

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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** Jan. 26, 2019  
**Bill No:** HB83

**Sponsor:** Ely and Garratt  
**Short**    Extreme Risk Protection  
**Title:**    Order Act

**Agency Code:** 264  
**Person Writing**    Gail MacQuesten  
**Phone:** 505 466-0532    **Email** gailmacquesten@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	minimal	minimal	minimal	recurring	general

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB8; HB40; HB35; HB87; HB105; HB130; SB8; SB201

Duplicates/Relates to Appropriation in the General Appropriation Act: none found

**SECTION III: NARRATIVE**

Sections 1-14 of HB83 create the “Extreme Risk Protection Order Act.” The Act will allow a household member to seek an “extreme risk protection order” against another household member by filing a petition in the district court. “Household member” includes spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, a person who has a child in common with another person, or a person with whom the petition has been in a dating or intimate relationship. Cohabitation is not necessary. The petitioner is not responsible for costs associated with seeking or serving an order.

The petitioner may seek an ex parte temporary extreme risk protection order. The petition must contain a sworn statement with detailed allegations based on personal knowledge, and the court must find probable cause to believe that the respondent poses an immediate danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing or receiving a firearm or ammunition.

The court may also issue an emergency order when a law enforcement officer states to the court, in person or through reliable electronic means, the need for an order and the court finds probable cause to believe that the respondent poses an immediate danger of causing personal injury to self or others by having custody, control or possession of a firearm or ammunition.

An order issued under the Act shall include a statement that the respondent shall not have custody or control of, purchase, possess or receive or attempt to purchase or receive a firearm or ammunition while the order is in effect. It shall also describe the requirements for relinquishing firearms and ammunition, a statement of the grounds asserted for the order, notice of the hearing required, a statement that at the hearing the court may extend the order for one year, a statement that the respondent may seek the advice of an attorney and a statement that any violation of the order is a misdemeanor.

An order shall be served immediately. It shall expire ten days after issuance. The court shall conduct a hearing within 20 days of issuance to determine if a one-year extreme risk order shall be issued. If the court finds by a preponderance of the evidence at the hearing that the respondent poses a significant danger of personal injury to self or others by having custody or control, purchasing, possessing or receiving a firearm or ammunition, the court shall issue a one-year extreme risk protection order. One-year orders may be extended after notice and hearing. A respondent under a one-year order may request a hearing to terminate the order at any time during the effective period of the order. The respondent has the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing

personal injury to self or others.

HB83 contains provisions allowing law enforcement to search for, and retain, firearms and ammunition, and return or dispose of the firearms and ammunition.

Extreme risk orders shall be transmitted to the federal bureau of investigation's national instant criminal background check system.

Violation of an order is a misdemeanor, and the violator shall be prohibited from having custody or control of, owning, purchasing, possessing or receiving or attempting to purchase or receive a firearm or ammunition for a period of five years.

A person who has a firearm and who resides with a respondent subject to an order must safely secure the firearm. Violation is a misdemeanor.

HB83 also amends the concealed handgun laws to prohibit issuance of a license to an applicant who is subject to an extreme risk protection order.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB83 creates a new crime, which will increase work for the district attorneys. If the district attorneys participate in the hearings, that will also increase their workload.

## **SIGNIFICANT ISSUES**

The apparent intent of the bill is to allow courts to identify volatile situations in which access to a firearm by a respondent poses a particular danger – either to the respondent or another person – and remove the respondent's access to firearms quickly.

HB83 creates a process under which a household member or a law enforcement officer can seek an order requiring the respondent to surrender firearms and ammunition, and not obtain firearms or ammunition. The process is quick- a household member may seek an ex parte order against another family member, or a law enforcement officer may seek an emergency order in any circumstance where respondent's access to a firearm poses a particular danger. An officer need not be in court to seek the order: the officer may provide a statement "through reliable electronic means." Issuance and service is prompt and officers may quickly obtain a warrant to search for firearms and ammunition. The initial order expires in 10 days, but the order may be extended after notice and hearing.

There will likely be due process challenges to the procedure. The initial order will typically be sought and obtained ex parte, which means the respondent will not have an opportunity to object or present his or her side of the story. The burden of proof on the petitioner is not heavy. A household member must submit a petition under oath accompanied by a sworn affidavit setting out detailed allegations based on personal knowledge that the respondent poses an immediate danger of causing personal injury to self or others through a firearm. Or an officer must state the

need for an emergency extreme risk protection order. If the court finds probable cause to believe that the respondent poses an immediate danger of causing personal injury to self or others through a firearm, the court shall issue the order. Note that although this is a light burden of proof, it is the same burden of proof applied by a court when determining whether to issue a temporary restraining order under Section 40-13-3.2 NMSA 1978, which can grant temporary custody of children as well as prohibit the respondent from contacting the protected party. All HB83 does is temporarily remove access to firearms and ammunition.

Before issuing a one-year order, the court must consider additional information, and find by a preponderance of the evidence, a higher standard, that the respondent poses a significant danger of personal injury to self or others by use of a firearm.

## **PERFORMANCE IMPLICATIONS**

Few, for the district attorneys.

## **ADMINISTRATIVE IMPLICATIONS**

The courts and law enforcement will bear the costs associated with obtaining and serving orders, conducting searches and hearings, recordkeeping, etc. HB83 contains no appropriation, and specifically provides that the petitioner shall not be charged costs.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

There are a number of bills pertaining to firearms:

- HB40: Background checks for firearm sales at gun shows
- HB35: Requiring firearms licensees who buy a gun to request the state Department of Public Safety check to see if the gun is stolen
- HB87: Domestic violence and firearm possession
- HB105: Increasing penalties under the firearm enhancement statute
- HB130: Adding firearms crimes and penalties
- SB8: Background checks
- SB201: Gun sales
- HB8 and SB8: Background check for firearm sales

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None noted.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**

None proposed.