HB 106-FN - AS INTRODUCED

2023 SESSION

23-0042
07/04

HOUSE BILL ***106-FN***

AN ACT relative to extreme risk protection orders.

SPONSORS: Rep. Bradley, Hills. 41; Rep. Ames, Ches. 13; Rep. S. Newman, Hills. 4; Rep. Abbott, Ches. 6; Rep. P. Schmidt, Straf. 14; Sen. Watters, Dist 4; Sen. D'Allesandro, Dist 20; Sen. Fenton, Dist 10; Sen. Altschiller, Dist 24

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes a procedure for issuing extreme risk protection orders to protect against persons who pose an immediate risk of harm to themselves or others.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0042
07/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to extreme risk protection orders.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Purpose. The general court finds that allowing family or household members or law enforcement officers to petition for a court order to temporarily restrict access to firearms by individuals who are found to pose an immediate risk to themselves or others would advance public safety. This act shall not apply in cases of domestic abuse or stalking where the petitioner is eligible to petition for relief under RSA 173-B or RSA 633:3-a.

2 New Chapter; Extreme Risk Protection Orders. Amend RSA by inserting after chapter 159-E the following new chapter:

CHAPTER 159-F

EXTREME RISK PROTECTION ORDERS

159-F:1 Definitions. In this chapter:

I. "Extreme risk protection order" means a temporary, ex parte, or final order issued pursuant to this chapter to temporarily restrict access to firearms by individuals who are found to pose an immediate or significant risk to themselves or others.

II. "Family or household member" means:

(a) A spouse, ex-spouse, person cohabiting with another person, and a person who cohabited with another person in the preceding 24 months but who no longer shares the same residence.

(b) A parent or other person related by consanguinity or affinity, other than a minor child who resides with the respondent.

III. "Firearm" means any weapon, including a starter gun, which will, is designed to, or may be readily converted to expel a projectile by the action of an explosive.

IV. "Intimate partner" means a person who is currently or who, in the preceding 24 months, has been involved in a romantic relationship with another, whether or not such relationship was ever sexually consummated.

V. "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, or a conservation officer.

VI. "Petitioner" means a law enforcement officer, family or household member, or intimate partner of the respondent who files a petition for an extreme risk protection order under this chapter.

VII. "Respondent" means an individual who is identified as the respondent in a petition filed under this chapter.

159-F:2 Jurisdiction and Venue.

I. The district division of the circuit court shall have jurisdiction over all proceedings under this chapter.

II. The petitioner may commence proceedings pursuant to RSA 159-F:3 in the county or district where either the petitioner or the respondent resides.

III. Proceedings under this chapter may be transferred to another court upon the motion of any party or of the court as the interests of justice or the convenience of the parties may require.

159-F:3 Commencement of Proceedings; Petition; Hearing.

I. A petitioner may seek relief under this chapter by filing a petition, in the county or district where the petitioner or respondent resides, alleging that the respondent poses a significant risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition.

II. A petition for an extreme risk protection order shall:

(a) Be accompanied by a written affidavit, signed by the petitioner under oath. The affidavit shall contain specific factual allegations regarding the factors that give rise to petitioner's belief that respondent poses a significant risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition.

(b) Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control.

(c) Identify if there is a known existing protection order in effect against the respondent under RSA 173-B or any other applicable statute.

(d) Identify what steps if any have been taken to voluntarily remove firearms from the respondent.

III. Any person who files a petition under this chapter containing allegations the petitioner knows to be false, or who files a petition with intent to harass the respondent, shall be subject to criminal penalties, as set forth in RSA 159-F:11.

IV. Notice of the pendency of the action and of the facts alleged against the respondent shall be given to the respondent, either personally or as provided in paragraph V. The petitioner shall be permitted to supplement or amend the petition only if the respondent is provided an opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions filed under this chapter shall include the home and work telephone numbers of the respondent, if known. Notice of the whereabouts of the petitioner may be kept confidential by order of the court for good cause shown. Any answer by the respondent shall be filed with the court and a copy shall be provided to the petitioner by the court.

V. No filing fee or fee for service of process shall be charged for a petition or response under this section, and the petitioner or respondent may proceed without legal counsel. A law enforcement

officer shall serve process under this section. Any proceeding under this chapter shall not preclude any other available civil or criminal remedy.

VI. The clerk of the circuit court shall supply forms for petitions and for relief under this chapter designed to facilitate pro se proceedings. All such petitions shall contain the following statement: "I swear that the foregoing information is true and correct to the best of my knowledge. I understand that making a false statement on this petition will subject me to criminal penalties."

VII. The findings of facts shall be final, but questions of law may be transferred from the circuit court to the superior court.

VIII.(a) The court shall hold a hearing within 7 days of the filing of a petition under this section or within 4 days of service of process upon the respondent, whichever occurs later.

(b) The time frame established in this paragraph may be extended for an additional 7 days upon motion by the respondent for good cause shown. A recusal by the judge or any act of God or closing of the court that interferes with the originally scheduled hearing shall not be cause for the dismissal of the petition. The court shall reschedule any hearing under this section in an expeditious manner.

IX. In any proceeding under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant, reliable, and material.

159-F:4 Temporary Relief.

I. A petitioner may request, and the court may enter, a temporary extreme risk protection order with or without actual notice to respondent. The court shall issue a temporary extreme risk protection order if it finds, by a preponderance of the evidence, that the respondent poses an immediate and significant risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition.

II. If a temporary extreme risk protection order is requested, the court shall hold a temporary ex parte risk protection order hearing in person or by telephone on the day the petition is filed or on the business day immediately following the day the petition is filed.

III. The court shall determine, by a preponderance of the evidence, whether there is reason to believe that the respondent poses an immediate risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition. The court shall consider any relevant, reliable, and material evidence.

IV. Temporary orders issued under this section shall prohibit the respondent from purchasing, possessing, or receiving any firearms and ammunition for the duration of the order and shall further direct the respondent to relinquish to a law enforcement officer all firearms and ammunition in the control, ownership, or possession of the respondent or any other person on behalf of the respondent, and any license to carry a loaded pistol or revolver issued to the respondent under

RSA 159:6, for the duration of the protective order. The court shall require proof, which may be in the form of a verbal attestation under oath or sworn affidavit, that the respondent has surrendered any firearms or ammunition owned by the respondent or in his or her custody, control, or possession.

V. The court may issue such temporary orders by telephone or facsimile. Such telephonically issued orders shall be made by a circuit court judge to a law enforcement officer and shall be valid in any jurisdiction in the state. Such orders shall be returnable to the circuit court where the petitioner resides, unless otherwise ordered by the issuing judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request an expedited hearing on such orders. Such hearing shall be held no less than 3 business days and no more than 5 business days after the request is received by the clerk. Such hearing may constitute the final hearing under RSA 159-F:3, VIII.

VI. A temporary extreme risk protection order shall expire upon the hearing on a final extreme risk protection order under RSA 159-F:3, VIII.

VII. The court may subsequently issue a search warrant authorizing a law enforcement officer to search for and seize any and all firearms and ammunition in the respondent's possession, custody or control, if there is probable cause to believe respondent has firearms or ammunition and if the court has reason to believe that such firearms or ammunition have not been relinquished by the respondent.

VIII. The court shall state the particular reasons for denying or granting the petitioner's request for a temporary extreme risk protection order.

159-F:5 Relief.

I. After notice to respondent and a hearing, and upon a showing by the petitioner that there is clear and convincing evidence that the respondent poses a significant and ongoing risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition, the court shall issue an extreme risk protection order for a period not to exceed 12 months.

II. An extreme risk protection order issued under this section shall prohibit the respondent from purchasing, possessing, or receiving any firearms and ammunition for the duration of the order and shall further direct the respondent to relinquish to a law enforcement officer all firearms and ammunition in the control, ownership, or possession of the respondent, and any license to carry a loaded pistol or revolver issued to the respondent under RSA 159:6 for the duration of the order.

III. In determining whether there is clear and convincing evidence to believe that the respondent poses an immediate risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition, the court shall consider any relevant, reliable, and material evidence.

IV. A person, including an officer of the court, who offers evidence or recommendations relating to a petition filed under this chapter either shall present the evidence or recommendations in to the court in a sworn written affidavit, with copies to each party and his or her attorney, if one is retained, or shall present the evidence under oath at a hearing at which all parties are present.

V. During the hearing, the court shall determine if a mental health evaluation or chemical dependency evaluation is appropriate and may order such evaluation if the court finds there is clear and convincing evidence that the respondent has a serious mental illness or recurring mental health condition that is likely to lead to the respondent being a danger to themselves or others. A mental health evaluation ordered pursuant to this paragraph shall comply with the requirements of RSA 135-C.

VI. The court may subsequently issue a search warrant authorizing a law enforcement officer to search for and seize all firearms and ammunition in the respondent's possession, custody, or control, if there is probable cause to believe respondent has firearms or ammunition and if the court has probable cause to believe that such firearms or ammunition have not been relinquished by the respondent. The court shall require proof, which may be in the form of a verbal attestation under oath or sworn affidavit, that the respondent has surrendered any firearms or ammunition owned by the respondent or in his or her custody, control, or possession.

159-F:6 Contents of Extreme Risk Protection Orders.

I. An extreme risk protection order issued under this chapter shall include all of the following:

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

(b) The date the order was issued.

(c) The date the order expires.

(d) Whether a mental health evaluation or chemical dependency evaluation of the respondent is required and, if so, when the results of said evaluation must be provided to the court.

(e) The address of the court in which any responsive pleading should be filed.

(f) A description of the requirements for the surrender of all firearms and ammunition in the control, ownership, or possession of the respondent under RSA 159-F:8.

(g) The following statement:

"To the subject of this extreme risk protection order: This order will remain in effect until the date noted above. If you have not done so already, you shall surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition that you own or that are in your custody, control, or possession and any license to carry a loaded pistol or revolver issued to you under RSA 159:6. You may seek the advice of an attorney as to any matter connected with this order."

II. If the court issues a temporary extreme risk protection order under RSA 159-F:4, the court shall inform the respondent, in writing, that he or she is entitled to request an expedited

hearing as provided in RSA 159-F:4, V. The court shall provide the respondent with a form to request such a hearing.

III. If the court issues an extreme risk protection order under RSA 159-F:5, the court shall inform the respondent, in writing, that he or she is entitled to request a hearing to vacate the order in the manner provided in RSA 159-F:10. The court shall provide the respondent with a form to request a hearing to vacate.

IV. The court shall state the particular reasons for granting or denying the petitioner's request for an extreme risk protection order.

159-F:7 Notification; Reporting of Orders.

I. A copy of any order made under this chapter shall be promptly transmitted to the local law enforcement agency having jurisdiction to enforce such order and, if such person has been issued a license to carry a loaded pistol or revolver under RSA 159:6, notice shall also be promptly made to the issuing authority of the license.

II. Extreme risk protection orders, including temporary extreme risk protection orders, shall be promptly served on the respondent by the law enforcement officer. Modifications, extensions, and any order vacating an extreme risk protection order shall be sent to the respondent's last address of record. The respondent shall be responsible for informing the court of any changes of address. Law enforcement agencies shall establish procedures whereby a law enforcement officer at the scene of an alleged violation of such an order may be informed of the existence and terms of such order.

III. The clerk of the court shall enter any order issued under this chapter into a statewide judicial information system on the same day such order is issued. The order shall remain in the information system as long as the order remains in effect.

IV. The clerk of the court shall forward a copy of any order issued under this section the same day such order is issued to the department of safety, which in turn shall forward a copy to the Federal Bureau of Investigation, or its successor agency, for inclusion in the National Instant Criminal Background Check database.

V. Any court-ordered changes, extensions, or modifications to the order shall be effective upon issuance of such changes, extensions, or modifications and shall be mailed or otherwise provided to the appropriate law enforcement agency, issuing authority, and transmitted to the department of safety within 24 hours of the entry of such changes, extensions, or modifications.

159-F:8 Surrender of Firearms and Ammunition.

I. Upon issuance of any extreme risk protection under this chapter, including a temporary ex parte extreme risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent or in his or her custody, control, or possession and any license to carry a loaded pistol or revolver issued to the respondent under RSA 159:6.

II. The law enforcement officer serving an extreme risk protection order under this section, including a temporary extreme risk protection order, shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent or in his or her custody, control, or possession and any license to carry a loaded pistol or revolver issued to the respondent under RSA 159:6. The law enforcement officer shall take possession of all firearms and ammunition and any license to carry a loaded pistol or revolver issued to them under RSA 159:6, which are surrendered. Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the extreme risk protection order hearing, the respondent shall surrender any firearms and ammunition owned by the respondent or in his or her custody, control, or possession and any license to carry a loaded pistol or revolver issued to them under RSA 159:6, held by the respondent, in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.

III. A law enforcement officer may, pursuant to RSA 159-F:4 and 159-F:5, seek a search warrant from a court of competent jurisdiction to search for and seize any and all firearms and ammunition owned by the respondent or in his or her possession, custody or control if the officer has probable cause to believe that said firearms or ammunition have not been surrendered.

IV. At the time of surrender, a law enforcement officer taking possession of any firearm or ammunition owned by the respondent or in his or her custody, control, or possession, or any license to carry a loaded pistol or revolver issued to respondent under RSA 159:6, shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered, and any license surrendered and shall provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

V. Notwithstanding RSA 595-A, upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender required by any order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender any firearms or ammunition owned by the respondent in his or her custody, control, or possession. If the court finds that probable cause exists, the court shall issue a warrant describing the firearms or ammunition owned by the respondent or in his her custody, control or possession and authorizing a search of the locations where any such firearms or ammunition are reasonably believed to be found and the seizure of any such firearms or ammunition discovered pursuant to such search.

VI. If a person other than the respondent claims title to any firearms or ammunition surrendered or seized pursuant to this section and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her, if:

(a) The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition; and

(b) The law enforcement agency conducts a background check to determine that the lawful owner is not prohibited under state or federal law from possessing the firearm or ammunition.

VII. Upon the issuance of any extreme risk protection order, the court shall order a new hearing date and require the respondent to appear no later than 3 business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition owned by the respondent or in his or her custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the surrender order.

VIII. All law enforcement agencies shall develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered under this section.

159-F:9 Return and Disposal of Firearms and Ammunition.

I. If an extreme risk protection order is vacated or ends without extension, a respondent may request, by motion to the court, the return of any and all firearms and ammunition that has been surrendered to or seized by the law enforcement pursuant to this chapter. Upon receipt of such a motion, the court shall schedule a hearing no later than 15 days after the expiration of the order. The court shall provide written notice to the petitioner who shall have the right to appear and be heard, and to the law enforcement agency which has control of the firearms and ammunition. The scope of the hearing shall be limited to:

(a) Establishing whether the respondent is subject to any state or federal law or court order that prohibits the respondent from owning or possessing a firearm or ammunition; and

(b) Under circumstances where the petitioner has requested an extension of the extreme risk protection order, pursuant to subsection 10 of this chapter, whether the petitioner has established by clear and convincing evidence that the respondent continues to pose a significant risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition.

II. If the court finds that the respondent is not subject to any state or federal law or court order prohibiting the ownership or possession of firearms, and, if applicable, the court denies the petitioner's request to extend the extreme risk protection order, the court shall issue a written order directing the law enforcement agency to return the requested firearms and ammunition to the respondent.

III. Law enforcement agencies shall not release firearms and ammunition without a court order granting such release. The law enforcement agency may charge the respondent a reasonable fee for the storage of any firearms and ammunition taken surrendered or seized to an extreme risk

protection order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms and ammunition. The respondent may make alternative arrangements with a federally-licensed firearms dealer for the storage of firearms, at the respondent's own expense, upon approval of the court. Such firearms shall be turned over to the appropriate law enforcement agency for transfer to the storage facility. Retrieval of such firearms shall be through the law enforcement agency responsible for their transfer to the storage facility pursuant to a court order as prescribed in this paragraph.

IV. No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

V. If an extreme risk protection order is vacated or ends without extension, the licensing authority, if it has suspended a license to carry a loaded pistol or revolver issued to respondent under RSA 159:6 pursuant to this section, shall reinstate such license only after confirming that the respondent is currently eligible to have such license.

VI. The court shall provide written notice, sent via the United States Postal Service to the last known address of the petitioner before the return of any firearm and ammunition surrendered or seized pursuant to this chapter.

159-F:10 Termination and Extension of Orders.

I. The respondent may submit one written request for a hearing to vacate an extreme risk protection order issued under RSA 159-F:5, starting after the date of the issuance of the order, and may request one additional hearing after every extension of the order, if any.

(a) Upon receipt of the request for a hearing to vacate an extreme risk protection order, the court shall set a date for a hearing. Notice of the request shall be served on the petitioner as provided in RSA 159-F:7. The hearing shall occur no sooner than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

(b) The respondent shall have the burden of proving by clear and convincing evidence that the respondent no longer poses a significant risk of causing bodily injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition. The court shall consider any relevant, reliable, and material evidence.

(c) If the court finds after the hearing that the respondent has met his or her burden of proof, the court shall vacate the order.

(d) The law enforcement agency holding any firearm or ammunition or license to carry a loaded pistol or revolver that has been surrendered or seized pursuant to this section shall be notified of the court order to vacate the extreme risk protection order. The court shall also provide notice as required by RSA 159-F:7, V.

II. The court shall notify the petitioner of the impending expiration of an extreme risk protection order. Notice shall be received by the petitioner at least 30 days before the date the order is set to expire.

III. The petitioner may, by motion, request an extension of an extreme risk protection order at any time within 30 days before the end of the order.

(a) Upon receipt of the motion to extend, the court shall schedule a hearing to be held no later than 14 days after the date the motion to extend is filed. The respondent shall be personally served with notice of the motion to extend as provided in RSA 159-F:7.

(b) In determining whether to extend an extreme risk protection order issued under this section, the court shall consider any relevant, reliable, and material evidence.

(c) If the court finds by clear and convincing evidence that the requirements for issuance of an extreme risk protection order as provided in RSA 159-F:5 continue to be met, the court shall extend the order.

(d) The court may extend an extreme risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate as provided in paragraph I or to another extension order by the court.

(e) The court shall also provide notice of the extension of the order as required in RSA 159-F:7, V.

159-F:11 Violation of Extreme Risk Protection Order; Penalties.

I. In addition to other applicable charges and penalties, a person shall be guilty of a class A misdemeanor if such person knowingly files a petition under this chapter containing false allegations, or if such person files a petition with intent to harass the respondent.

II. In addition to other applicable charges and penalties, a person shall be guilty of a class B felony if he or she knowingly violates an extreme risk protection order issued under this chapter by having in his or her possession, custody, or control any firearm or ammunition while the order is in effect.

III. A person who completes and signs an application for purchase of a firearm and who knows that such purchase is illegal because he or she is subject to an extreme risk protection order shall be guilty of a class A misdemeanor for a first offense and a class B felony for a second or subsequent offense.

159-F:12 Orders Enforceable.

I. Any extreme risk protection order issued under this chapter shall be effective throughout the state.

II. Any comparable extreme risk protection order issued by any other state, tribal, or territorial court, including an ex parte order, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory, and the person

against whom the order was made was given reasonable notice and opportunity to be heard. There shall be a presumption of validity where an order appears facially valid.

III. Any valid extreme risk protection order, as defined in paragraph II, shall be accorded full faith and credit throughout the state.

159-F:13 Standard Forms.

I. The administrative office of the courts shall develop instructions and informational brochures, standard petition forms, and extreme risk protection order forms. The standard petition and order forms shall be developed after September 20, 2023 for use by January 1, 2024, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, judges, and law enforcement personnel. Materials shall be based on best practices and available electronically online to the public.

(a) The instructions shall be designed to assist petitioners in completing the petition and shall include a sample of a standard petition and order for protection forms.

(b) The instructions and standard petition shall include a means for the petitioner to identify, with only lay knowledge, the firearms the respondent may own, possess, receive, or have in his or her custody or control. The instructions shall provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge regarding the firearms.

(c) The informational brochure shall describe the use of and the process for obtaining, modifying, and terminating an extreme risk protection order under this chapter, and provide relevant forms. The brochure shall provide plain language explanations of these processes for both petitioners and respondents. The brochure shall also clearly explain the legal requirements and processes for the relinquishment and return of firearms pursuant to an extreme risk protection order.

(d) The extreme risk protection order form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written application."

(e) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

II. The clerk of the circuit court may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in paragraph I.

III. The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all clerks of the circuit courts. Distribution of all documents shall, at a minimum, be in an electronic format or formats accessible to all courts and court clerks in the state.

IV. The administrative office of the courts shall determine the significant non-English-speaking or limited-English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section to be developed after September 20, 2023, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all clerks of the circuit court by January 1, 2024.

V. The administrative office of the courts shall update the instructions, brochures, standard petition, and extreme risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

159-F:14 Reporting.

I. No later than January 31 of each year, clerks of the circuit courts shall report to the administrative office of the courts the following information:

(a) The total number of petitions for an extreme risk protection order, and the total number of those petitions that requested the order be issued ex parte during the previous year.

(b) The total number of temporary extreme risk protection orders issued and the total number denied during the previous year.

(c) The total number of extreme risk protection orders issued and the total number denied during the previous year.

(d) The total number of extreme risk protection orders vacated upon petition by the respondent during the previous year.

(e) The total number of extreme risk protection orders extended during the previous year.

II. No later than April 1 of each year the administrative office of the courts shall compile and publish on its website a report which aggregates the information received pursuant to paragraph I and lists each category by county and type of court.

3 Effective Date.

I. RSA 159-F:13, as inserted by section 2 of this act shall take effect September 20, 2023.

II. The remainder of this act shall take effect January 1, 2024.

LBA
23-0042
10/25/22

HB 106-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to extreme risk protection orders.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill establishes a procedure for issuing extreme risk protection orders to protect against persons who pose an immediate risk of harm to themselves or others. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	$119	$122	$122
Complex Felony Case	$3,195	$3,244	$3,366
Routine Criminal Case	$644	$657	$779
Appeals	Varies	Varies	Varies

Judicial Council	FY 2023	FY 2024
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney - Felony	$825/Case $105 administrative fee $200 incarceration fee (If applicable)	$825/Case $105 administrative fee $200 incarceration fee (If applicable)
Contract Attorney – Misdemeanor	$300/Case $70 administrative fee $100 incarceration fee (If applicable)	$300/Case $70 administrative fee $100 incarceration fee (If applicable)
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	$90/Hour up to $5,500	$90/Hour up to $5,500
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	$90/Hour up to $2,000	$90/Hour up to $2,000
Assigned Counsel - Supreme Court Appeal	$125/Hour up to $10,000	$125/Hour up to $10,000

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.

Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	$64,223	$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	$6,123	$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	$688	$688

The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.

NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	$105 to $125	$105 to $125

In addition to the potential costs for misdemeanor and felony charges shown in the table above, the Judicial Branch has identified the following fiscal impacts to the Branch which would be significant but indeterminable.

- The receipt of pleadings, scheduling hearings, hearings, and post-hearing document management will have a fiscal impact on court staff and judicial resources. Those pleadings and hearings include the following:
    - Petitions for issuance of extreme risk protection orders.
        - Hearings to be held within 7 days of the filing of the petition, or 4 days of service on respondent.
    - Petitions that include requests for temporary hearings by petitioner.
        - Hearings to be held by the day following receipt of the request.
    - Motions for expedited hearing filed by respondent.
        - Hearings to be held 3-5 business days after receipt of the motion.
    - Orders would need to be entered in the Court's database and transmitted to the Department of Safety on the day the order is issued.
    - Hearing for the respondent to demonstrate that all weapons and ammunition have been relinquished to be held within 3 business days of the date the order is issued.
    - Motions for return of weapons following an order to vacate or expiration of an extreme risk protection order
        - Hearings must be held within 15 days of the order's expiration date.
    - Motions to vacate filed by respondent.
        - Hearings must be held between 14-30 days after the date of service on the petitioner.
    - Requests for search warrants.
- Mental health or chemical dependency evaluation orders.
    - The cost of such evaluations would be borne by the Judicial Branch.
- Development of forms, instructions and information brochures in English and translated into other languages determined by the Judicial Branch.
- Collection of data with reports to be filed annually.
- Appeals filed in the Superior Court and the Supreme Court.

Because the filings and hearings under this bill are new, the Branch does not have data to evaluate how many cases would be filed nor can it determine how many criminal cases may flow from the violations described in the bill.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

The New Hampshire Municipal Association states participation in potential, additional court processes by municipal law enforcement officers may result in additional costs, including overtime costs, being incurred by municipalities. However, the frequency of filings, the necessity of overtime, or additional hiring by a municipal police department to meet potential additional demands on law enforcement personnel are all indeterminable. Additional local expenditures, while likely, are indeterminable.

The New Hampshire Association of Counties contacted the Sheriff's Association to inquire about the fiscal impact of this bill. The Sheriffs indicated there is no way to estimate the fiscal impact, but indicated that in addition to serving an extreme risk protection order, there could be additional costs for storage of firearms and ammunition that has been relinquished or sized.

The Department of Safety, Division of State Police indicates this bill would have no impact on the Department.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections, Justice, and Safety, Judicial Council, New Hampshire Association of Counties and New Hampshire Municipal Association