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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DOMESTIC VIOLENCE; PROHIBITING INDIVIDUALS SUBJECT TO ORDERS OF PROTECTION FROM POSSESSING OR PURCHASING FIREARMS.

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

SECTION 1. A new section of the Family Violence Protection Act is enacted to read:

"[NEW MATERIAL] REMOVAL OF FIREARMS--PENALTY.--

A. When a judge issues an order of protection pursuant to the Family Violence Protection Act, but not including a temporary order of protection, the judge shall order the respondent to relinquish any firearm in the respondent's immediate possession, care, custody or control or subject to the respondent's immediate possession, care, custody or control and shall provide in the order that the respondent is prohibited from purchasing, receiving, possessing or

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1 attempting to purchase, receive or possess any firearm while
2 the order of protection is in effect.

3 B. A relinquishment ordered pursuant to Subsection
4 A of this section shall occur by the respondent immediately
5 surrendering any firearm in the respondent's immediate
6 possession, care, custody or control or subject to the
7 respondent's immediate possession, care, custody or control in
8 a safe manner, upon request of any law enforcement officer, to
9 the control of the officer, after the respondent has been
10 served with the order of protection. A law enforcement officer
11 serving an order of protection that indicates that the
12 respondent possesses a firearm shall request that any firearm
13 in the respondent's immediate possession, care, custody or
14 control or subject to the respondent's immediate possession,
15 care, custody or control be immediately surrendered.

16 Alternatively, if a request is not made by a law enforcement
17 officer, or if the respondent states that the respondent wishes
18 to surrender a firearm to a federally licensed firearms dealer,
19 the relinquishment shall occur within twenty-four hours of the
20 respondent being served with the order by surrendering the
21 firearm in a safe manner to the control of local law
22 enforcement officials or to a federally licensed firearms
23 dealer. A law enforcement officer or federally licensed
24 firearms dealer taking possession of a firearm pursuant to this
25 subsection shall issue a receipt to the person relinquishing

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1 the firearm at the time of relinquishment.

2 C. If the respondent surrenders a firearm to a law
3 enforcement officer or federally licensed firearms dealer, the
4 respondent shall, within forty-eight hours after being served
5 with the order of protection, file:

6 (1) the receipt issued to the respondent
7 pursuant to Subsection B of this section with the court that
8 issued the order of protection. Failure to timely file a
9 receipt shall constitute a violation of the order of
10 protection; and

11 (2) a copy of the receipt issued to the
12 respondent pursuant to Subsection B of this section with the
13 law enforcement agency that served the order of protection.
14 Failure to file a copy of the receipt shall constitute a
15 violation of the order of protection.

16 D. The respondent shall file a declaration of
17 non-surrender with the court that issued the order of
18 protection and the law enforcement agency that served the order
19 if the respondent does not have a firearm in the respondent's
20 immediate possession, care, custody or control or subject to
21 the respondent's immediate possession, care, custody or
22 control.

23 E. The law enforcement agency that served the order
24 of protection or took possession of the relinquished firearms
25 shall inform the petitioner of the relinquishment within five

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1 days of relinquishment or of receiving a receipt issued
2 pursuant to Subsection B of this section.

3 F. A law enforcement agency shall be immune from
4 civil or criminal liability for any damage or deterioration of
5 firearms stored or transported pursuant to this section. This
6 subsection shall not apply if the damage or deterioration
7 occurred as a result of recklessness, gross negligence or
8 intentional misconduct by the law enforcement agency.

9 G. A search warrant may be issued for a firearm
10 that is owned by, or is in the possession of or is in the care,
11 custody or control of, a person who is prohibited from
12 possessing a firearm pursuant to Section 30-7-16 NMSA 1978, if
13 the person has been lawfully served with an order as provided
14 in this section and the person has failed to relinquish the
15 firearm as ordered.

16 H. If the respondent declines to relinquish
17 possession of any firearm based on the assertion of the right
18 against self-incrimination as provided by the fifth amendment
19 to the United States constitution and Article 2, Section 15 of
20 the constitution of New Mexico, the court may grant use
21 immunity for the act of relinquishing a firearm under this
22 section.

23 I. Upon expiration or termination of the order of
24 protection:

25 (1) the respondent may petition for the return

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1 of any relinquished firearms. Within thirty days of the
2 receipt of a petition for the return of surrendered firearms,
3 the local law enforcement agency shall return such firearms
4 unless:

- 5 (a) the firearms have been stolen;
- 6 (b) the respondent is prohibited from
7 possessing a firearm under state or federal law; or
- 8 (c) another order of protection pursuant
9 to the Family Violence Protection Act is issued against the
10 respondent; and

11 (2) the respondent may request return of
12 relinquished firearms from a federally licensed firearms dealer
13 to whom the firearms were relinquished. The federally licensed
14 firearms dealer shall transfer the firearms as if the dealer
15 were selling the firearms from the dealer's own inventory.

16 J. The law enforcement agency returning firearms
17 shall notify the petitioner of the return of firearms to the
18 respondent within five days of return.

19 K. If the respondent fails to petition for the
20 return of relinquished firearms, the law enforcement agency in
21 possession of the relinquished firearms may dispose of the
22 firearms as allowed by law.

23 L. If the respondent is prohibited from possessing
24 a firearm under state or federal law, the respondent shall be
25 afforded an opportunity to sell the firearm through a federally

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1 licensed firearms dealer.

2 M. If a firearm that was relinquished has been
3 stolen, upon recovery, the firearm shall be restored to the
4 respondent upon the respondent's identification of the firearm
5 and provision of proof of ownership, unless the respondent is
6 not allowed to possess a firearm pursuant to this section or
7 any or state or federal law.

8 N. A respondent owning or possessing a firearm in
9 violation of this section shall be guilty of a misdemeanor.

10 O. As used in this section:

11 (1) "federally licensed firearms dealer" means
12 a licensed importer, licensed manufacturer or licensed dealer
13 required to conduct national instant criminal background checks
14 under 18 U.S.C. Section 922(t); and

15 (2) "firearm" means any weapon that will or is
16 designed to or may readily be converted to expel a projectile
17 by the action of an explosion; the frame or receiver of any
18 such weapon; or any firearm muffler or firearm silencer.

19 "Firearm" includes any handgun, rifle or shotgun."