

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 12 amends portions of the Extreme Risk Firearm Protection Order Act as follows:

- allows a law enforcement officer to file a petition based upon credible information that the officer collects while carrying out the officer's official duties;
- defines what a petition filed by a law enforcement officer must contain; and
- allows the relinquishment of firearms by a respondent subject to a temporary or one-year ERFPO immediately upon service of the order.

House Bill 12 does not contain an effective date and would be effective on June 20, 2025, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for the statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

As currently written, the Extreme Risk Firearm Protection Order (ERFPO) Act requires two parties, a petitioner and a reporting party, to request the court issue an ERFPO against a person (respondent) who poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm. A petitioner is defined as "a law enforcement officer who files an extreme risk firearm protection order petition" and a reporting party is defined as "a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order". Currently under the ERFPO Act, only a law enforcement officer can file a petition for an ERFPO, and the petition must include a sworn affidavit from a reporting party.

A reporting party is typically a family member or an individual with a close relationship to the person whom the ERFPO is sought for. HB12 creates an alternative process for a law enforcement officer to be able to file a petition for an ERFPO, if a reporting party is not available or does not want to be involved. Currently, the ERFPO Act requires a petition for an ERFPO "be made under oath and shall be accompanied by a sworn affidavit signed by the reporting party". NMSA 1978 Section 40-14-5(F). HB 12 appears to clarify that a law enforcement officer can serve as both a petitioner and a reporting party but HB 12 doesn't specify whether the *same* law enforcement officer can fill both roles.

HB 12 also creates a new subsection H in Section 40-17-5 that lists information a law enforcement officer must include if the petition is based upon credible information collected by

the law enforcement officer, rather than obtained through a reporting party's affidavit. HB12 requires a law enforcement officer's petition shall include "a statement regarding why the law enforcement officer believes the respondent poses a significant danger of causing imminent personal injury to self or others by having custody or control of or by purchasing, possessing or receiving a firearm." It is unclear whether HB 12 intends for this "statement" to be in lieu of a "sworn affidavit signed by the reporting party" that is currently required in the ERFPO Act. If HB 12 intends to keep the current process that a "sworn affidavit signed by a reporting party" must be included with the law enforcement officer's petition, it does not clarify whether a single law enforcement officer can serve both roles.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS – none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – none.

TECHNICAL ISSUES – none.

OTHER SUBSTANTIVE ISSUES – none identified.

ALTERNATIVES

If the intent of HB 12 is to allow a law enforcement officer to be able to file a petition for an ERFPO if a reporting party is unavailable or unwilling to provide credible information by completing an affidavit, the definition of a "reporting party" in subsection H of Section 40-17-2 could be amended as follows:

"reporting party" means a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order. A reporting party can be any person, and includes including a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, person with whom a respondent has or had a continuing personal relationship, employer or public or private school administrator, or a law enforcement officer who obtains credible information while carrying out the officer's official duties about the respondent posing a significant danger of causing imminent personal injury to self or others by having custody or control or by purchasing, possessing or receiving a firearm.

If the intent of HB 12 is to preserve the two-party system where a reporting party must be a different person than the law enforcement officer filing the petition, the following sentence could be added to the expanded definition of a "reporting party" in subsection H of Section 40-17-2 above:

A reporting party must be a different person than the petitioner.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – none.

AMENDMENTS – none.