

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 17JAN2024

Bill No: HB 27

Sponsor: Joy Garratt, Christine
Chandler
Short Title: Extreme Fire Risk Protection
Order Changes
Agency Name and Code: 790-Department of Public Safety
Number:
Person Writing: Carolyn Huynh
Phone: 505-681-2861 Email: CarolynN.Huynh@dps

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY24 | FY25 | | |
| NFI | NFI | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY24 | FY25 | FY26 | | |
| NFI | NFI | NFI | | |
| | | | | |

(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 | NFI | NFI | NFI | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

This bill seeks to clarify and expand the scope of extreme risk firearm protection orders (ERFPO). The bill modifies language from the 2020 statute and adds licensed health care professionals and law enforcement officers to the list of individuals who can report to law enforcement with a request that law enforcement file a petition for an ERFPO. The bill also redefines the duration language from a one-year order to a three-hundred and sixty-five-day mandatory expiration period after issuance.

Additionally, the bill adds the requirement that the district attorney or attorney general’s office file the petition if a law enforcement officer is listed as the respondent on an ERFPO petition. The bill adds a forty-eight-hour deadline for written notice to the reporting party when law enforcement declines to file a petition.

If passed, this would allow law enforcement to orally petition the court for a search warrant to be followed by a written petition within twenty-four hours and requiring a district court judge or, by appointment by the chief judge or a domestic violence special commissioner who shall be available at all times to review petitions as they are filed and mandates the issuance of a temporary ERPO if probable cause exists.

Upon a finding of probable cause and along with the issuance of the temporary order by the district court, the bill adds to the minimum requirements of the order by ordering respondent to immediately, upon service of the order, relinquish the firearm subject to the order. In addition, the temporary ERFPO must include a sufficient description of the firearm subject to relinquishment, when appropriate and a notice that the violation of the order is a misdemeanor. The bill clarifies that if the court declines to issue a temporary order, it shall dismiss the petition without prejudice.

The bill requires that following a hearing and the issuance of an ERFPO, the court include in the order that a violation is a misdemeanor. If passed, HB27 would require a respondent subject to an ERFPO to immediately upon service of the order or as directed by the court to relinquish all firearms in their possession and allows law enforcement to request orally or in writing a search warrant if they believe a respondent is in violation of an ERFPO.

The bill clarifies the district court clerk’s responsibilities with entering orders and renewals into the national instant criminal background check system and with timely removal of the orders as they are terminated by expiration or by dismissals. Further, upon the expiration or termination of an ERFPO, the return of the firearm(s) is predicated upon a request by the respondent. Additionally, the bill would add a provision to the current law to allow for a law enforcement

agency in possession of a firearm relinquished pursuant to an ERFPO to destroy, sell, or transfer an unclaimed firearm three hundred sixty-five days following notice of the agency's intent to sell, destroy or transfer the firearm.

FISCAL IMPLICATIONS

No fiscal impact to DPS.

SIGNIFICANT ISSUES

Dual Civil and Criminal Roles: The bill appears to weave in and out of both civil matters and criminal matters. For example, ERFPOs are a civil order, but a violation of an order is a misdemeanor. Similarly, to retrieve firearms, petitioners are required to obtain a search warrant for a matter that is purely civil. Clarification is needed specifically regarding criminal authority on a civil order. Furthermore, different entities are responsible for entering information into databases depending on (1) whether the order is civil or criminal; and (2) which database the information is being entered into.

Search Warrant Requirements: The bill adds language to allow an officer to request a search warrant orally, which may violate established court rules. *See* 5-211 NMRA. Furthermore, in *Ammerman v. Hubbard Broadcasting*, the New Mexico Supreme Court stated that under the New Mexico Constitution, the legislature lacks the power to prescribe by statute rules of evidence and procedure, and statutes purporting to regulate practice and procedure in the courts *cannot be binding*.

Courts Issuing Orders into Law Enforcement Databases: Courts may not have authority to enter orders into NICS, all federal or state systems used by law enforcement to identify purchasers of firearms, or all computer based criminal intelligence information systems and databases used by law enforcement. Furthermore, access NICS and NCIC is governed by federal law. Thus, DPS is required to follow federal law regarding access to these databases.

Orders Subject to Appeal: Subsection G of Section 6 provides that an ERFPO is a final immediately appealable order. However, Subsection F of Section 6 allows the petitioner to petition the court to extend the order. Is it only the original order that is appealable? Can the respondent also appeal the order to extend?

PERFORMANCE IMPLICATIONS

An attorney with a district attorney's or the attorney general's office is not considered a law enforcement officer and the bill could further clarify that only when a law enforcement officer is a respondent would a prosecutor be able to file a petition with the court.

ADMINISTRATIVE IMPLICATIONS

For DPS and other law enforcement agencies, the forty-eight (48) hour deadline for providing a reporting party with a *written* notice for declining to file a petition would create a burden based upon agency operational needs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship, or relationship issues to DPS.

TECHNICAL ISSUES

Property Return and Destruction: Law enforcement agencies may need more guidance on the process for determining the rightful owner of a confiscated firearm following the three hundred sixty-five-day period for unclaimed firearms relinquished under an ERFPO prior to the transfer, sale, or destruction of the firearm. This could be addressed by referencing already existing statutory processes.

Miscellaneous Technical Issues:

- On page 1, line 8, is the respondent enjoined from purchasing, receiving or attempting to receive a firearm forever?
- On page 2, lines 10-11, after “Act,” insert “regardless of whether the order is temporary.” Strike “and includes a temporary extreme risk protection order.” *See State v. Strauch.*
- On page 3, can a law enforcement officer be both a reporting party and a petitioner? The distinction between reporting party and petitioner remains confusing.
- On page 3, line 1, “And” implies that to meet the definition of law enforcement officer, a person needs to be both a certified law enforcement officer AND an attorney employed by the district attorney or attorney general. Strike “and” and insert “or.”
- On page 7, line 1, how is “special domestic violence commissioner” defined? On Page 7, Line 1, insert after “commissioner” “appointed pursuant to Section 40-13-9 NMSA 1978”
- On page 7, lines 18-19, the stricken language confuses what type of probable cause is needed. Is it probable cause for anything? Does it need to be probable cause as explained in Subsection A?
- On page 8, line 1, how long is a person enjoined from purchasing or receiving a firearm? The stricken language reads that a person is enjoined forever.
- Subsection A of Section 8 requires the respondent to relinquish all firearms in the respondent’s possession, custody or control. This conflicts with Section 40-16-6(b)(3) which requires the court to order the relinquishment of the firearm the court found probable cause to believe is in the respondent’s custody
- On page 9, line 3, when is it appropriate to describe the firearm subject to relinquishment? If the respondent needs to relinquish a *specific* firearm, then wouldn’t the description always be needed?
- On page 9, line 22, strike “CONTENTS OF ORDER.” Section 40-17-7 does not touch on the contents of an order; it only describes what the court should consider evaluating the petition.
- On page 18, line 3, after “request,” insert “as provided by law.” This will ensure that the process for relinquishing a firearm will be that which is provided in Section 29-1-14.
- On page 19, line 14, after firearm, insert “as provided by law.” This will ensure that the process for selling, destroying or otherwise transferring a firearm would be the process allowed in Section 29-1-14.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None currently.