

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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: Date 1-31-17
Original **Amendment** _____ **Bill No:** SB259
Correction _____ **Substitute** _____

Sponsor: Joseph Cervantes **Agency Code:** 264
Short Title: No Firearms for Orders of Protection Subjects **Person Writing:** Gail MacQuesten
Phone: 466-0532 **Email:** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB259 amends and adds a section to the Family Violence Protection Act, prohibiting a person subject to certain orders of protection from possessing or purchasing firearms and providing procedures for relinquishing and returning firearms.

The court shall enter an order of protection upon finding that domestic abuse has occurred or upon stipulation of the parties, unless the court makes a specific finding on the record that there is no credible threat to the safety of a household member or that there is a substantial and compelling order of protection. The order shall provide that after the restrained party has received notice of the order and an opportunity to be heard, the restrained party must relinquish any firearm in the restrained party’s possession to an authorized recipient, and refrain from purchasing receiving, possessing or attempting to purchase, receive or possess any firearm while the order of protection is in effect.

An “authorized recipient” means a law enforcement agency, federally licensed firearms dealer, or neutral third party (someone who has completed a background check, is not prohibited by federal or state law from purchasing or possessing a firearm and does not reside with a restrained party).

The relinquishment of the firearms must take place on or before the business day following service of the order of protection. If a neutral third party takes possession of the firearm, he or she must take the firearm to a law enforcement agency or a federally licensed firearms dealer and request that they use the national crime information center database to verify in writing that the neutral third party may lawfully take possession of the firearm. The restrained party shall then file the verification with the court that issued the order of protection. If a law enforcement agency or a dealer takes possession of the gun, it shall issue a receipt to the restrained party, who shall file it with the court. If a restrained party has no firearms, he or she shall file a declaration of non-surrender with the court.

If a restrained party declines to relinquish a firearm based on an assertion to the right against self-incrimination, the court may grant use immunity for the act of relinquishing the firearm.

SB259 provides procedures for returning the firearm to the restrained party when an order of protection expires or is terminated.

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.

SB259 may result in increased costs for law enforcement agencies and courts, who will be administering the provisions in the bill. Orders of protection may be sought by individuals, or may be sought by district attorneys in sentencing proceedings in criminal sexual penetration cases. Costs for district attorneys may therefore increase because of the additional issues to be litigated in obtaining an order of protection. In addition, the violation of an order of protection is a misdemeanor. (See NMSA 1978, Section 40-13-6(E).) The district attorneys may have additional expenses related to violations of SB259's additional terms in protection orders.

SIGNIFICANT ISSUES

SB259 is designed to protect victims of domestic violence from their attackers by requiring orders of protection to prohibit the restrained person from possessing or acquiring firearms.

Federal law prohibits the purchase and possession of firearms by a person convicted of a misdemeanor crime of domestic violence, or a person who is subject to certain domestic violence protective orders. Many states have laws designed to keep firearms out of the hands of abusers. The legislative approaches vary in scope and in the ways they limit access to firearms. Some states require abusers to surrender firearms upon conviction, or upon issuance of a domestic violence protective order. Some states facilitate reporting of domestic violence misdemeanants to the database used for background checks. Some states allow law enforcement to seize firearms at the scene of domestic violence.

The particular structure and wording of SB259 may raise concerns about the rights of the restrained person, and the amount of protection it affords the victim.

Rights of the restrained person:

- The firearm restrictions are automatic if an order of protection is issued. (The statute, as amended by SB259, provides that the court "shall" enter an order requiring the restrained party to relinquish any firearm, etc. The firearm provisions are not in the paragraph describing provisions the court "may" put in the order.) There is no way for a court to determine that an order of protection is appropriate, but that the firearm provisions are not appropriate.
- SB259 only allows the firearm restrictions to be put into place after the restrained person has received notice and an opportunity to be heard. (New Mexico provides several paths for obtaining a restraining order, and temporary orders may be obtained without a hearing, based on the representations of the victim.) Although SB259 does not impose the firearms restrictions until a hearing and an opportunity for the restrained person to be heard, it is not clear what arguments the restrained person can raise to challenge the firearms restrictions. Again, the firearm provisions are automatic and required. SB259 does allow the court to decline to issue an order of protection if it makes a specific finding on the record that there is no credible threat to the safety of a household member

or that there is a substantial and compelling reason not to enter an order of protection. It is not clear what would be a substantial and compelling reason not to enter an order. But, again, the issue goes to whether an order of protection should be issued at all, not to whether the firearm provisions should be part of the order. They appear to be automatic and required in every order of protection.

Protection of the victim:

- SB259 adds language to the statute governing orders of protection to allow the court to deny an order of protection if it makes a specific finding on the record that there is no credible threat to the safety of a household member or that there is a substantial and compelling reason not to enter an order of protection. As currently written, the statute says a court “shall” enter an order of protection upon finding that domestic abuse has occurred or upon stipulation of the parties. By adding this language allowing denial, SB259 actually makes it harder for a victim to obtain an order of protection.
- There are few restrictions on a “neutral third party.” The person must have gone through a background check, not be prohibited by state or federal law from having a firearm, and not reside with a restrained party. The neutral third party may be, for example, the best friend, co-worker or sibling of the restrained person, and it is possible that the restrained person will still have access to the firearm. Although SB259 assumes the neutral third party will keep the firearm away from the restrained person, there is no provision in the bill to enforce that presumption.
- Although SB259 prohibits the restrained person from purchasing a firearm, there is nothing in the bill that would make it illegal for a dealer to sell to the restrained person.
- SB259 contains no provision allowing law enforcement to remove firearms at the scene during a domestic violence call. The gun restrictions only apply when they are part of the process of obtaining a protection order.

PERFORMANCE IMPLICATIONS

SB259 requires the court to notify the relevant district attorney of a violation of an order of protection. That violation may result in the court holding the violator in contempt, but such violations are also misdemeanors, to be prosecuted by the district attorney. The notice requirement may result in increased prosecutions for order violations.

Because of the loopholes described above, SB259 may not provide full protection to the victim.

ADMINISTRATIVE IMPLICATIONS

SB259 contains short time limits for a restrained person and the “authorized recipient” to comply with its requirements (typically one business day for each required action).

Courts, or the person seeking the order of protection, will need to determine if the restrained person has complied with the requirements.

Law enforcement agencies who act as the authorized recipient for firearms surrendered under this program will have to accept, hold and return the firearms. The law enforcement agency that served the order of protection is responsible for determining if a neutral party may return the firearm to the restrained person when the order of protection expires or terminates.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB23 would amend the Family Violence Protection Act to provide for the Protection Order Exclusion Zone Project.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have a statutory provision prohibiting restrained persons from having or obtaining firearms.

AMENDMENTS

None proposed.