

**NEW MEXICO**

**EXTREME  
RISK  
FIREARM  
PROTECTION  
ORDERS**

**A GUIDE TO THE PROCESS**



**Bloomberg American  
Health Initiative**

Information on this website does not constitute legal advice. Every factual situation is unique; if you want legal advice specific to your particular circumstances, please consult knowledgeable counsel.

## NEW MEXICO

# Extreme Risk Firearm Protection Orders Process

### Authorized petitioners for an extreme risk firearm protection order in New Mexico:

- One law enforcement officer
- One district attorney or attorney general (only if the respondent is a law enforcement officer)

### Authorized reporting parties for an extreme risk firearm protection order in New Mexico:

- 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 resident has or had a continuing personal relationship
- Employer
- Public or private school administrator
- Other person\*

### REPORTING PARTY REQUESTS THAT LAW ENFORCEMENT FILE AN EXTREME RISK FIREARM PROTECTION ORDER PETITION

A reporting party may ask that law enforcement file a petition for ERFPO, providing credible information that the respondent poses imminent risk of personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.

### FILE COMPLAINT FOR AN ERFPO

During court hours, petitioner goes to court and files complaint for an ERFPO under oath describing why there is probable cause to believe the respondent poses a risk of imminent personal injury to self or others.

### ASSESS INFORMATION FROM REPORTING PARTY

Upon receipt of credible information from a reporting party, the law enforcement officer shall evaluate whether the information gives rise to probable cause that the respondent poses a risk of imminent personal injury to self or others.

### OFFICER DETERMINES RISK EXISTS AND FILES COMPLAINT FOR AN ERFPO

If the law enforcement officer determines that such risk exists, the officer shall file a petition for an ERFPO from the district court in the county where the respondent resides.

### OFFICER DECLINES TO FILE A PETITION FOR AN ERFPO

If the law enforcement officer determines that there is no probable cause, the law enforcement officer may decline to file a petition for an extreme risk firearm protection order and must file a notice with the sheriff of the respondent's county of residence stating that the law enforcement officer is declining to file a petition for an extreme risk firearm protection order.

### ASSESS ERFPO PETITION ON AN EX PARTE BASIS

Upon filing of the petition, a district court judge decides whether to issue a temporary ERFPO.

### IF A TEMPORARY ERFPO IS ISSUED, SERVE THE ORDER

Within a reasonable time after the issuance of the order, the petitioner serves the respondent with a copy of the order, supporting documents that formed the basis of the order, notice of the hearing and the petition for a one-year extreme risk firearm protection order.

### TEMPORARY ERFPO IS NOT ISSUED

If the judge declines to issue a temporary order, the judge must enter an order that includes the reasons for denial.

### RESPONDENT RELINQUISHES FIREARM(S)

Within 48 hours from receipt of service or sooner (depending on the court's discretion), the respondent must relinquish all firearms in possession, custody or control or subject to the respondent's possession, custody or control to a law enforcement officer, law enforcement agency or a federal firearms licensee.

### POTENTIAL SUSPENSION OR REVOCATION OF CONCEALED HANDGUN CARRY LICENSE

The Department of Public Safety or a law enforcement officer may suspend or revoke the respondent's concealed handgun license.

### UPDATE THE BACKGROUND CHECK SYSTEM

Clerk of the court provides a copy of the order to any law enforcement agency designated to update the national instant criminal background check system (NICS). The law enforcement agency enters the order into NICS, all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms, and all computer-based criminal intelligence information systems and databases available in New Mexico used by law enforcement agencies.

Flowchart continued on page 3

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\*On August 20, 2021, New Mexico Attorney General Hector Balderas issued an opinion clarifying the meaning of "reporting party." The Attorney General notes that the term "reporting party" is defined in the law as "a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order" that "includes" a specified list of individuals. The Attorney General reasons that the use of the word "includes" shows a legislative intent to provide an incomplete list of individuals. "Reporting party" therefore means any person who requests that a law enforcement officer file a petition for an ERFPO.

## NEW MEXICO

# Extreme Risk Firearm Protection Orders Process (continued)

### PROCEED WITH A HEARING FOR ONE-YEAR ERFPO

Within 10 days of the issuance of the temporary ERFPO, the court determines whether to issue a one-year ERFPO.

### COURT ISSUES A ONE-YEAR ERFPO & SERVES THE ORDER

The police department or, if no police department in the respondent's county, sheriff's office in the county in which the respondent resides must serve the one-year ERFPO on the respondent. The respondent may request in writing that law enforcement transfer any firearms removed to a federally licensed firearms dealer or a lawful private party purchaser designated by the respondent. This transfer must be completed as a sale making the transferee the actual owner of the firearm. Law enforcement must conduct a national criminal records check in all instances, except where the transferee is a federally licensed firearms dealer, to determine that the transferee is not prohibited from possessing a firearm by state or federal law.

### COURT DETERMINES NOT TO ISSUE A ONE-YEAR ERFPO

The court must state in writing the reasons for the court's denial and must order the return of any firearms to the respondent. Law enforcement must conduct a national criminal records check to ensure the respondent is not prohibited from possessing firearms by state or federal law. The relinquished firearm(s) are returned to the respondent within ten days following the termination of the extreme risk firearm protection order.

### ONE-YEAR ERFPO IS RENEWED OR TERMINATED

At any time before one month prior to the expiration date of the one-year ERFPO, the petitioner may petition the court to extend the ERFPO.

At any point during the period of the order, the respondent may petition to terminate the ERFPO.

### UPDATE BACKGROUND CHECK SYSTEM

Upon renewal of the order, the court clerk provides a copy the order to any law enforcement agency designated to provide information to NICS. The law enforcement agency enters the order into NICS, all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms, and all computer-based criminal intelligence information systems and databases available in New Mexico used by law enforcement agencies. The ERFPO record remains in state databases for the period stated in the order.

Upon termination of the order, the designated law enforcement agency shall promptly remove the order from any state computer-based system into which it was entered and shall notify NICS and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms.

### UPDATE THE BACKGROUND CHECK SYSTEM

The court clerk provides a copy the order to any law enforcement agency designated to provide information to NICS. The law enforcement agency enters the order into NICS, all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms, and all computer-based criminal intelligence information systems and databases available in New Mexico used by law enforcement agencies. The ERFPO record remains in state databases for the period stated in the order.