4 (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.

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; provided that the chief judge of a district court may

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1 appoint a domestic violence special commissioner to also review
2 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 EXTREME RISK FIREARM
6 PROTECTION ORDER--~~[TEMPORARY]~~ CONTENTS OF ORDERS--
7 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 and shall issue a
11 temporary extreme risk firearm protection order if the court
12 finds from specific facts shown by the petition that there is
13 probable cause to believe that the respondent poses a
14 significant danger of causing imminent personal injury to self
15 or others by having in the respondent's custody or control or
16 by purchasing, possessing or receiving a firearm before notice
17 can be served and a hearing held.

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

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

25 (2) enjoin the respondent from purchasing,

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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

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1 hearing, to be held within ten days of the issuance of the
2 order;

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

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

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

10 F. A temporary extreme risk firearm protection
11 order shall be served by the petitioner along with supporting
12 documents that formed the basis of the order and the notice of
13 hearing [~~and the petition for a one-year extreme risk firearm~~
14 ~~protection order~~].

15 G. If the court declines to issue a temporary
16 extreme risk firearm protection order, the court shall dismiss
17 the petition without prejudice and enter an order that includes
18 the reasons for the [~~denial~~] dismissal."

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

21 "40-17-7. HEARINGS ON PETITION--GROUNDS FOR ISSUANCE--
22 CONTENTS OF ORDER.--In determining whether grounds for [~~any~~] an
23 extreme risk firearm protection order exist, the court shall
24 consider, at a minimum, the following:

25 A. any recent act or threat of violence by the

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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;

7 D. the respondent's abuse of controlled substances
8 or alcohol;

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;

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."

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

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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 that the respondent poses a
5 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.

10 B. An extreme risk firearm protection order shall
11 expire three hundred sixty-five days after issuance.

12 [~~B. A one-year~~] C. An extreme risk firearm
13 protection 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) the date and time the order expires;

18 (4) information pertaining to any
19 recommendation by the court for mental health or substance
20 abuse evaluations, if applicable;

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

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

3 ~~[G.]~~ 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 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."

23 SECTION 7. Section 40-17-9 NMSA 1978 (being Laws 2020,
24 Chapter 5, Section 9) is amended to read:

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

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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 ~~[within forty-eight hours of]~~
18 immediately upon service of the order or ~~[sooner at the~~
19 ~~discretion of]~~ as directed by the court.

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

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

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

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1 respondent;

2 (3) provide a copy of the receipt to the
3 petitioner within seventy-two hours of taking possession of the
4 firearms;

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

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

11 C. If a law enforcement officer has probable cause
12 to believe that a respondent is in violation of an extreme risk
13 firearm protection order, the officer may request, orally or in
14 writing, a search warrant from the court that issued the
15 order."

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

18 "40-17-11. PENALTIES.--A person who fails to relinquish,
19 or who possesses or has custody or control over, [any] a
20 firearm or who purchases, receives or attempts to purchase,
21 possess or receive [any] a firearm, in violation of [~~a~~
22 ~~temporary extreme risk firearm protection order or a one-year~~]
23 an extreme risk firearm protection order is guilty of a
24 misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978."

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

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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 ~~G.] 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 of an order pursuant~~
19 ~~to the Extreme Risk Firearm Protection Order Act, the court~~
20 shall enter the order into:

21 (1) the national instant criminal background
22 check system;

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

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

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 ~~[G]~~ 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.

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~~

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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

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1 to the respondent within ten days following the expiration or
2 termination of ~~[an]~~ the extreme risk firearm protection order
3 upon the respondent's request.

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

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

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

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

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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."