

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

August 20, 2021

The Honorable Melissa A. Kennelly
Eighth Judicial District Court Judge
1413 S. 2nd St.
Raton, NM 87740

Re: Opinion Request – Extreme Risk Firearm Protection Order Act

Dear Judge Kennelly,

You have requested an Attorney General opinion regarding the term “reporting party,” defined in the Extreme Risk Firearm Protection Order Act (the “Act”), NMSA 1978, Sections 40-17-1 to -13 (2020), as “a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order,” which also states that the term “includes” a number of specified types of individuals. Section 40-17-2(H). You have asked our Office to provide our interpretation of this definition. As explained in greater detail below, and based on applicable rules of statutory construction and existing judicial precedent, we conclude that the definition of “reporting party” is not limited to those individuals specified in the statutory definition. Rather, it extends to any person “who requests that a law enforcement officer file a petition for an extreme risk firearm protection order.” Section 40-17-2(H).

Background

The recently enacted¹ Extreme Risk Firearm Protection Order Act establishes a comprehensive statutory structure for the issuance of protection orders that effectively enjoin certain individuals from possessing, controlling, or purchasing firearms. In general, the Act allows a law enforcement officer (called the “petitioner”) to file a petition in District Court requesting the issuance of an extreme risk firearm protection order against an identified individual believed to be a threat to himself or the public (called the “respondent”). *See generally* § 40-17-5. A law enforcement officer has a non-discretionary duty to file a petition² upon receiving credible information from a “reporting party” that gives the officer “probable cause to believe that a respondent poses a significant danger of causing imminent personal injury to self or others by having in the

¹ The New Mexico Legislature passed the Extreme Risk Firearm Protection Order Act during the 2020 regular legislative session, and the Governor signed the bill into law shortly thereafter. *See* 2020 N.M. Laws, ch. 5, §§ 1-13.

² If an officer declines to file any requested petition, the Act requires him or her to file a notice of this declination with the sheriff of the county in which the respondent resides. *See* § 40-17-5(C).

respondent's custody or control or by purchasing, possessing or receiving a firearm.” Section 40-17-5(D). Once an officer has filed a valid petition and a hearing is held on the matter, the District Court is required to issue a one-year³ extreme risk firearm protection order if it finds by a preponderance of the evidence that “the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.” Section 40-17-8(A). A one-year protection order is both appealable and extendable. *See* § 40-17-8.

Because the procedures set forth in the Act begin with a “reporting party” submitting a request to a law enforcement officer to file a petition for extreme risk firearm protection order, the definition of this term shapes the scope of the Act. In full, the Act’s definition of a “reporting party” reads:

“reporting party” means a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order and includes a 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 respondent has or had a continuing personal relationship, employer or public or private school administrator

Section 40-17-2(H). As you have observed, this definition begins by defining “reporting party” as “a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order” before stating that the term “includes” a number of specified types of individuals. This therefore raises the question of whether the definition of “reporting party” is limited to those specified types of individuals or whether they are simply among those persons who may request an officer file a petition.

The canons of statutory construction inform our interpretation of the Act and its definition of a “reporting party.” The most basic of these rules is that courts must look first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.” *New Mexico Indus. Energy Consumers v. PRC*, 2007-NMSC-053, ¶ 20, 142 N.M. 533. Although courts will reject a strictly literal interpretation of the statute where “the literal meaning leads to conclusions that are unjust or nonsensical.” *Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 13, 117 N.M. 655, in general “it is of course the responsibility of the judiciary to apply the statute as written.” *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 22, 117 N.M. 346. When interpreting a particular statutory provision, courts “will construe the entire statute as a whole so that all the provisions will be considered in relation to one another.” *Regents of Univ. of New Mexico v. New Mexico Fed'n of Tchrs.*, 1998-NMSC-020, ¶ 28, 125 N.M. 401. Ultimately, the purpose of these rules is to give effect to the legislative intent behind the statute. *See id.*

Analysis

Our interpretation of the Act’s definition of a “reporting party” begins with the plain language of Section 40-17-2(H). By defining a “reporting party” as “a person who requests that a law

³ The District Court may also issue a temporary protection order before a hearing is held “if the court finds from specific facts shown by the petition that there is probable cause to believe that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm before notice can be served and a hearing held.” Section 40-17-6(A).

enforcement officer file a petition for an extreme risk firearm protection order” and then specifying a number of types of individuals who are included within this definition, the term is not literally limited to only those specified types. On the contrary, the term merely “includes” those types of individuals. As your request to our Office recognized, our Supreme Court has observed that “the use of the word ‘includes’ to connect a general clause to a list of enumerated examples demonstrates a legislative intent to provide an incomplete list of activities.” *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMCS-030, ¶ 13, 148 N.M. 426. *See also Matter of Est. of Corwin*, 1987-NMCA-100, ¶ 4, 106 N.M. 316 (observing that “the word ‘including’ ... is a word of expansion rather than of limitation”).

Our Court of Appeals addressed a similar issue fairly recently in *State v. Salazar*, 2018-NMCA-030, a case involving the interpretation of a statute that listed “synthetic cannabinoids” as controlled substances and then listed eleven different types of cannabinoids included within the term. *See Salazar*, 2018-NMCA-030, ¶ 33; *see also* NMSA 1978, § 30-31-6(C)(19) (2017, as amended through 2019). Citing to an array of New Mexico appellate decisions which had found that the word “include” was typically one of enlargement, the Court firmly rejected the contention that the definition was limited to only the eleven enumerated types of cannabinoids. *Salazar*, 2018-NMCA-030, ¶ 33. “The word ‘including’ following the term ‘synthetic cannabinoids’ expresses a clear legislative intent that the listing of specific examples of ‘synthetic cannabinoids’ that follows is not exclusive.” *Id.* Hence, as with the word “including” in the statutory provision at issue in *Salazar*, we believe a court would agree that the word “includes” in Section 40-17-2(H) does not operate to limit the scope of the statute. The plain language of the statute shows that a “reporting party” is “a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order.” *Id.* This term includes, but is not limited to, those types of individuals specified thereafter in the statute.

This more expansive interpretation of the term “reporting party” is consistent with the statutory purpose and structure of the Act. None of the Act’s other provisions would suggest that only a limited number of individuals may request the issuance of a protection order, since the only real function of the “reporting party” is to provide the initial “credible information” to law enforcement about the danger posed by the respondent. Section 40-17-5. The relationship between the reporting party and the respondent is not germane to the ultimate issuance of a protection order. Although any petition for a protection order under the Act must include “a description of the relationship between the reporting party and the respondent,” Section 40-17-5(G)(4), this relationship is not among the factors the court must consider “[i]n determining whether grounds for any extreme risk firearm protection order exist.” Section 40-17-7. Instead, the court must look to other relevant factors to make a finding “by a preponderance of the evidence that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent’s custody or control or by purchasing, possessing or receiving a firearm.” Section 40-17-8(A).

Ultimately, a narrow interpretation of the term “reporting party” would be at odds with the broad purpose of the Act to protect the public from those individuals who, through their potential operation of a firearm, pose an “extreme risk” to public health. *See* § 40-17-8(A) (providing that the court may issue a protection order on finding “that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent’s custody or control or by purchasing, possessing or receiving a firearm”). Because law enforcement can only

request the issuance of a protection order upon filing a petition stating “the name and address of the reporting party,” a narrow interpretation of the term “reporting party” would serve only to inhibit the Act’s provisions. It would mean that law enforcement could not petition for a protection order even after receiving “credible information ... that a respondent poses a significant danger of causing imminent personal injury to self or others,” merely because the individual providing the information was not the respondent’s spouse, parent, or another specified type of individual in Section 40-17-2(H). This would be plainly inconsistent with public safety and the Act’s purpose.

Conclusion

We interpret the term “reporting party” in the Extreme Risk Firearm Protection Order Act as broader than those types of individuals which are specifically included within the scope of the definition in Section 40-17-2(H). Both the plain language and the legislative intent behind the Act demonstrate that “reporting party” means “a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order.” Section 40-17-2(H). Consistent with prior New Mexico appellate decisions considering similar issues, this term includes, but is not limited to, “a 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 respondent has or had a continuing personal relationship, employer or public or private school administrator.” *Id.*

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,



John F. Kreienkamp
Assistant Attorney General