

LFC Requester: _____

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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 January 15, 2020
Bill No: SB5

Sponsor: Cervantes, Ely
Short Extreme Risk Firearms
Title: Protection Act

Agency Name and Code Administrative Office of the District Attorneys (AODA)
Number: 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: none
Duplicates/Relates to Appropriation in the General Appropriation Act none

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB5 sets out a process to try and minimize incidents of individuals using firearms to commit crimes. The legislation appears to be in response to numerous incidents involving firearms in which the individual should not have possessed them. The legislation sets forth a process similar to that used in domestic violence protection orders proceedings. The process seems to be very similar in that a household member (as defined in Section 2, Paragraph C) can petition the court to remove firearms from an individual who may be at risk to himself or others. In addition, like domestic violence protection orders, the legislation provides for a process were a court can issue an ex parte temporary order.

Sections 1 through 12 set forth the process for petitioning for an order to remove firearms from a person and the processes of removing firearms. Sections 1 through 12 also set forth the procedures for storing confiscated firearms and disposing of said firearms. There are also time periods set out for how long a person can be deprived of their firearms.

Sections 13 and 14 of SB 5 provide criminal penalties. Section 13B states that a “person who has custody or control of, owns, purchases, possesses or receives a firearm or ammunition in violation of an extreme risk firearms protection order is guilty of a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978.” Section 13 B also prevents a person convicted under this act from “having custody or control of, owning, purchasing, possessing or receiving or attempting to purchase or receive firearms or ammunition for a period of 5 years from the date of conviction.” Section 14 requires that a person who possesses firearms and who resides with a respondent subject to an extreme risk firearms protection act order to the following: make sure that firearms are secured in the residence were the respondent cannot have access to them: and if the person has firearms on their person, need to make sure that the respondent does not have access to those firearms. If that person fails to do this, they can be found convicted of a misdemeanor.

The legislation also proposes to amend Section 29-19-4 NMSA 1978, to include paragraph 11 that adds an additional condition to the concealed handgun carry provisions. This paragraph will require that a person applying for the concealed carry handgun not be subject to any order under the extreme risk firearms protection act.

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.

The bill provides for a new court procedures and therefore more resources may be needed for the courts to carry out the provisions of the act. In addition, the act creates two new criminal statutes with misdemeanor penalties that may also affect law enforcement, district attorneys, public defenders, local jails and probation offices. It is unknown what the cost may be.

SIGNIFICANT ISSUES

1. Section 12 provides that the courts or other authorized entity transmit information regarding a person subject to an order to the FBI. It is not clear whether that is something the FBI does, or will do, in relation to the Brady Bill (18 U.S.C. §922).

2. Section 13B, as mentioned above, provides that a person may be convicted of possessing, etc., a firearm in violation of an order. That person will be guilty of a misdemeanor. The same provision sets forth that the person be prevented from possessing, etc., a firearm for a period of 5 years. It is not clear what will happen if a person possesses a firearm after their period of probation is over (364 days). Another issue is what will be a person's legal status if, after they are convicted and they have successfully completed the period of probation, they petition for, and are granted, an order expunging their criminal record.

3. Section 14 deals with those incidents where a person has firearms and resides with a person who is the subject of an order. This section prohibits that person from making firearms available where a person subject to an order can access them. The legislation, as written, does not provide that a suspect have actual or constructive knowledge that the person they are residing with is subject to an order pursuant to the extreme risk firearms protection act. As is used in other criminal statutes, language such as "knew or should have known..." that the person they are residing with is subject to an order under the extreme risk firearms protection act. In addition, it is not clear whether the person described in this section is the same as provided in section 2 C ("household member").

PERFORMANCE IMPLICATIONS law enforcement, courts, District attorneys and public defenders may need additional resources to deal with violations of section 13 and 14.

ADMINISTRATIVE IMPLICATIONS there may be the need for training, case management and office hardware needs as well as possibly more personnel.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Section 13 A: provides immunity for a person who petitions the court to have firearms

removed from another, provided that they act with reasonable care. It may be necessary to outline a process where a person can be liable if they do not act with reasonable care. It is conceivable that a person could make allegations about another out of spite, ill will, revenge, etc., to prevent that person from owning or possessing firearms.

If enacted, there is a high probability that this will be challenged by Second Amendment advocates.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

status quo

AMENDMENTS