Subject: Extreme Risk Firearm Protection Order Act		Policy Number: OPR: 69
Revision Number: 03	Effective Date: 07-08-2026	Original Issue Date: 10/07/2021

1) PURPOSE

a) This policy is adopted to ensure compliance with New Mexico's Extreme Risk Firearm Protection Order Act.

2) POLICY

a) It is the policy of the Department of Public Safety to enforce the Extreme Risk Firearm Protection Order Act as required by law. This policy provides guidance that allows firearms to be temporarily taken away from those deemed dangerous to themselves or others.

3) APPLICABILITY

a) This policy applies to all relevant employees of the Department of Public Safety having duties related to the Extreme Risk Firearm Protection Order Act.

4) REFERENCES

a) **Senate Bill 5, Extreme Risk Firearm Protection Order Act, effective May 20, 2020**
b) **40-17-2 NMSA 1978, Annotations**
c) **40-17-5 NMSA 1978, amended on June 20, 2025**

5) DEFINITIONS

a) **Court –** The district court in the county in which the respondent resides.
b) **Extreme Risk Firearm Protection Order –** Either a temporary Extreme Risk Firearm Protection Oder or a one-year Extreme Risk Firearm Protection Order granted pursuant to the Extreme Risk Firearm Protection Oder Act.
c) **Firearm –** Any weapon that is designed to expel a projectile by an explosion or the frame or receiver of any such weapon.
d) **Law Enforcement Agency –** The Police Department of any city or town, the Sheriff's Office of any county, the New Mexico State Police, and a District Attorney's Office in the state and the Office of the Attorney General.

e) **Law Enforcement Officer** – a public official or public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes and includes an attorney employed by a district attorney or the attorney general.

f) **One-year Extreme Risk Firearm Protection Order** - an Extreme Risk Firearm Protection Order granted for up to one year following a hearing pursuant to the provisions of the Extreme Risk Firearm Protection Order Act.

g) **Petitioner** - A law enforcement officer who files an Extreme Risk Firearm Protection Order petition.

h) **Reporting Party** - A person who requests that a law enforcement officer file a petition for an Extreme Risk Firearm Protection Order and includes, but is not limited to, a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, coparent of a child, child, person with whom a respondent has or had a continuing personal relationship, employer or public or private school administrator.

i) **Respondent** – The person identified in or subject to an Extreme Risk Firearm Protection Order petition.

j) **Temporary Extreme Risk Firearm Protection Order** – An Extreme Risk Firearm Protection Order issued prior to a 10-day hearing pursuant to the provisions of the Extreme Risk Firearm Protection Order Act.

6) OPERATIONAL PROCEDURES

a) **Petition For Extreme Risk Firearm Protection Order, Contents.**

i) An NMSP Officer shall file a petition for an Extreme Risk Firearm Protection Order upon receipt of credible information from a reporting party that provides the officer or NMSP probable cause to believe that a respondent poses a significant danger of causing imminent personal injury to self or others by having in their custody or control or by purchasing, possessing, or receiving a firearm.

ii) If the respondent is a law enforcement officer, the petition shall be filed by the district attorney or the attorney general, not an NMSP officer.

iii) If the NMSP officer declines to file a requested petition for an Extreme Risk Firearm Protection Order, the officer shall file with the sheriff of the county in which the respondent resides in, a notice that the law

enforcement officer is declining to file a petition the Extreme Risk Firearm Protection Order Act.

iv) **Petition for an Extreme Risk Firearm Protection Order** shall be substantially in the form of *Attachment C*, and shall:

(1) State the specific statements, actions or facts that support the belief that the respondent 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.

(2) Made under oath and shall be accompanied by a sworn affidavit signed by the reporting party setting forth specific facts supporting the order shall include:

(a) The name and address of the reporting party.

(b) The name and address of the respondent.

(c) A description of the number, types, and locations of firearms or ammunition that the petitioner believes the respondent has custody of, controls, owns, or possesses.

(d) A description of the relationship between the reporting party and the respondent; and

(e) A description of any lawsuit, complaint, petition, restraining order, injunction or other legal action between the reporting party and the respondent.

(3) Request that the Court enter an order enjoining the respondent from having in the respondent's possession, custody, or control of any firearm, and from purchasing, receiving, or attempting to purchase, possessing or receive a firearm while the order is in effect.

(a) Proceedings shall be filed in the district court for the county in which the respondent resides.

(b) No costs shall be imposed associated with Extreme Risk Firearm Protection Orders, including:

(i) The filing, issuance, or service of a petition for an Extreme Risk Firearm Protection Order.

(ii) The filing, issuance, or service of a warrant.

(iii) The filing, issuance, or service of a witness subpoena.

(iv) Service of an Extreme Risk Firearm Protection Order.

(v) Obtaining law enforcement reports or photographs or copies of photographs relating to the allegations in the petition, or

(vi) Any cost associated with the confiscation, storage, or destruction of a firearm.

b) **Petition for temporary Extreme Risk Firearm Protection Order, temporary orders, proceedings.**

i) Upon the filing of a petition pursuant to the Extreme Risk Firearm Protection Order Act, the court may enter a temporary Extreme Risk Firearm Protection Order if the court finds from specific facts shown by the petitioner that there is probable cause to believe that the respondent 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 before notice can be served and a hearing held.

ii) The petitioning NMSP officer must file the petition with the court, along with all supporting documentation, the proposed temporary Extreme Risk Firearm Protection Order, and related one year order.

iii) A temporary extreme risk firearm protection order shall include:

(1) A statement of the grounds supporting the issuance of the order.

(2) The date and time the order was issued.

(3) A statement that the order shall continue until the earlier of ten (10) days or such time as a court considers the petition at a hearing unless an extension is granted at the request of the respondent.

(4) The address of the court that issued the order and in which any responsive pleading should be filed.

(5) A statement ordering the respondent to turn in all firearms in the respondent's possession, custody, or control or subject to the respondent's possession, custody, or control in a safe manner to any law enforcement officer, agency or federal firearms licensee immediately upon service of the order, or earlier if the court chooses. **Firearms need not, but may, be relinquished to the NMSP**; and

(6) The date and time of the scheduled hearing, to be held within ten (10) days ("ten-day hearing") of the issuance of the order.

iv) The court may continue the hearing at the request of the respondent, but the hearing shall be set within thirty days of the respondent's request for a continuance.

v) If the court finds probable cause, the court shall issue the temporary Extreme Risk Firearm Protection Order enjoining the respondent from

having in the respondent's possession, custody or control any firearm and shall further enjoin the respondent from purchasing, receiving, or attempting to purchase or receive a firearm while the order is in effect.

vi) The NMSP officer shall ensure that the temporary Extreme Risk Firearm Protection Order entered by the court is served upon the respondent along with supporting documents that formed the basis of the order, the notice of hearing, and the petition for a one-year Extreme Risk Firearm Protection Order.

c) **Hearings on a petition, grounds for issuance, contents of the order.**

i) In assembling the Petition, the NMSP officer shall be careful to include all available grounds which are known and should be considered by the court before issuing an order. In determining whether grounds for any Extreme Risk Firearm Protection Order exist, the court is required to consider, at a minimum, the following:

(1) recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat involved a firearm.

(2) A pattern of acts or threats of violence by the respondent within the past twelve months, including acts or threats of violence against self or others.

(3) The respondent's mental health history.

(4) The respondent's abuse of controlled substances or alcohol.

(5) The respondent's previous violations of any court order.

(6) Previous Extreme Risk Firearm Protection Orders issued against the respondent.

(7) The respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking.

(8) The respondent's history of the use, attempted use or threatened use of physical violence against another person; of stalking another person; or of cruelty to animals; and

(9) Any recent acquisition or attempts at acquisition of a firearm by the respondent.

d) **One-year Extreme Risk Firearm Protection Order, grounds for issuance, contents of order, termination, expiration, renewal of orders.**

i) The petitioning NMSP Officer shall notify all reporting parties of the "10-day hearing" date and time scheduled by the court and noticed in the Temporary Extreme Risk Firearm Protection Order. If, after hearing the matter, the court finds by a preponderance of the evidence that the respondent 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, the court shall issue a one-year Extreme Risk Firearm Protection Order.

ii) A one-year Extreme Risk Firearm Protection Order, a skeleton draft of which the officer should attach to the original petition for consideration and any required amendment by the court, shall include:
(1) a statement of the grounds supporting the issuance of the order.
(2) The date and time the order was issued.
(3) The date and time the order expires.
(4) information pertaining to any recommendation by the court for mental health or substance abuse evaluations, if applicable.
(5) The address of the court that issued the order; and
(6) Notice that the respondent is entitled to request termination of the order prior to the expiration of the order.

iii) If the court declines to issue a one-year extreme risk firearm protection order, the court shall state in writing the reasons for the court's denial and shall order the return of any firearms to the respondent.

iv) At any time not less than one month prior to the expiration of a one-year extreme risk firearm protection order, an officer may petition the court to extend the order. Each extension of the order shall not exceed one year. A petition filed pursuant to this subsection shall comply with the same requirements as the original petition, as set forth in paragraphs C above, and shall be served on the respondent by the sheriff's office in the county in which the respondent resides; provided that if the respondent resides in a city or town that has a police department, the police department shall serve the order.

v) A one-year Extreme Risk Firearm Protection Order is final and may be immediately appealed.

e) **Service of Extreme Risk Firearm Protection Orders**

i) A one-year Extreme Risk Firearm Protection Order issued pursuant to the Extreme Risk Firearm Protection Order Act shall be personally served

upon the respondent by the sheriff's office in the county in which the respondent resides; provided that if the respondent resides in a city or town that has a police department, the police department shall serve the order.

f) **Relinquishment of firearms.**
   i) A respondent who receives a temporary or one-year Extreme Risk Firearm Protection Order shall relinquish all firearms in the respondent's possession, custody, or control or subject to the respondent's possession, custody, or control in a safe manner to a law enforcement officer, a law enforcement agency or a federal firearms licensee immediately upon service of the order or sooner at the discretion of the court. **Firearms need not, but may, be relinquished to the NMSP.**
   ii) Any NMSP officer that takes temporary possession of a firearm pursuant to this section shall:
      (1) Prepare a receipt in the form of *Attachment E* identifying all firearms that have been relinquished or taken.
      (2) Provide a copy of the receipt to the respondent.
      (3) Provide a copy of the receipt to the Petitioning Officer within seventy-two hours of taking possession of the firearms, so the Petitioner will know the respondent has complied with the Order.
      (4) File the original receipt with the court that issued the temporary or one-year extreme risk firearm protection order within seventy-two hours of taking possession of the firearms; and
      (5) Ensure that the law enforcement agency retains a copy of the receipt.

g) **Penalties**
   i) A person who fails to relinquish, or who possesses or has custody or control over, any firearm or who purchases, receives, or attempts to purchase, possess, or receive any firearm, in violation of a temporary Extreme Risk Firearm Protection Order or a one-year Extreme Risk Firearm Protection Order is guilty of a misdemeanor punishable pursuant to NMSA 1978, Section 31-19-1.

h) **Extreme Risk Firearm Protection Order, reporting of orders.**
   i) The clerk of the court is required to provide a copy of a one-year Extreme Risk Firearm Protection Order or temporary Extreme Risk Firearm

Protection Order issued pursuant to the Extreme Risk Firearm Protection Order Act to both the petitioning officer and DPS. When the officer receives a copy, the officer must forward a copy of that order to the Law Enforcement Records Bureau to ensure that it is able to comply with its duties as set forth below.

ii) Upon receipt of a copy of a one-year Extreme Risk Firearm Protection Order or temporary Extreme Risk Firearm Protection Order, the DPS shall enter the order into:
   (1) The national instant criminal background check system.
   (2) All federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and
   (3) All computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

iii) An Extreme Risk Firearm Protection Order shall remain in each state system for the period stated in the order. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The Extreme Risk Firearm Protection Order shall be fully enforceable in any county, city, or town in the state.

iv) Upon the expiration of or upon receiving notice of the termination of an Extreme Risk Firearm Protection Order issued pursuant to the NMSP officer's petition, the DPS, the shall promptly remove the order from any state computer-based system into which it was entered and shall notify the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms.

v) Following the expiration or termination of an order issued pursuant to the Extreme Risk Firearm Protection Order Act and upon written request, the DPS Law Enforcement Records Bureau shall provide a sworn affidavit to the respondent affirming that the information contained within the order has been removed from all state databases and systems into which information about the order was entered and that the law enforcement agency has notified the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms.

The affidavit shall be provided to the respondent within five (5) days of receipt of the request.

vi) If any Extreme Risk Firearm Protection Order is terminated before its expiration date, the clerk of the court shall forward a copy of the termination order to the office of the attorney general and the petitioner.

i) **Firearms return, disposition.**

i) Any firearm relinquished to the NMSP in accordance with the Extreme Risk Firearm Protection Order Act shall be returned to the respondent within ten (10) days following the expiration or termination of an Extreme Risk Firearm Protection Order.

ii) A respondent shall not be required to acquire any court order granting the return of relinquished firearms.

iii) Before returning the firearm to the respondent the NMSP shall conduct a national criminal records check and shall return the firearms if the agency determines that the respondent is not prohibited from possessing firearms pursuant to state or federal law.

iv) Upon written request of the respondent, when the NMSP is storing a firearm for a respondent, it shall transfer possession of the respondent's firearm to a federally licensed firearms dealer or lawful private party purchaser designated by the respondent; provided that the transfer is the result of a sale, that the transferee is the actual owner of the firearm thereafter and, except in the case of a federally licensed firearms dealer, the law enforcement agency has conducted a national criminal records check and determined that the transferee is not prohibited from possessing a firearm pursuant to state or federal law.

j) **Fees**

i) No fee shall be charged for background checks required pursuant to this section I. The officer transferring possession of a firearm to a transferee shall notify the transferee that it is unlawful to transfer or return the firearm to the respondent while the Extreme Risk Firearm Protection Order is in effect. A transferee who violates this subsection is guilty of a misdemeanor and may be punished pursuant to Section 31-19-1 NMSA 1978.

7) ATTACHMENTS

a) Reporting Party Affidavit - Exhibit A
b) Law Enforcement Statement - Exhibit A
c) Petition for Extreme Risk Firearm Protection Order
d) EFRPO Return of Service
e) Relinquishment Receipt Form
f) Petition to extend One-Year ERFPO Form
g) Reporting Party Request to Omit Contact Information Form
h) Respondent's Motion to Postpone a Hearing
i) Respondent's Motion to Terminate a One-Year ERFPO Order Form
j) Temporary Extreme Risk Firearm Protection Order
k) One Year Extreme Risk Firearm Protection Order

8) APPROVAL

APPROVED BY: _____ DATE: 7-8-20

DPS Cabinet Secretary