

1/15/2024

Extreme Risk Task Force

2023 Annual Report

Presented by Carolyn N. Huynh, Deputy Chief on behalf of
the ERFPO TF and Janice Madrid, Lieutenant, New Mexico
State Police

Extreme Risk Task Force Report 2023

A report from the Johns Hopkins Center for Gun Violence Solutions analyze[d] Centers for Disease Control and Prevention [“CDC”] firearm fatality data for 2020 – a year that saw the highest number of gun related deaths ever recorded by the CDC and a sharp increase in gun homicides. Among other things, the report concludes that states with the most robust gun laws have lower gun-related death rates.

The 2020 data reveals striking differences across age, gender, ethnicity and geographic region. As in recent years, gun violence was the leading cause of death for young people under the age of 25. On the other end of the age spectrum, people age 75 and older were at the highest risk for dying by gun suicide, with a gun suicide rate of twice the national average.

States that had the highest gun death rates in 2020 had stand-your-ground laws, that authorize individuals to use lethal force even in situations they might have otherwise been able to walk away from, and three of the five had permitless carry laws, which allow individuals to carry a concealed gun in public without a permit.

Researchers note that the states with the lowest gun death rates have stronger gun laws. Each of the five states with the lowest gun death rates had both the following gun laws in place in 2020: a firearm purchaser licensing law or a waiting period; and an Extreme Risk Protection Order law.

The report authors recommend that states put in place firearm removal laws such as Extreme Risk Protection Orders and Domestic Violence Protection Orders in order to limit gun violence.

Caitlin Hoffman, Report: CDC records highest-ever number of gun-related deaths in 2020 (May 2, 2022) (<https://hub.jhu.edu/2022/05/02/highest-number-of-gun-related-deaths-in-2020-report/>) (downloaded January 12, 2024)

Introduction

In 2020, the New Mexico Legislature introduced SB 5, an Act to create the Extreme Risk Firearm Protection Order Act [“The Act”]. The bill became law and empowered law enforcement officers in New Mexico to petition the court for the entry of an extreme risk firearm protection order [“ERFPO”] upon the officer’s “receipt of credible information from a reporting party that gives the agency or officer probable cause to believe that” an individual (respondent) “poses a significant danger of causing imminent personal injury to self or others by having in the [individual’s] custody or control or by purchasing, possessing or receiving a firearm.” 2020 was later identified as the deadliest year to date for gun violence in the United States.

Extreme Risk Firearm Protection orders were applied for infrequently in the first partial year (2020) and first two full years (2021 and 2022) following the Act’s passage.

In August 2022, in an effort to tackle the underutilization of the ERFPO as an important tool in combating gun violence in New Mexico, the Extreme Risk Task Force [“ERFPO TF”] was created by Governor Lujan Grisham by way of Executive Order 2022-121. As grounds for the urgency of increasing the utilization of ERFPO, Governor Lujan Grisham noted in Executive Order 2022-121, the report by the New Mexico Department of Health that “firearm related deaths” in New Mexico “spiked 55% from 2010-2020” and that in 2019, New Mexico ranked “fourth in the nation in gun violence deaths.”

As the Chair of the ERFPO TF, New Mexico Department of Public Safety Cabinet Secretary Jason R. Bowie designated New Mexico State Police [“NMSP”] Deputy Chief [“DC”] Carolyn Huynh to carry out the day-to-day work of the TF. DC Huynh and other ERFPO TF members, Officer Thomas McClelland, New Mexico State Police, Lieutenant Matt Dietzel, Albuquerque Police Department, Sheriff Adan Mendoza, Santa Fe County Sheriff’s Department, Rachel O’Connor, Director, Community Services Department, Santa Fe County, Nick Boukas, Division Director, Human Services Department-Behavioral Health Services Division, and Wendy Johnson MD MPH, Family Medicine Physician, Casa de Salud, appointed by Governor Lujan Grisham worked tirelessly to identify obstacles to the use of this tool.

The ERFPO TF was charged with examining the process of applying for ERFPOs, developing and disseminating training materials for the education of law enforcement officers, judges, judicial staff, school officials, behavioral health providers, and suicide and other crisis treatment providers. The ERFPO TF was also tasked with developing and launching a statewide public awareness campaign regarding the availability of ERFPOs, the process by which an ERFPO may be obtained and the behaviors that may indicate to a potential reporting party, that a particular individual would benefit from such an order. Finally, beginning with calendar year, 2023, the ERFPO TF was charged with publishing what an annual report of: a) the number of ERFPO petitions filed per annum; b) the number of petitions that led to the issuance of an order and of those, the number that led to respondent’s surrender of firearms; c) the number of ERFPO petitions heard but not granted; d) statistical information regarding the race and ethnicity of petitioners and respondents, if available; e) statistical information regarding the sex and gender identity of petitioners and respondents, if available; f) statistical information regarding the age of petitioners and respondents, if available; g) statistical information regarding the county of residence

of petitioners and respondents, if available; h) the duration of each ERFPO; i) the number of instances in which an order was terminated or otherwise modified prior to its original expiration date; and j) information regarding any individual who was found to have used a firearm to injure or kill him/herself or another and whether that individual previously exhibited “red flags” which could have but did not result in the filing of a petition for an ERFPO. The TF was also given discretionary authority to apply for and accept any grants, funding, or appropriations, consistent with its purpose and duties.

This 2023 Report, which provides the data for partial year 2020 and calendar years 2021 through 2023¹, is the ERFPO TF’s inaugural report. Data for each of the categories specified in the Executive Order is included if it was available. With respect to data that was not available, suggestions are included with respect to how this data might be collected and included in future reports. Finally, the ERFPO TF has identified certain obstacles that it believes may be preventing the ERFPO from reaching its full potential as an effective weapon in the arsenal to combat gun violence in New Mexico and suggested remedies to those obstacles.

The Process and Parties involved in applying for an ERFPO

The Act entrusts the filing of ERFPO petitions to law enforcement officers², i.e. “petitioners”³ as defined therein. The Act envisions a “reporting party” who “requests that a petitioner [law enforcement officer] seek an [ERFPO]”⁴. The “reporting party” is “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.”⁵ The petition, which must be filed in the district court for the county in which the respondent resides, seeks an injunction prohibiting the individual against whom the injunction is sought, a/k/a the “respondent,” from “purchasing, receiving or attempting to purchase, possess or receive any firearm while the order is in effect.” The Act provides that the law

¹ The OMI data with respect to manner of death for 2023 is incomplete for the last quarter of 2023 due to the fact that manner of death decisions by OMI may not be final until ninety days after the death.

² “Law enforcement officers” for purposes of seeking ERFPOs are defined as “public official[s] or public officer[s] vested by law with the power to maintain order, to make arrest for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes and includes an attorney employed by a district attorney or the attorney general.” See NMSA 1978 Section 40-17-2 E.

³ “Petitioner” is defined as “a law enforcement officer who files an extreme risk firearm protection order petition.” See NMSA Section 40-17-2 G.

⁴ See NMSA 1978 Section 40-17-2, 40-17-3.

⁵ *Id.* at 40-17-2 H.

enforcement officer to whom a report is made “shall file” a petition “upon receipt of credible information from a reporting party that gives the agency or 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 respondent’s custody or control or by purchasing, possessing or receiving a firearm.”⁶ The petition is to be made “under oath” and shall “be accompanied by a sworn affidavit signed by the reporting party setting forth specific facts supporting the order.”⁷ The petition must also include the name and address of both the reporting party and the respondent, a “description of the relationship between the reporting party and the respondent,” and a “description of any lawsuit, complaint, petition, restraining order, injunction or other legal action between the reporting party and the respondent.”⁸

Upon filing, the district court may enter a temporary *ex parte* order 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.”⁹ The court must hold a hearing on the *ex parte* order within ten days of its entry, unless the respondent requests additional time in which to hold the hearing, not to exceed thirty days of the date the continuance is requested.¹⁰ The petitioner is charged with serving the temporary *ex parte* ERFPO together with the supporting affidavit, the notice of hearing and the petition for a one-year ERFPO. If, after a hearing, the court 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, possession or receiving a firearm, the court shall issue a one-year” ERFPO.¹¹ The one-year ERFPO must be served upon the respondent by the sheriff’s office in the county in which the respondent resides, but if respondent resides in a city or town that has a police department, the police department “shall” serve the order.¹² The Act requires respondents served with either a temporary *ex parte* ERFPO to “relinquish all firearms in [or subject to] the respondent’s possession, custody or control . . . in a safe manner to a law enforcement officer, a law enforcement agency or a federal firearms licensee within forty-eight hours of service of the order or sooner at the discretion of the court.”¹³

⁶ NMSA 1978 Section 40-17-5 E.

⁷ NMSA 1978 Section 40-17-5 F.

⁸ NMSA 1978 Section 40-17-5 G.

⁹ NMSA 1978 Section 40-17-6

¹⁰ NMSA 1978 Section 40-17-6 E.

¹¹ NMSA 1978 Section 40-17-8 A.

¹² NMSA 1978 Section 40-17-9.

¹³ NMSA 1978 Section 40-17-10 A.

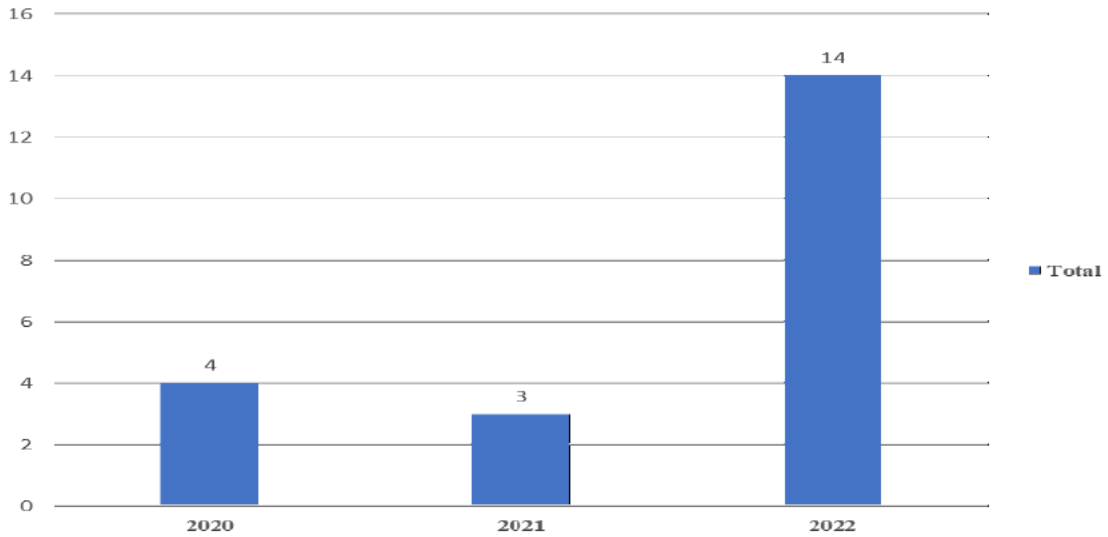
Obstacles identified with the current process for obtaining an ERFPO by the ERFPO TF include: 1) confusion as to who may be a “reporting” party; 2) disagreement as to whether the law enforcement petitioner may also be a reporting party; 3) the need for the petition to be “under oath” and the affidavit “sworn;” 4) the absence of authority of the law enforcement officer serving the ERFPO to search and immediately seize any firearms in the possession or under the control of the respondent; and 5) the inconsistency of issuing an ERFPO only upon a finding respondent poses a significant danger of causing imminent harm to self or others but allowing forty-eight hours in which to relinquish firearms.

Each of these obstacles and proposed remedies are discussed in more detail below.

Data for Partial Year 2020 and Calendar Years 2021 through 2022

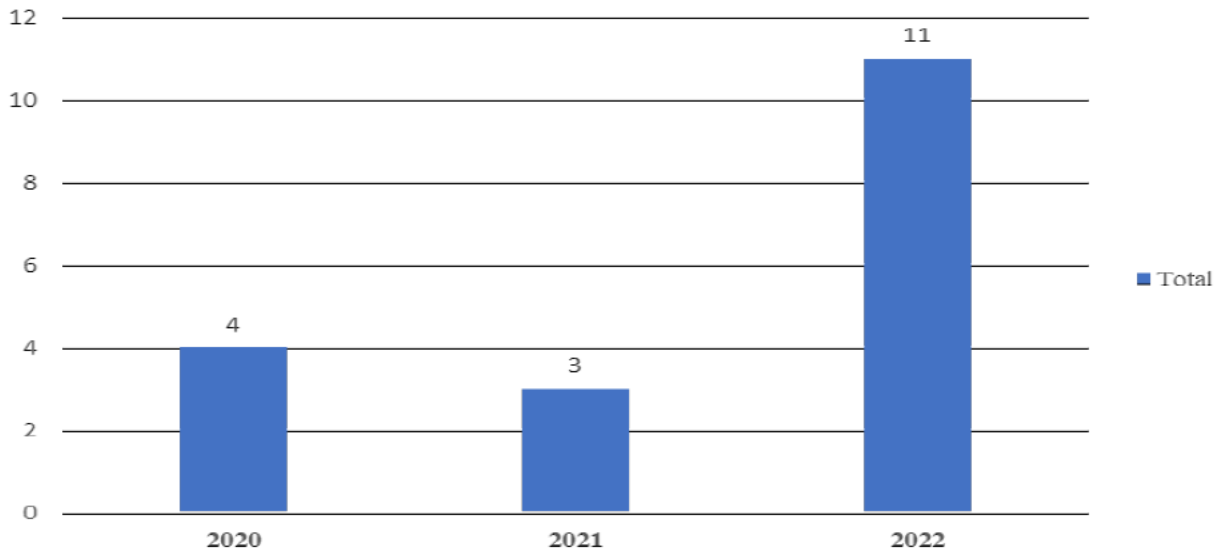
The available data for partial year 2020 and calendar years 2021 through 2022 reveal that twenty-one petitions for ERFPOs were filed. Eighteen temporary *ex parte* ERFPOs were granted and fourteen one-year orders were granted. The data further indicates that in the years 2020 through 2022, a total of three ERFPO petitions were denied and no temporary *ex parte* orders entered, and seven ERFPO petitions that resulted in the entry of a temporary *ex parte* order were denied following a hearing and did not result in the entry of a one-year order.

2020-2022 Number of ERFPO Petitions Filed Per Year



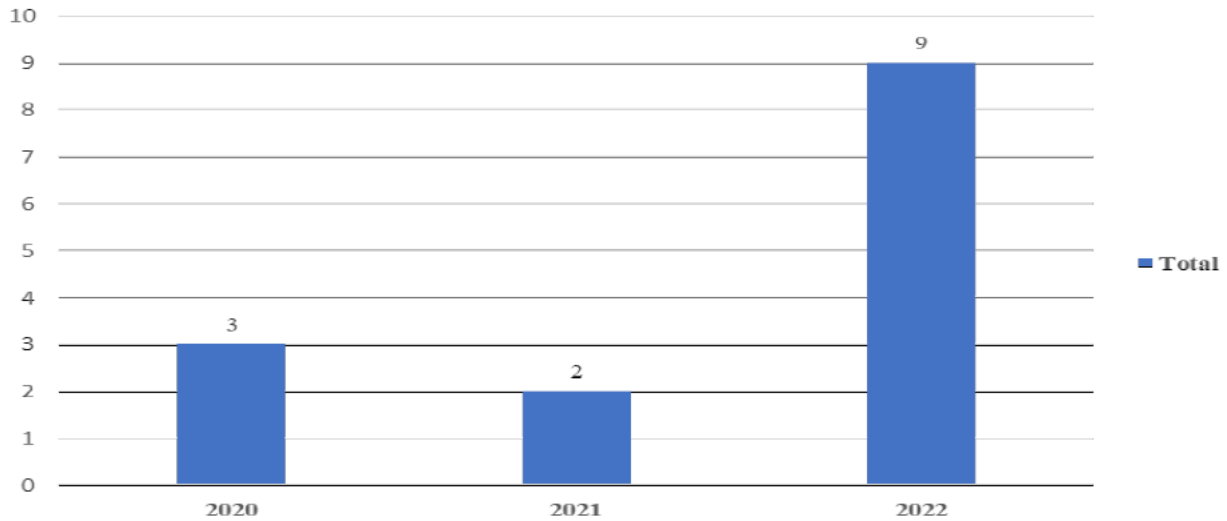
The graph identifies the Total number of petitions seeking ERFPOs filed since the law took into effect on May 20, 2020. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2020- 2022 N of ERFPO Petitions Filed that Resulted in the Entry of a Temporary ERFPO



The graph identifies the total number of Temporary ERFPOs granted since the Act took effect on May 20, 2020 through December 31, 2022. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

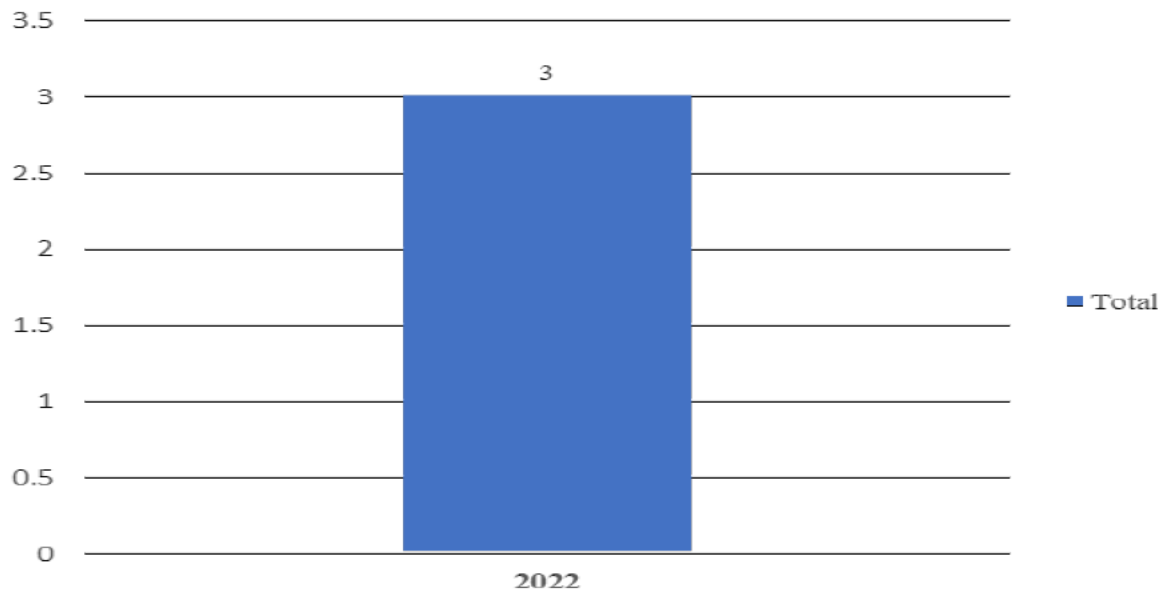
2020-2022 Number of ERFPO Petitions Filed that Resulted in the Entry of a One- Year ERFPO



The graph identifies the total number of One-Year ERFPOs granted since the Act took effect on May 20, 2020 through December 31, 2022. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

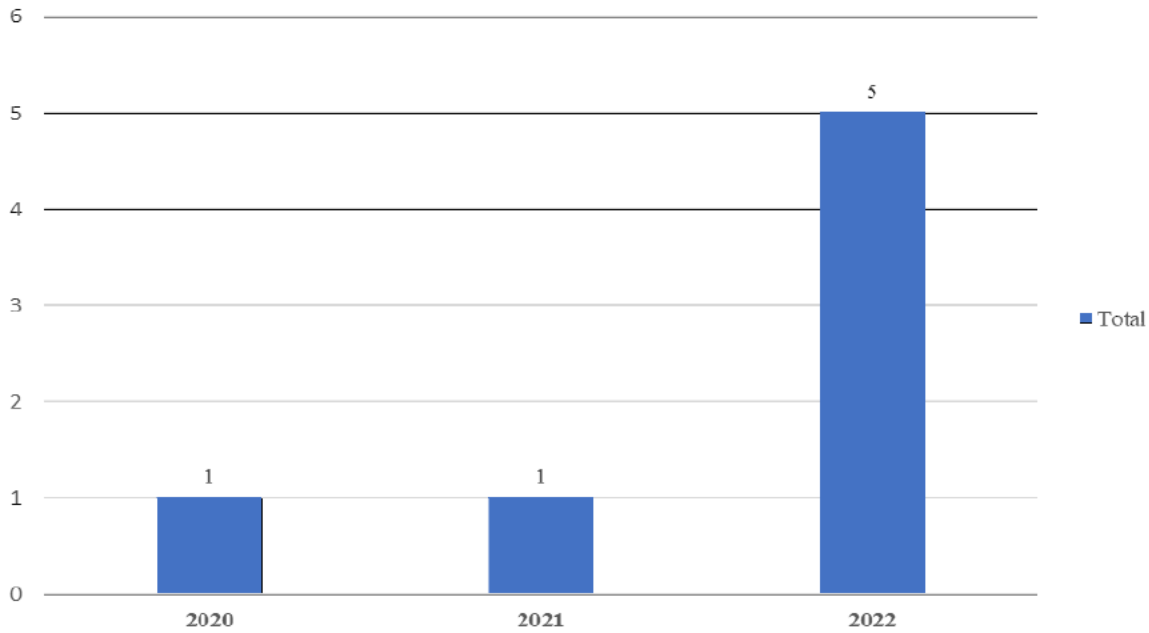
To further break down the orders filed through the New Mexico Judicial District Courts, the total orders filed, temporary orders filed, and one-year orders filed for years 2020 through 2022 were broken down to identify the number of orders that resulted in denial.

2020-2022 Temporary ERFPOs Denied



The graph identifies the total number of ERFPO petitions filed between the date the Act took effect on May 20, 2020, 2020 through December 31, 2022, which were denied and no temporary ERFPO was entered. None of the petitions filed in between May 20, 2020 and 2021 were denied prior to the entry of a temporary ERFPO. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2020-2022 One-Year ERFPOs Denied



The graph identifies the total number of petitions filed since the Act took on May 20, 2020 through December 31, 2022, that did not result in the entry of a One-Year ERFPO. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

Years 2020 through 2022 resulted in the relinquishment of thirty-seven firearms in response to the service of twenty-one orders filed within the court. Of the nine one-year ERFPOs granted, only three (3) yielded firearm relinquishments/seizures.

2020-2022 The number of firearms that came into the possession of law enforcement officers, law enforcement agencies or federally licensed firearms licensees pursuant to temporary and one-year ERFPOs

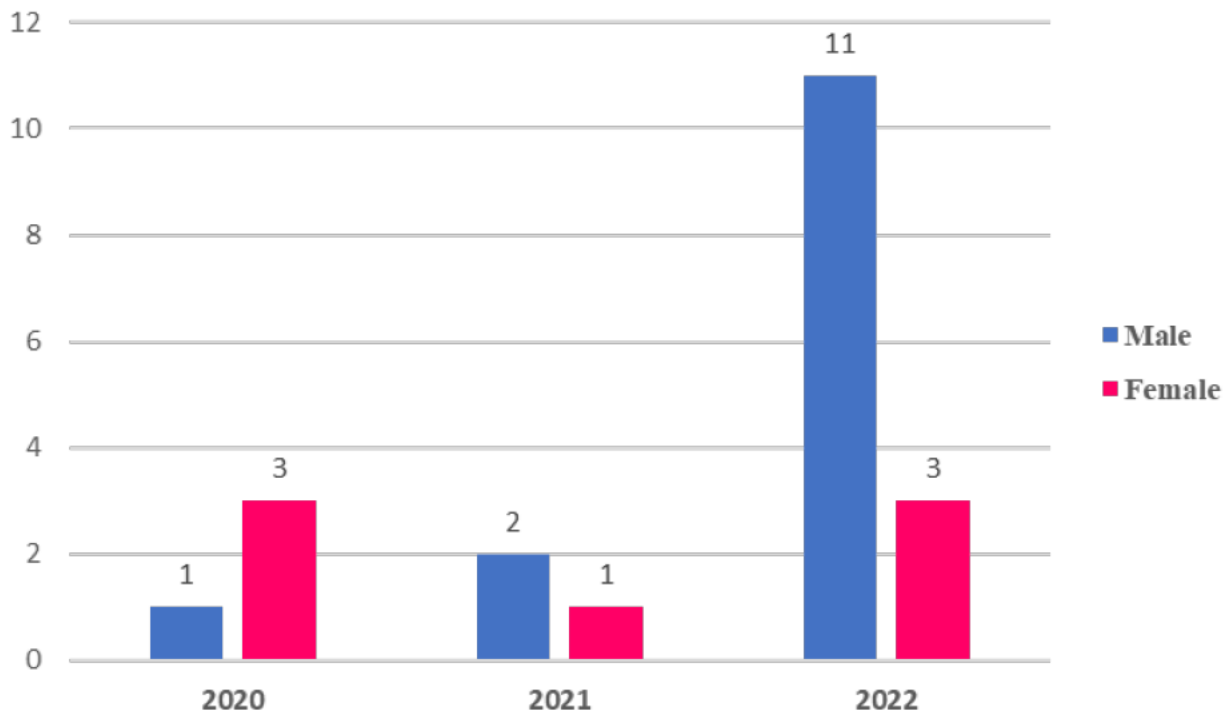


The graph legend "yes" identifies the total number of ERFPO cases in which firearms were relinquished/seized since the law took effect on May 20, 2020 through December 31, 2022. In calendar Year 2022 possessed one case with three (3) relinquished/seized firearms. 0 seizures in 2021, and three (3) cases yielded thirty-four (34) Firearms relinquished/seized. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

The demographics were broken down by gender, age range of respondent, and geographical location based on the judicial district and county in which ERFPO petitions were filed. The ethnicity of the respondent and petitioner was not considered because no data was available.

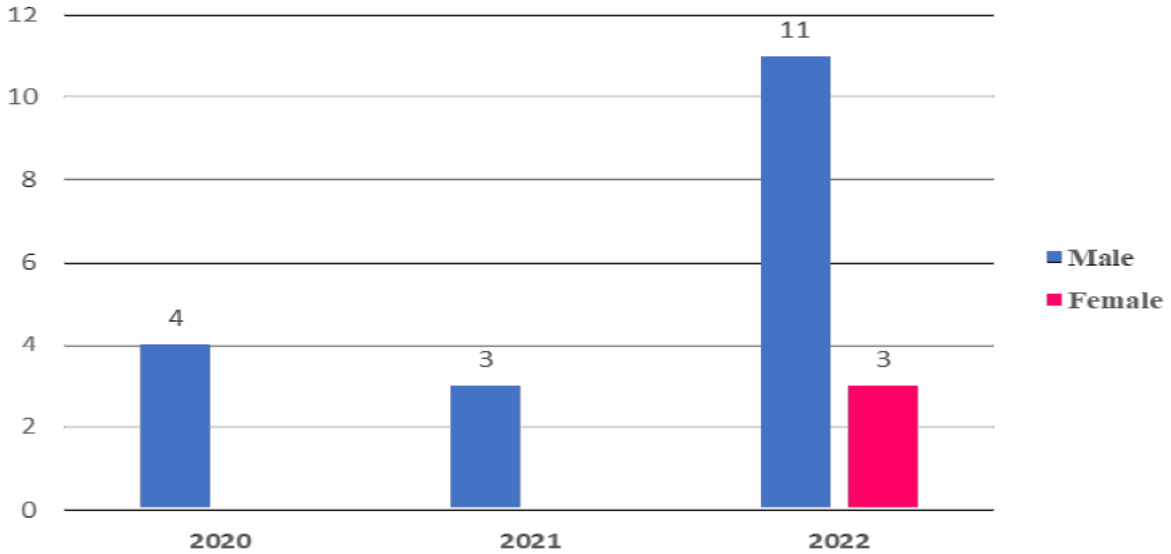
Gender statistics were based on data reported by respondents to the New Mexico Taxation & Revenue Department, Motor Vehicle Division, in application for state issued identification or driver’s licenses.

2020-2022 Petitioner Gender



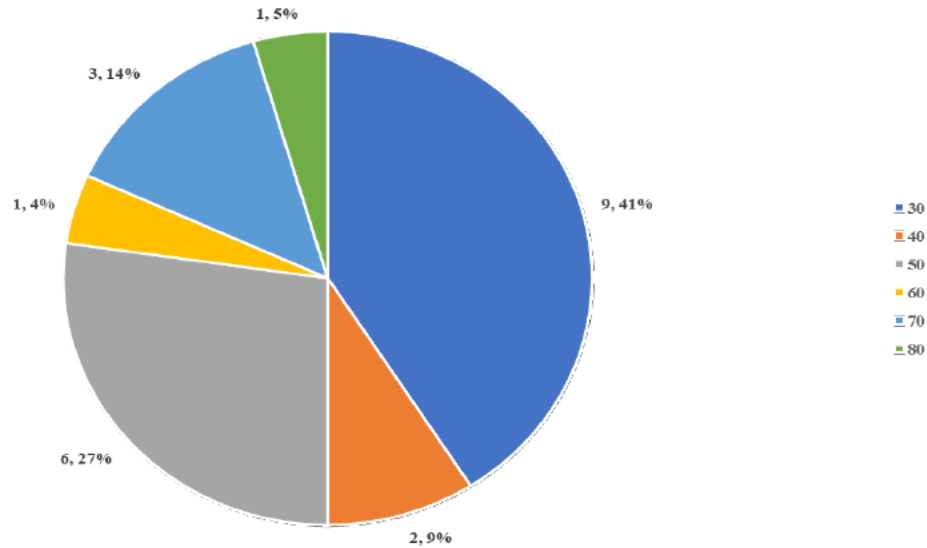
The graph identifies the total number of ERFPO cases in which Petitioner Gender based on petitioner first name was identified as male or female since the law took into effect on May 20, 2020 through December 31, 2022. All petitioners were identified as commissioned officers, with one exception to the District Attorney’s office. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2020-2022 Respondent Gender



The graph identifies the total number of ERFPO cases in which Respondent Gender was identified as male or female since the law took into effect in 2020. Gender was based on data reported by respondents to New Mexico Taxation & Revenue Department, Motor Vehicle Division, in application for state issued identification or driver’s licenses. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2020-2022 ERFPO Respondent Age Range Percentages



The graph identifies the ERFPO Age Demographics of Respondents identified since the law took effect on May 20, 2020 through December 31, 2022. 41% of Respondents were of 30-39 years of age. Only 4% of the Respondents were between the ages of 60-69. Age of Respondents were identified through the petitions filed.

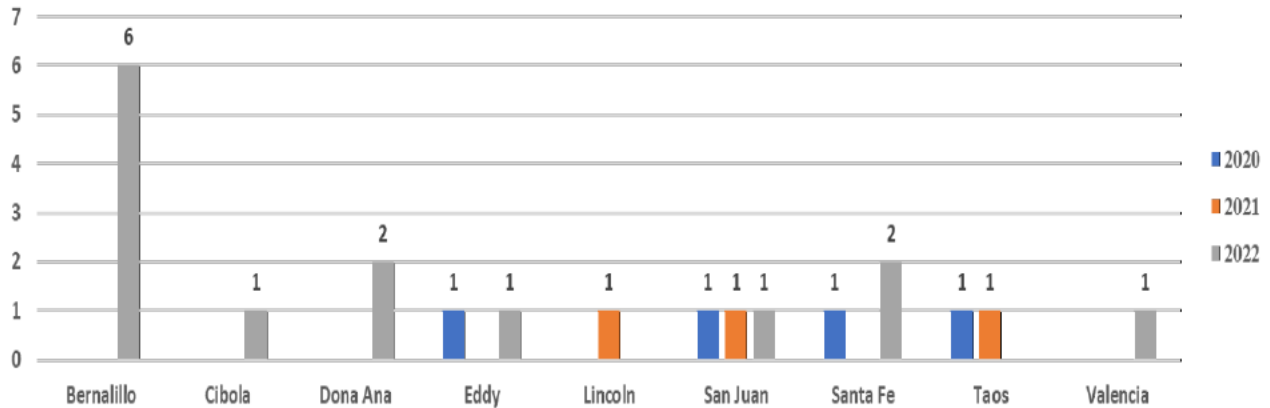
The Petitioner age demographics are not captured as they are identified as the Law Enforcement Agency. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

The geographical location of the Respondent’s residence was identified based on the Judicial District in which the case was filed and, for those districts encompassing more than one county, the county in the district in which the case was filed.

New Mexico Statutes Chapter 40- Domestic Affairs Article 17 Extreme Risk Firearm Protection Order Section 40-17-2 Definition.

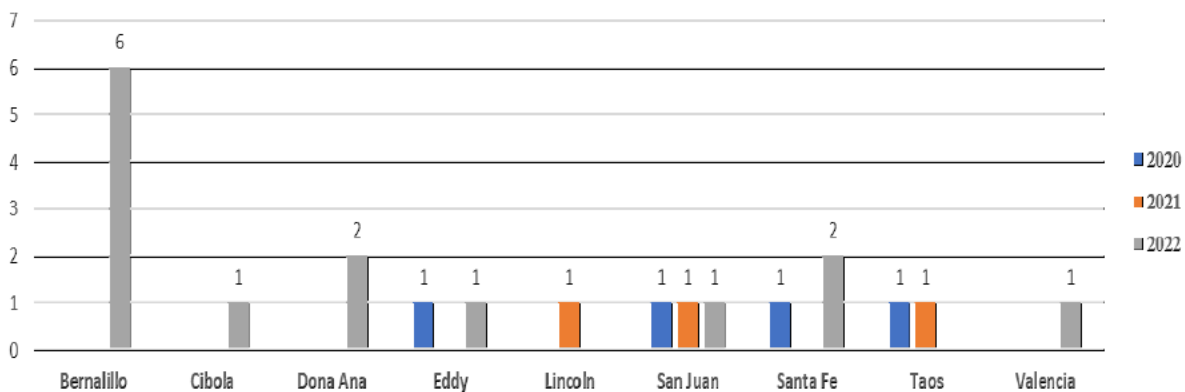
A. "court" means the district court in the county in which the respondent resides.

County of Respondent



The graph identifies the counties of residence of the respondents in ERFP cases initiated since the law went into effect on May 20, 2020 through December 31, 2022. This graph assumes the cases were filed in the proper county of the judicial district in which the case was filed. The largest number of petitions filed in calendar year 2022 occurred in Bernalillo County. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

County of Petitioner



The graph identifies the Counties in which the Petitioners (Law Enforcement) filed petitions since the law took effect on May 20, 2020 through December 31, 2022. The largest number of petitions filed in 2022 were filed in Bernalillo County. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

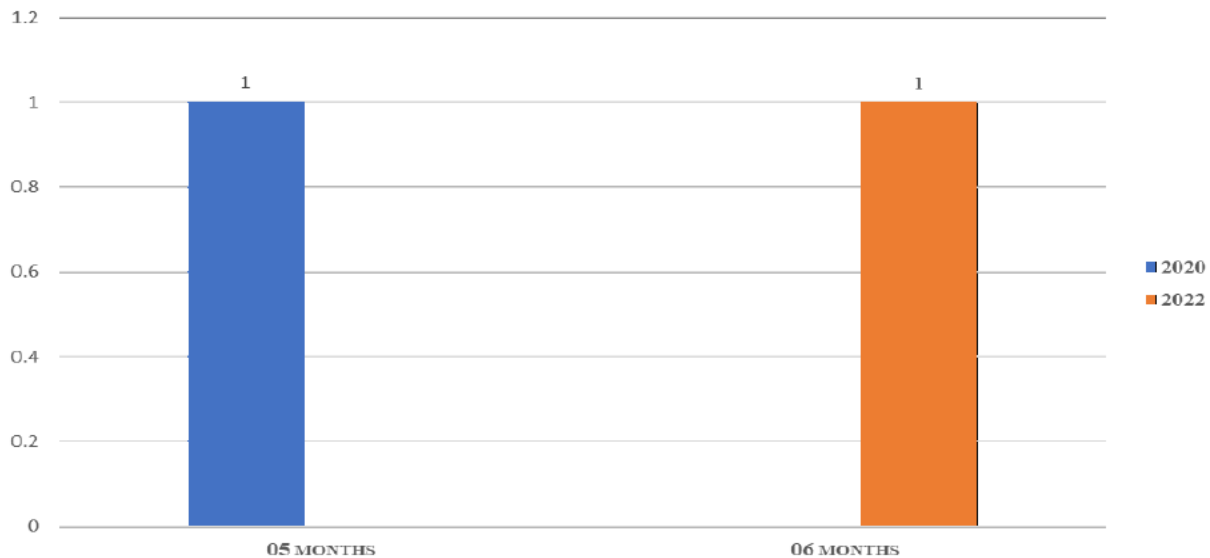
The last data point captured was the duration of each one-year ERFPO. Although issued for one-year following a finding, based on a “preponderance of the evidence” by the court that the respondent poses a significant danger, the Act allows the respondent to request and the court to terminate a one-year order, at any time.

New Mexico Statutes Chapter 40- Domestic Affairs Article 17 Extreme Risk Firearm Protection Order Section 40-17-8. One-year extreme risk firearm protection order; grounds for issuance; contents of order; termination; expiration; renewal of orders.

A. If, after hearing the matter, the court 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, the court shall issue a one-year extreme risk firearm protection order.

D. A respondent may request that the court terminate a one-year extreme risk firearm protection order at any time prior to the expiration of the order.

2020-2022 Early Termination



The graph identifies the two ERFPOs Terminated Early (prior to the expiration of one-year, since the law took effect on May 20, 2020). One (1) ERFPO was terminated early between 0-5 months in year 2020. No early terminations of ERFPOS were identified in 2021, and one (1) ERFPO was terminated early, between 0-6 months in year 2022. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

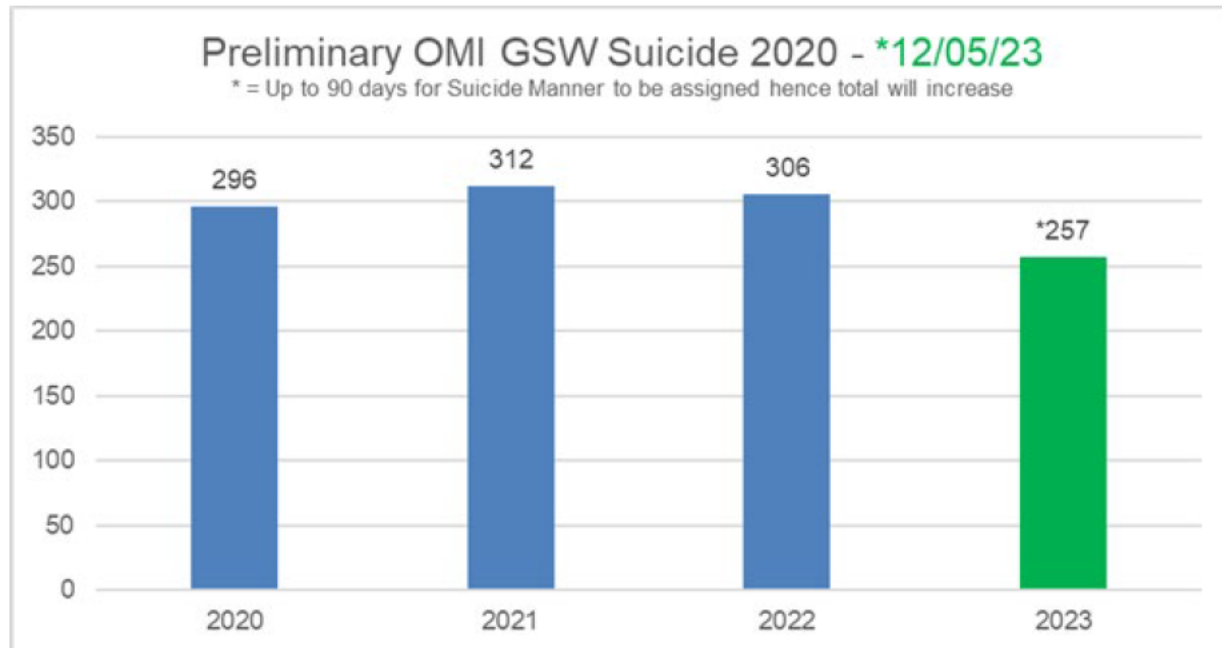
The orders terminating ERFPOs prior to the expiration of one-year did not include the rationale for the early termination. No applications seeking extensions of ERFPOs beyond the initial one-year were filed in the partial year 2020 or in the calendar years 2021-2022.

OMI Data Regarding Gun Violence in New Mexico for Calendar Years 2020-2022

The Office of the Medical Investigator [“OMI”] provided numbers of deaths attributed to gun violence in which the manner of death was determined by that office to be either suicide or homicide for calendar years 2020-2022.

The OMI identified two hundred and ninety-six deaths found to be suicides caused by firearms during calendar year 2020, three hundred and twelve during calendar year 2021 and three hundred and six in calendar year 2022.

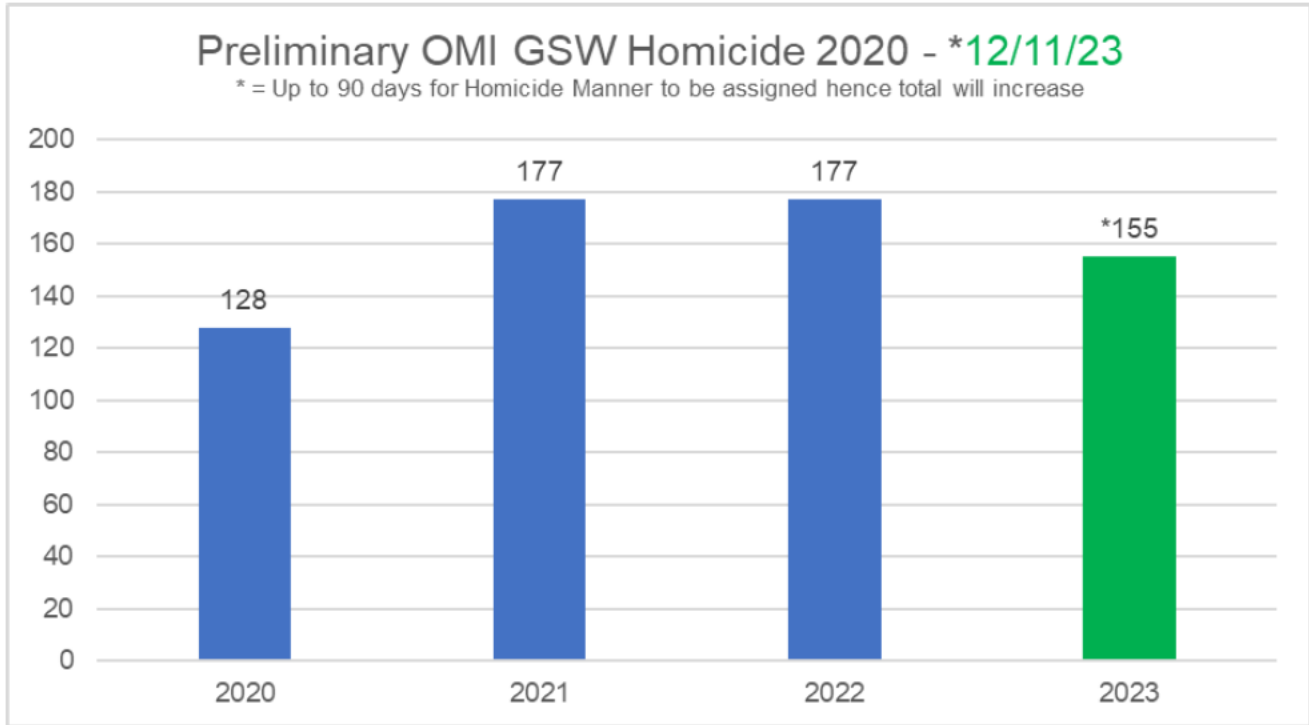
2020-2022 and Preliminary 2023 OMI Suicide Deaths



The graph identifies the Suicides Deaths reported 2020-2022, by the Office of the Medical Investigator. 2023 Data discussed further in the report.

The Office of the Medical Investigator identified one hundred twenty-eight homicides resulting from gun violence for calendar year 2020. In 2021 the number increased to one hundred seventy-seven. The number of homicides related to firearms remained the same in 2022 at one hundred seventy-seven.

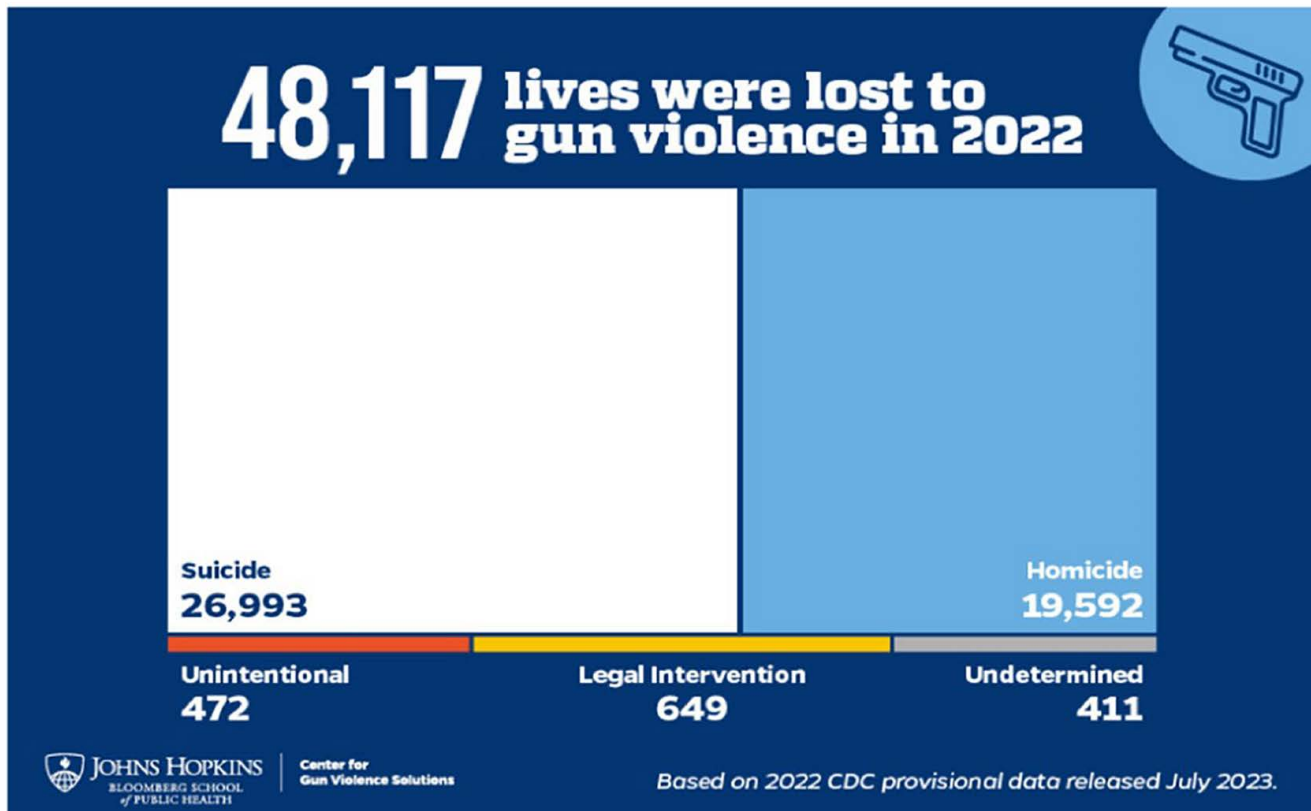
2020-2022 OMI Homicide Deaths



The graph identifies the Homicides Deaths reported 2020-2022 by the Office of the Medical Investigator. 2023 Data discussed further in the report.

The Johns Hopkins Bloomberg School of Public Health analyzed provisional data for gun suicides and homicides released by the CDC for calendar year 2022 and noted the data suggests gun-related deaths attributed to suicide reached an all-time high in 2022, although gun related homicides were down slightly from 2021. The provisional CDC data identified 48,117 people who died by guns in 2022, an average of one person every 11 minutes. See CDC Provisional Data: Gun Suicides Reach All-time High in 2022, Gun Homicides Down Slightly from 2021, Johns Hopkins Bloomberg School of Public Health (July 27, 2023)¹⁴.

¹⁴ (<https://publichealth.jhu.edu/2023/cdc-provisional-data-gun-suicides-reach-all-time-high-in-2022-gun-homicides-down-slightly-from-2021/>)(downloaded January 16, 2024)

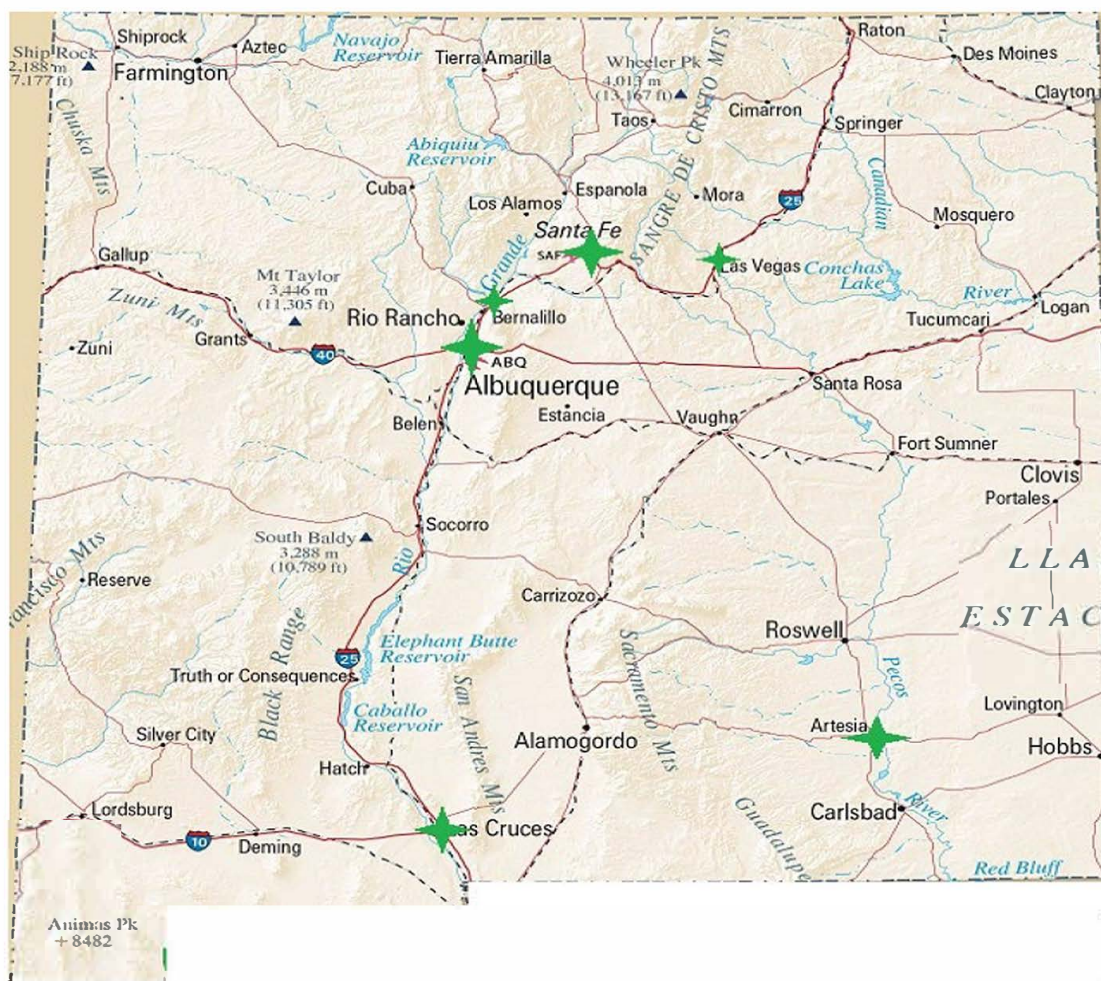


2023 “ERFPO” Law Enforcement/ Medical Professional Training, Civilian Education and Public Awareness Campaign Efforts

In late 2022, New Mexico State Police [“NMSP”] Deputy Chief Carolyn N. Huynh directed the development of the ERFPO curriculum. The ERFPO curriculum was created by NMSP Lieutenant Janice Madrid, NMSP Officer Thomas McClelland, Advanced Crisis Intervention, and New Mexico Law Enforcement Academy Legal instructor, attorney and former prosecutor in the Second Judicial District Attorney’s Office, Elliott Guttman, with the assistance of the members of the ERFPO TF. The ERFPO TF believes that the development and implementation of this curriculum has provided a much better explanation of the statutory requirements and process for the entry of an ERFPO than requiring the officer to discern from the statutory language alone. The curriculum has been approved by the Law Enforcement Academy as an accredited block of instruction.

The curriculum implemented reality-based training (this may include role-playing, simulations, and/or scenario practical instruction) to make the effectiveness of this violence prevention tool more meaningful to the law enforcement officers across the State of New Mexico.

To date, the training implemented by the ERFPO TF and the NMSP has resulted in eight hundred and seventy-six individuals, including NMSP officers, County Sheriffs' Department deputies, ERFPO Task Force Member, Medical Professionals, District Attorney Investigators, Assistant District Attorneys, Civilians, Law Enforcement Academy Recruits, and NMSP dispatchers being trained in the availability of ERFPOs, the possibilities ERFPOs present to reduce deaths and injuries from gun violence related suicides and homicides in New Mexico, and the procedure by which an ERFPO may be obtained.



ERFPO Training Locations and Entities/Individuals Trained as of 2023:

- New Mexico State Police: 413 commissioned officers*
- New Mexico State Police Communications: 5 TACs (terminal agency coordinator)*
- Bernalillo County Sheriff's Department: 366 commissioned deputies*
- Santa Fe County Sheriff's Department: 6 commission deputies (Training instructors)*
- State of New Mexico DA Investigators: 24*
- ERFPO Task Force: 8 (commissioned officers, HSD, health care, & county)*
- Albuquerque Police Department: 54 commissioned officers*

Further instruction dates to include instruction for civilians have been set aside for the new year 2024 in furtherance of education and awareness for ERFPO.

The 54 Albuquerque Police Department (APD) officers trained are detectives and officers who also have Crisis Intervention Training and have been assigned to file ERFPO petitions when needed.

NMSP in collaboration with the ERFPO TF, the Administrative Office of the Courts (AOC), and the Law Enforcement Academy (LEA) have begun working on an ERFPO TRAIN the TRAINER curriculum which would allow for the training of additional instructors to teach the current curriculum. Having more trainers that are trained would allow more officers, non-commissioned employees of law enforcement agencies and interested civilians to become aware of ERFPO as a tool to combat gun violence. The NMSP is currently working with the LEA to obtain a waiver of Master Certification requirements to expedite the training of law enforcement officers throughout the state.

In collaboration with the LEA , dates have been set aside in 2024 to provide training to sworn officers for all agencies throughout the state.

Medical Curriculum for ERFPO Training

The ERFPO TF assigned medical professionals to develop a curriculum to provide mental health care providers, physicians and medical paraprofessionals, including physician assistants and certified nurse practitioners, throughout the state with training regarding the purpose and means to obtain an ERFPO. The hope is that this training will assist these professionals in recognizing the potential of the ERFPO to prevent gun violence as well as when and how these professionals may provide information as a “reporting party” to law enforcement agencies.

Ms. O’Connor along with Dr. Wendy Johnson, and Nick Boukas, Division Director of the Human Services Department -Behavioral Health Services Division, were instrumental in the development of a training curriculum for health care providers in line with the Health Insurance Portability and Accountability Act of 1996, HIPAA, standards. The recorded training provided by the Community Services Department is available on the Santa Fe County website for additional use by other entities. The training will be provided by personnel within the various divisions of the Department of Health and Human Services. This curriculum will not only provide medical professionals with basic instruction on how and when to report the possible need for an ERFPO but it will also provide crucial training regarding the intersection between ERFPO and the Health Insurance Portability and Accountability Act

["HIPAA"] and, in particular, the Privacy Rule and circumstances in which a health care provider may provide what might otherwise be "protected health information" without running afoul of the Privacy Rule. See Guidance on the HIPAA Privacy Rule and Disclosures of Protected Health Information for Extreme Risk Protection Orders (U.S. Department of Health and Human Services) (December 20, 2021). (<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/extreme-risk-protection-orders/index.html>) (downloaded January 15, 2024) ¹⁵

¹⁵ Does the Privacy Rule permit a covered health care provider to disclose protected health information (PHI) about an individual, without the individual's authorization, to support an application for an ERPO against the individual?

In limited circumstances, yes. The Privacy Rule permits a covered health care provider to disclose PHI to support an ERPO application by the provider or another person in certain circumstances, including the following:

- *When the disclosure is required by law.*³ A covered health care provider may disclose PHI when the disclosure is required by law (e.g., statute, regulation, court order, subpoena) and the disclosure complies with and is limited to the relevant requirements of such law.⁴
- *When the disclosure is in response to an order of a court or administrative tribunal, subpoena, discovery request, or other lawful process in the course of a judicial or administrative proceeding.*⁵ The Privacy Rule places conditions on disclosures for these purposes, including when such disclosures are required by other law.⁶ For example:

Example 1: A covered health care provider receives a court order compelling the provider to produce an individual's medical records to the court to support its determination as to whether to issue an ERPO against the provider's patient. The Privacy Rule permits the provider to disclose only the PHI that is authorized by the court order.⁷

Example 2: A petitioner applies for an ERPO in state court alleging, in an affidavit, that her partner has threatened to shoot her with his firearm and has been receiving care from a mental health professional. The state's attorney issues a subpoena compelling the partner's covered mental health care provider to disclose medical records to determine whether there is a sufficient legal basis to issue the ERPO.

The Privacy Rule permits the mental health care provider to disclose the minimum necessary⁸ PHI to comply with the subpoena that is not accompanied by an order of a court or administrative tribunal if **one** of the following conditions is met:⁹

- The provider receives satisfactory assurances¹⁰ from the state's attorney that reasonable efforts have been made to ensure that the individual who is the subject of the PHI request has been given notice of the request;¹¹ or
- The provider receives satisfactory assurances¹² from the state's attorney that reasonable efforts have been made to secure a qualified protective order prohibiting use or disclosure of the PHI for purposes other than the proceeding, and requiring the return to the provider or destruction of the PHI at the end of the proceeding.
- *When the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.*¹³ A covered health care provider who believes that an individual presents a serious and imminent threat to the health or safety of a person (including the individual) or the public may, consistent with applicable law and standards of ethical conduct, disclose PHI if the provider believes in good faith that the disclosure is necessary to prevent or lessen the threat and the disclosure is made to any person or persons reasonably able to prevent or lessen the threat.¹⁴ The covered health care provider must make reasonable efforts to limit the PHI disclosed to the minimum necessary to prevent or lessen the threat.¹⁵

A health care provider that discloses PHI to prevent or lessen a serious and imminent threat is presumed to have acted in good faith with regard to the belief that the disclosure is necessary to prevent harm if the belief is based on the provider's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.¹⁶ Health care providers may disclose the necessary PHI, without an individual's authorization, to

The AOC worked diligently in the months of November and December of 2023 to update, revise, and provide the approved ERFPO forms to the Supreme Court for approval. On December 5, 2023, the forms were made available to all law enforcement and the citizens of New Mexico along with step-by-step directions. Further, the AOC has created a webpage on NMCourts.gov that went live in late December 2023. The website is a user friendly ERFPO website made available in English and Spanish and can be located at <https://www.nmcourts.gov/erfpo>.

Public ERFPO Training and Education

The Public Awareness Campaign directly targets *New Mexicans* of all ages, races, ethnicity, and diverse cultural backgrounds. The campaign provides educational materials, regarding the process related to ERFPO. The ERFPO TF created a pilot program with the County of Santa Fe, in which the county created a brochure, posters, and weblink (can be translated into multiple languages) advising the public of the existence of ERFPO and how it may assist in preventing gun violence. The county of Santa Fe's program went live in December 2023. The Director of Community Services Department, Santa Fe County Ms. Rachel O'Connor graciously provided resources to assist with the roll out of ERFPO educational material. The goal of rolling out the program is to advise the public of the true intention of the Act – which is not to take guns away from law abiding citizens who present no danger to themselves

anyone who is in a position to prevent or lessen the threatened harm.¹⁷ This permission includes the sharing of psychotherapy notes, which otherwise receive special protection under the Privacy Rule.¹⁸

- **Example 3:** An individual's family member calls the individual's therapist and states that the family is worried because the individual threatened to bring a firearm to the workplace and kill a supervisor. An applicable state law authorizes health care providers to petition a court for an ERPO to protect the life of a patient or another person. The therapist knows that the individual possesses a firearm and believes the family member's representation is credible. The therapist applies for an ERPO and provides an affidavit that discloses PHI about the individual who poses a threat.
- The Privacy Rule permits the therapist to disclose the PHI of the individual to the court in an ERPO application if the therapist believes in good faith that the disclosure is necessary to lessen or prevent the serious and imminent threat to the supervisor. The good faith belief may be based on a credible representation by the individual's family member.
- The Privacy Rule also permits the therapist to notify the supervisor that the individual poses a serious and imminent threat if the therapist believes in good faith that the disclosures are necessary to prevent or lessen the threat and the disclosures are to a person or persons reasonably able to prevent or lessen the threat.¹⁹

* * *

or others – but is to reduce the number of gun related deaths and injuries by temporarily removing access to guns from those individuals who pose “a significant danger of causing imminent personal injury to self or others by having” guns in their custody or by purchasing, possessing or receiving a firearm. “Ultimately the law seeks to serve as a preventative measure to reduce death and injury due to firearms in New Mexico.”

https://www.santafecountynm.gov/uploads/documents/ERPO_Rack_Card_Final_Version_11.26.pdf.

Expansion of training is now possible with available funding in 2024.

The ERFPO TF is aware Ms. Sheila Lewis, in collaboration with the New Mexicans To Prevent Gun Violence, a non-profit 501© (3) corporation have provided training to law enforcement and the public regarding ERFPOs when there is a direct connection to domestic violence.

A gun buy-back event was held on November 4, 2023, in Espanola, Albuquerque, and Las Cruces. This event resulted in the relinquishment of 439 guns. Also, during this event, brochures were provided to the public to promote education of ERFPO and how to prevent gun violence.

Law Enforcement Command Center for Expertise

The NMSP has taken the lead in this role as it relates to ERFPO. The NMSP Command staff has identified the Criminal Investigations Bureau in collaboration with the Special Operations Bureau, Advanced Crisis Intervention officers to provide direct oversight and assistance to any state agency or local law enforcement officer seeking assistance or direction on ERFPO issues. Currently NMSP has twelve District offices throughout New Mexico. The Special Operations Bureau, in collaboration with the ERFPO TF, has ensured each district in the state possesses two Advanced Crisis Intervention Trained (ACIT) officers who are trained in ERFPO to ensure best practices and proper procedures are being followed in all areas of the state. ACIT officers provide on-site assistance to any entity seeking assistance with questions, filing, and service of an ERFPO. This expertise has been made available since the establishment of the curriculum and is provided on a twenty-four-hour , seven day a week basis.

Albuquerque Police Department Commander Matt Dietzel, and Santa Fe County Sheriff Adan Mendoza have taken the lead in collaborating with the NMSP Crisis Intervention officers and in the development of ERFPO procedures for their respective agencies. This collaborative effort among the NMSP, and other law enforcement agencies like APD and SFCSO, the ERFPO TF and the AOC is anticipated to

assist in ensuring ERFPO reaches its full potential as a tool to reduce gun violence throughout the state of New Mexico.

ERFPO Notifications to Law Enforcement

A variety of bureaus within the Department of Public Safety, including the NMSP Communications Bureau, which includes the dispatch centers, the Law Enforcement Records Bureau, and the Department of Public Safety Office of Legal Affairs have worked with the AOC to streamline a system whereby ERFPOs are provided daily, following the close of business, to DPS for entry into the National Crime Information Center [“NCIC”].

Currently ALL filed ERFPOs are being provided to NMSP Advanced Crisis Intervention personnel for tracking until the DPS Communications Bureau begins entering ERFPOs sought by NMSP officers into NCIC. The ERFPO TF has been advised that DPS intends to begin entering ERFPOs into NCIC on January 22, 2024. The NMSP Communications Bureau intends to provide training to the dispatch centers for other law enforcement agencies throughout the state so that they may timely enter the ERFPOs sought by officers in their respective agencies into NCIC.

The AOC enters ERFPO data into the National Instant Criminal Background Check System [“NICS”] daily. NICS is the database queried by non-law enforcement officials, including federally licensed firearms dealers and entities, which issue permits or licenses for guns, to determine whether an individual is prohibited from purchasing or possessing a firearm.

Obstacles to ERFPO Being an Effective Tool to Combat Gun Violence

1. Confusion as to who may be a “reporting” party.

NMSA 1978 Section 40-17-2 H. provides:

*H. "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;*

(Emphasis added)

Some law enforcement officers and courts interpret the Act’s definition of “reporting party” to mean that only the types of individuals identified therein as reporting parties may provide the required information to the law enforcement petitioner who seeks an ERFPO. In N.M.A.G. Opinion No. 2021-08, in response to a question from an Eighth Judicial District Court Judge, the Office of Attorney General Raul Torrez opined that the use of the word “includes” in the statute means that the definition of reporting party is *not* limited to the types of individuals identified in the statute. However, to ensure the greatest number of individuals as possible with pertinent information may serve as reporting parties, an amendment to the statute, such as “includes, but is not limited to . . .” the identified types would be helpful.

2. *Confusion as to whether the law enforcement petitioner may also be the reporting party*

NMSA 1978 Section 40-17-2 E. and F. provide:

E. *“law enforcement officer” means a public official or public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes and includes an attorney employed by a district attorney or the attorney general;*

G. *“petitioner” means a law enforcement officer who files an extreme risk firearm protection order petition;*

In some cases, it is only a law enforcement officer who may be able to serve as the reporting party. This will occur if the officer personally observes the conduct of the respondent or if the officer receives information from another who is either unable or unwilling to serve as a reporting party. The ERFPO TF believes that use of ERFPO as an important tool in combating gun violence may be lost if the officer as petitioner cannot also be in some circumstances, the person with “credible information” who “gives the agency or 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 respondent’s custody or control or by purchasing, possessing or receiving a firearm.”

A district judge in the First Judicial District concluded that a law enforcement officer could not serve as a reporting party because the officer did not have the relationship with the respondent “required” by Section 40-17-2 H. This case is currently pending in the New Mexico Court of Appeals. See *State of New Mexico v. Phillip Le Strange*, No. A-1-CA-41174, Court of Appeal, State of New Mexico. Without

a clarifying amendment on this point, officers with the requisite credible information but without a separate reporting party may hesitate to or be prohibited by a court from filing a petition for an ERFPO.

3. *The need for the petition to be “under oath” and the affidavit “sworn”*

The Act at Section 40-17-5 F. requires the petition for an ERFPO to be made “under oath” and to be accompanied by a "sworn affidavit." Law enforcement officers have expressed concern that these requirements delay or prohibit the filing of a petition given a reported unavailability of a notary public during non-business hours and in some parts of the state, the unavailability of a notary public during business hours. These issues related to both public safety and officer safety are increased in the rural areas of the State of New Mexico, where there are few officers, longer distances to travel, and less support for both potential respondents and officers. The ERFPO TF believes that Supreme Court Rule 23-115 Unsworn Affirmations Under Penalty of Perjury¹⁶ provides a remedy to this problem. However, given that most law enforcement officers will not be familiar with this court rule and will be making decisions on whether or not to proceed with an ERFPO without the assistance of counsel, an amendment to the Act specifically adopting this procedure, in the absence of a notary public, would streamline the process and ensure a law enforcement officer does not hesitate to file a petition for an ERFPO due to the absence of a notary public.

4. *The absence of authority of the law enforcement officer serving the ERFPO to search and immediately seize any firearms in the possession or under the control of the respondent;*
5. *The inconsistency of issuing an ERFPO only upon a finding respondent poses a significant danger of causing imminent harm to self or others but allowing forty-eight hours in which to relinquish firearms.*

¹⁶ RULE 23-115. Unsworn Affidavits Under Penalty of Perjury

Unless expressly provided by any other rule approved by the Supreme Court, any written statement in a pleading, paper, or other document that is not notarized shall have the same effect in a court proceeding as a notarized written statement, provided that the statement includes the following:

- A. the date that the statement was given;
- B. the signature of the person who gave the statement; and
- C. a written affirmation under penalty of perjury under the laws of the State of New Mexico that the statement is true and correct.

40-17-6 Petition for temporary extreme risk firearm protection order; temporary orders; proceedings

- A. . . . *the court may enter a temporary extreme risk firearm protection order if the court finds from specific facts shown . . . 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 . . .*

40-17-10. Relinquishment of firearms.

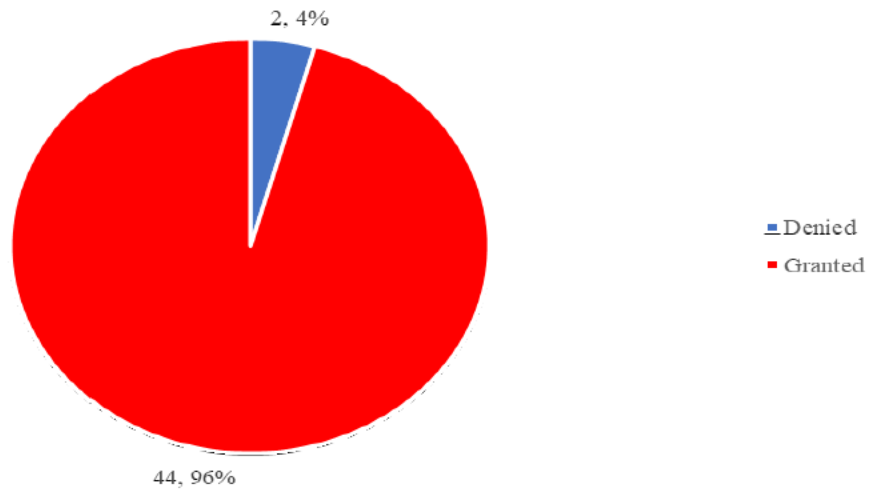
- A. *A respondent who receives a temporary or one-year extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody, or control or subject to the respondent's possession, custody, or control in a safe manner to a law enforcement officer, a law enforcement agency, or a federal firearms licensee within forty-eight hours of service of the order or sooner at the discretion of the court.*

The Act's reliance on voluntary relinquishment within forty-eight hours in the face of a requirement that the respondent be found to pose a significant danger of causing "*imminent* personal injury" raises concerns that the service of an order trigger the violence it is aimed to prevent endangering both the public, the Respondent, the officer or all three. See Office of the New Mexico Attorney General Legislative Recommendations on New Mexico's Extreme Risk Firearm Protection Order Act ("A finding of a likelihood of *imminent harm is incongruent with a 48-hour grace period* for continued possession of firearms, and *exclusive reliance on voluntary relinquishment is inconsistent with a finding that the individual is dangerous to the individual's self or others. Service of an order, in fact, could be a trigger that makes such an individual even more dangerous.* For this reason, most jurisdictions with red flag provisions require immediate relinquishment and provide law enforcement with authority to perform a search to verify that there are no firearms in the person's residence"). (Emphasis added).

2023 Statistical Data

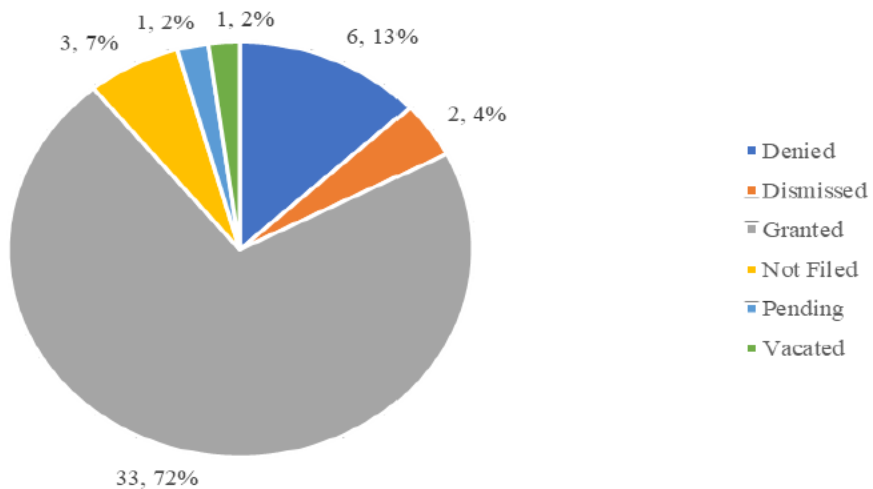
The 2023 data indicates a significant increase in the number of ERFPO petitions filed in 2023, in in comparison to prior years. From January 1, 2023, to December 31, 2023, forty-six (46) ERFPO petitions were filed; compared to the fourteen (14) ERFPO petitions filed in 2022.

2023 Temporary ERFPO Petitions Filed and the Percentage Increase when Compared to 2022



This graph represents the number of ERFPO petitions filed in 2023 and the percentage of those petitions resulting in Temporary ERFPOs granted in 2023. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

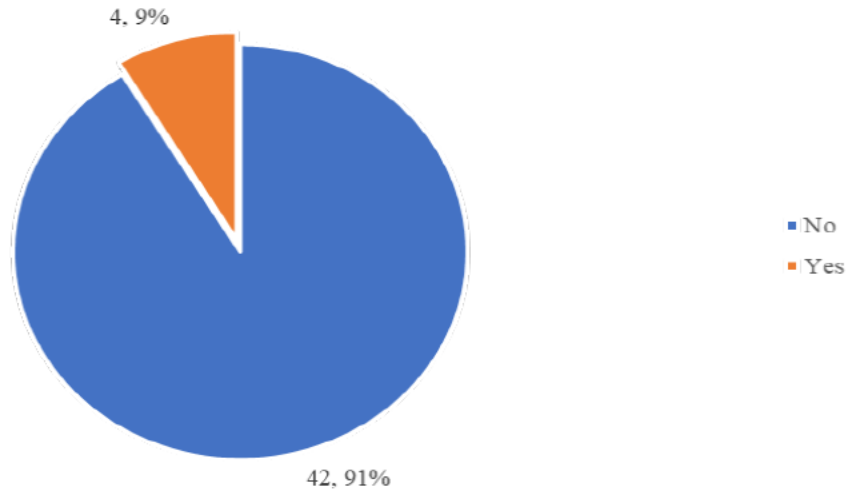
2023 One Year ERFPOs



*The 2023 graph identifies the total number of One Year ERFPOs granted as a result of the 46 petitions filed in 2023. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts. *Two cases were described by AOC as "not filed." In fact, they were dismissed for lack of proper venue and not refiled.*

In 2023, four (4) orders led to firearms being relinquished/seized or voluntarily turned over to law enforcement. This determination was made based on receipts filed with the court. The receipts reflect twenty-six (26) firearms were relinquished/seized.

2023 Relinquished/Seized Firearms



The 2023 graph identifies the total ERFPO cases in which firearms were relinquished/seized in that year. Yes, signifies the number of cases where seizures or voluntary relinquishments occurred. No signifies lack of information and or no return of service filed with the courts. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

The Act does not require any tracking of firearms relinquished or seized as a result of an ERFPO except the receipt issued by a law enforcement officer, agency, or Federal Firearms Licensee.

40-17-10 Relinquishment of firearms;

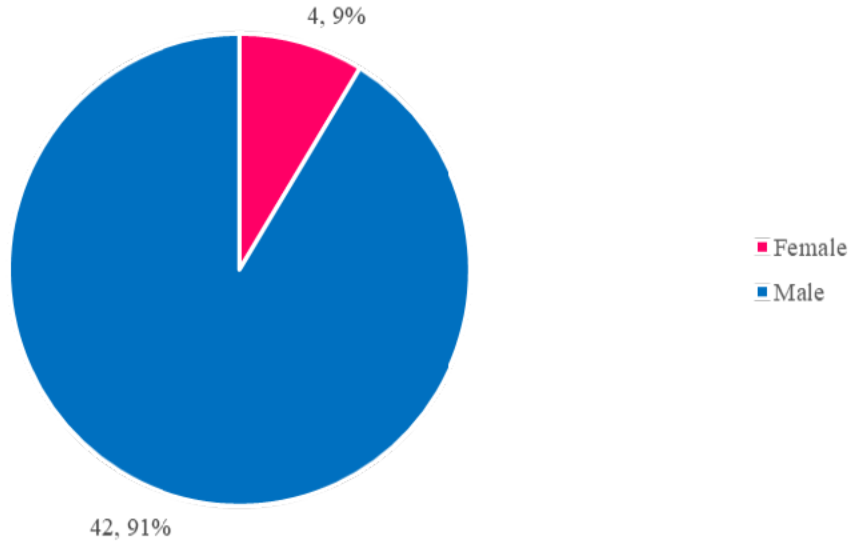
A. A respondent who receives a temporary or one-year extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody, or control or subject to the respondent's possession, custody, or control in a safe manner to a law enforcement officer, a law enforcement agency or federal firearms licensee within forty-eight hours of service of the order or sooner at the discretion of the court.

B. A law enforcement officer, law enforcement agency or federal firearms licensee that takes temporary possession of a firearm pursuant to this section shall:

- (1) prepare a receipt identifying all firearms that have been relinquished or taken;*
- (2) provide a copy of the receipt to the respondent;*
- (3) provide a copy of the receipt to the petitioner within seventy- two hours of taking possession of the firearms;*
- (4) file the original receipt with the court that issued the temporary or one-year extreme risk firearm protection order within seventy-two hours of taking possession of the firearms; and*
- (5) ensure that the law enforcement agency retains a copy of the receipt.*

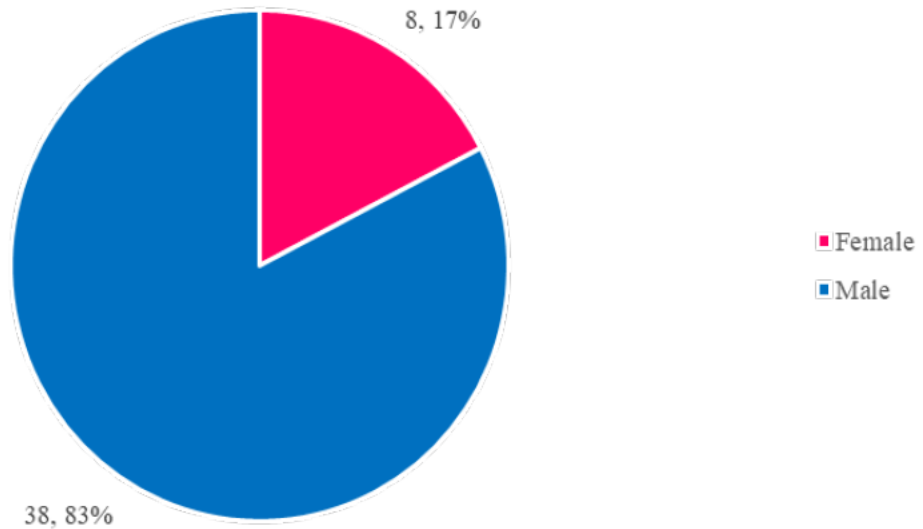
The ERFPO TF again analyzed the available data to determine gender of petitioner and gender and age of respondent, and the geographical location of the respondent based on the judicial district and county in which the ERFPO petitions were filed and the orders entered. Again, neither the ethnicity of the respondent or petitioner could be determined due to the lack of data.

2023 Respondent Gender



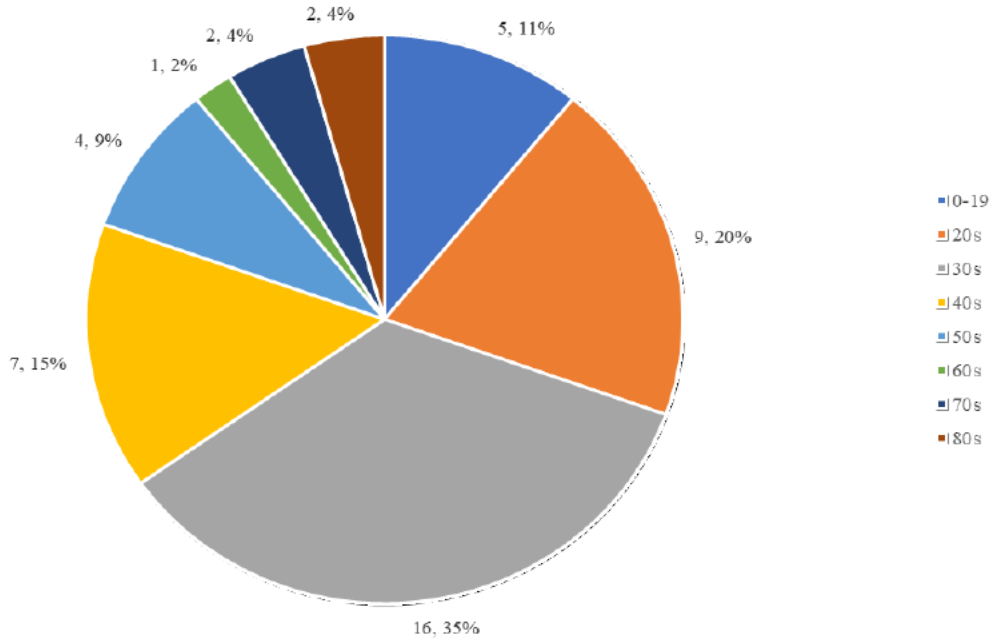
The 2023 graph identifies the total number of ERFPO cases in which Respondent gender was identified in 2023. The gender identification was made based on information provided by the Respondent to the New Mexico Department of Taxation and Revenue Motor Vehicle Division for the purpose of obtaining a driver's license or other state issued identification. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2023 Petitioner Gender



The 2023 graph identifies the total ERFPO cases in which Petitioner gender was identified in 2023. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2023 Respondent Age Range Percentages

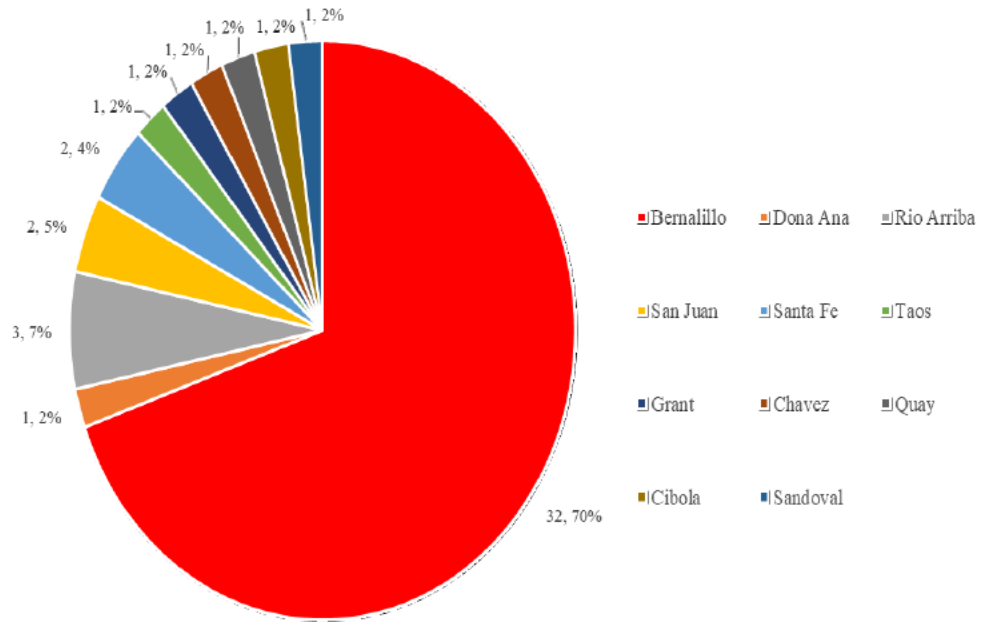


The 2023 graph identifies the ERFPO Age demographics of respondents identified in 2023 ERFPO petitions. The largest percentage of respondents, 35% were between the ages of 30 and 39 years of age. The lowest percentage of respondents, 2%, were between the ages of 60 and 69 years of age.

The Petitioner demographics are not captured as they are identified as the law enforcement agency. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

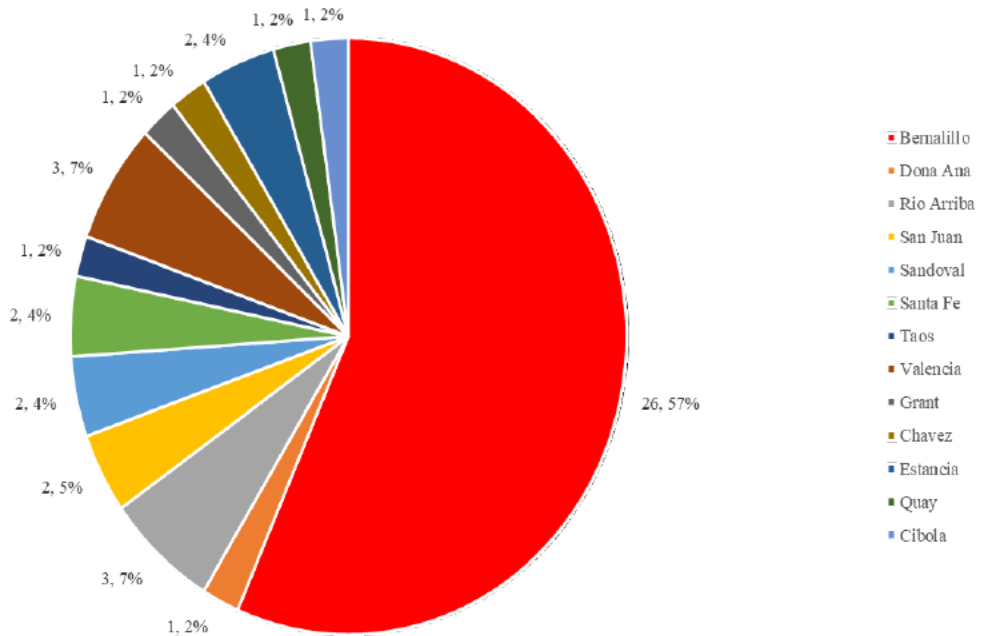
The geographical location was identified based on the judicial district and the county in which the ERFPO petition was filed, which in accordance with the statute, must be the county in which the respondent resides.

2023 Petitioner County



The 2023 graph identifies the ERFP Counties related to the Petitioner (Law Enforcement) in 2023. The highest percentage of petitioners 70%, were in Bernalillo County. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

2023 Respondent County



The 2023 graph identifies the ERFP Counties related to the Respondents in 2023. The highest percentage of respondents, 57%, resided in Bernalillo County. Statistics generated from data compiled from AOC filed petitions in the State of New Mexico Judicial District Courts.

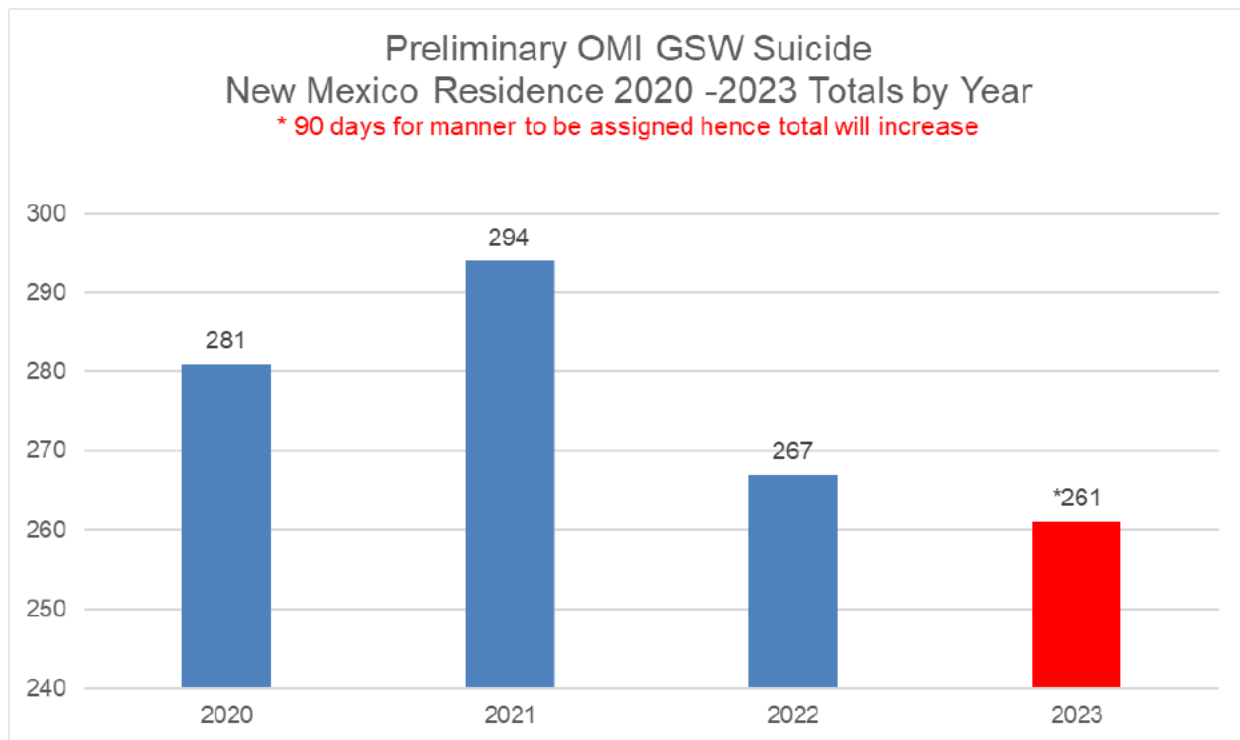
The last demographic captured the number of one-year ERFPOs that were terminated early.

There were no orders filed in 2023 indicating that previously entered one-year ERFPOs were terminated prior to the expiration of one-year. No applications for extensions of one-year orders were filed in 2023.

The Office of the Medical Investigator (OMI) again provided data for the number of suicide and homicide gun related deaths for the calendar year 2023. The gun related suicide deaths must be viewed as incomplete for approximately the last quarter of 2023, as the OMI has ninety days following the date of death to determine the manner of death.

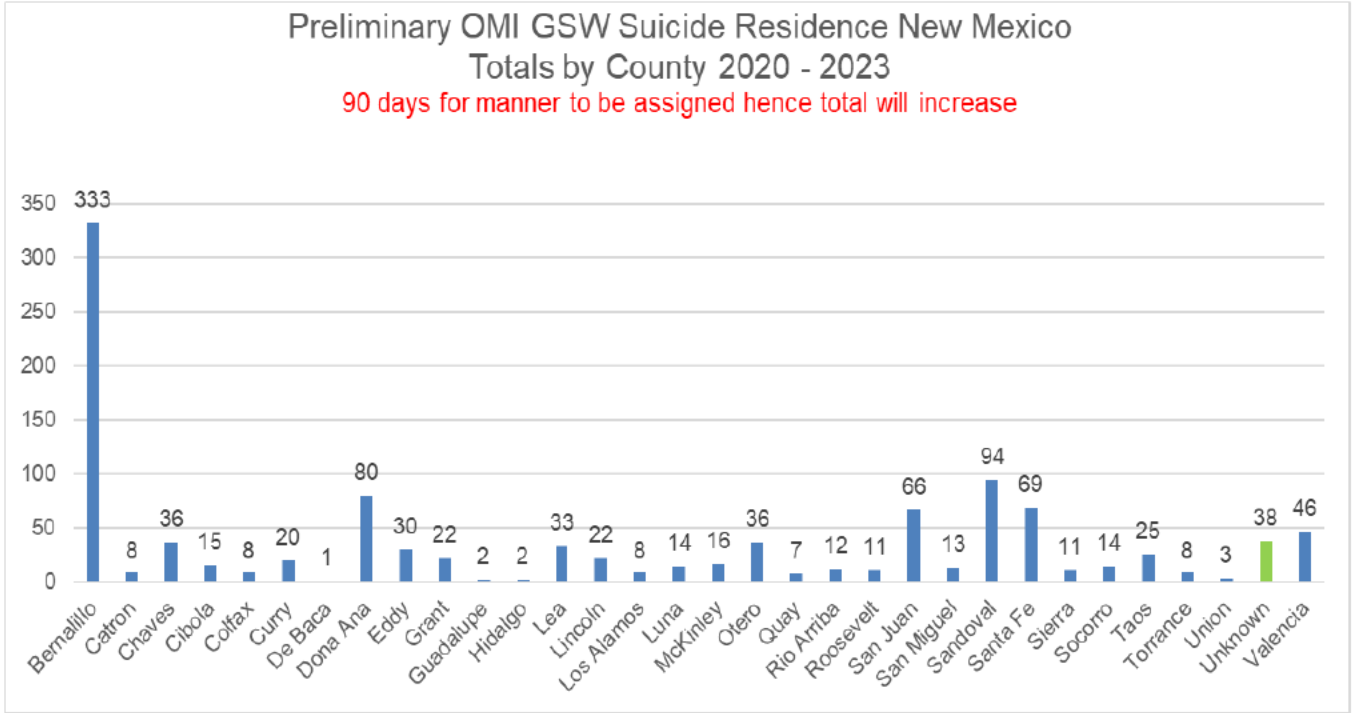
The overall numbers for 2023 from OMI identified two hundred and sixty-one total firearms caused suicides. This preliminary number is a slight decrease from prior years.

2023 Preliminary OMI GSW Suicide Residence New Mexico



The graph identifies the Suicide Deaths reported in 2023 by the Office of the Medical Investigator. The number could increase as the manner in some cases has yet to be determined.

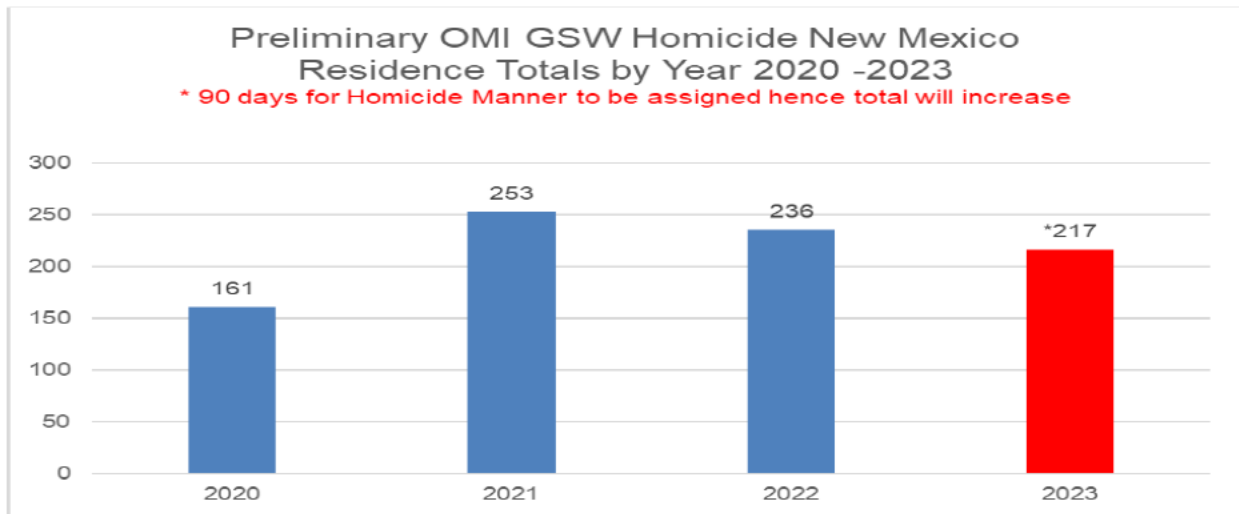
2023 Preliminary OMI GSW Suicide Residence Totals by County



The graph identifies the Suicide Deaths attributed to firearms reported in 2023 by County by the Office of the Medical Investigator. The number could increase as the manner in some cases has yet to be determined.

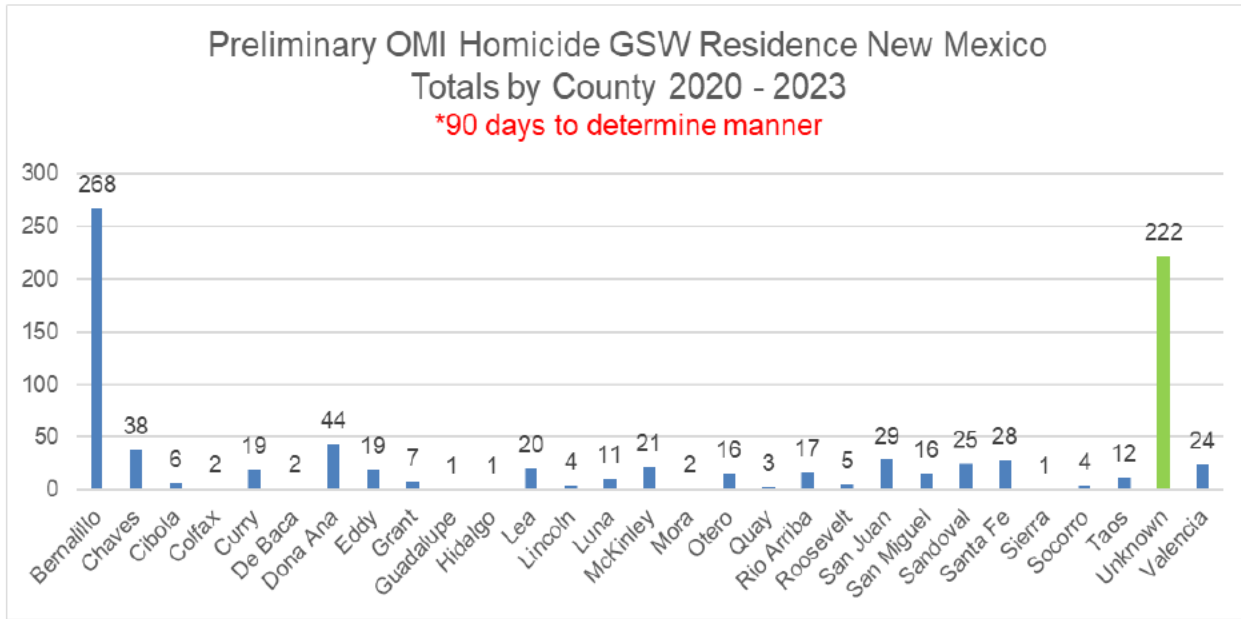
The OMI reported two hundred and seventeen (217) homicide deaths caused by firearms.

2023 Preliminary OMI GSW Homicides New Mexico



The graph identifies the Homicide Deaths reported in 2023 by the Office of the Medical Investigator. The number could increase as the manner in some cases has yet to be determined.

2023 Preliminary OMI GSW Homicide Residence Totals by County



The 2023 graph identifies the Homicide Deaths Caused by Firearms reported in 2023 by County by the Office of the Medical Investigator. The number could increase as the manner in some cases has yet to be determined.

Although the number of homicide deaths did not increase from previous years, these deaths remain unnecessary and present an opportunity for prevention.

Executive Summary

The ERFPO TF believes that the data presented in this inaugural report demonstrates the potential for ERFPO as underutilized, but a promising tool to reduce gun violence in New Mexico.

By examining existing legislation, statistical data, and case studies, this report has shed light on the consequences of inadequate application of the law, the need for clarification in various aspects of the Act, the need for mandatory relinquishment of firearms contemporaneous with service of the order and continued training and public awareness with respect to the life-saving potential of the ERFPO. With amendments and clarifications made to the Act, more positive outcomes may be expected.

From fourteen (14) ERFPO petitions filed in 2022, to forty-six (46) in 2023, the number of petitions seeking this life-saving tool increased by 228%. The ERFPO TF hopes to double this rate again in 2024. The increased ERFPO petition numbers are not definitively tied to the partnership, collaboration,

identification of expertise, creation of curriculum, implementation of reality based training, and educational materials distributed, but these measures have surely helped the cause.

In late 2023, the Byrnes State Crisis Intervention Program, Byrne SCIP, awarded approximately Three (3) million dollars to New Mexico. This program provides funding for the creation and or implementation of ERFPO programs, state crisis intervention court proceedings, and related gun violence reduction programs and initiatives.

With the increase of awareness and the positive direction of ERFPO, the grant can now be utilized to its full potential and intended initiatives, which will roll out in 2024.

- 1. Training for those implementing ERFPO programs.*
- 2. Communication, Education, and Public Awareness.*
- 3. Specialized court-based programs such as drug, mental health, veterans' treatment courts, to include those that specifically accept clients with firearms violations.*
- 4. Behavioral health services for those at risk to themselves or others.*
- 5. Funding for law enforcement agencies to safely secure, store, track, and return relinquished guns.*

As we move forward into 2024, ERFPO is at the forefront of discussion in New Mexico. The topic surrounding gun violence is impacting New Mexicans more than ever. This has a profound and far-reaching impact on our communities here in New Mexico. New Mexico has consistently grappled with high rates of gun related incidents, leading to tragic loss of life, debilitating injuries, and lasting emotional trauma for individuals and families. The pervasive presence of firearms in the state has contributed to an elevated sense of insecurity and fear particularly in vulnerable neighborhoods. Moreover, the economic toll of gun violence, including healthcare costs, loss of productivity, and law enforcement expenses has strained local resources.

The presence of firearms in the hands of individuals who are at a heightened risk of harming themselves or others has clear public health implications. As history and statistics dictate, suicide and homicide rates are significantly high. In most cases, improper utilization or understanding of ERFPO, along with the lack of tracking mechanisms in place during the relinquishment phase, and potentially failing to seize firearms from individuals at risk of self-harm or are a danger to others, can exacerbate this issue.

As discussed above, changes are needed to the Act to ensure the ERFPO reaches its full potential. The Legislature should clearly state whether the types of individuals mentioned in the definition of “reporting party” were intended to be an exclusive list of who may be a reporting party, or merely examples. The Legislature should clarify whether an officer filing an ERFPO as a petitioner may also serve as a reporting party. Clarification that an affirmation will substitute for sworn testimony should be added to the Act. Finally, the Legislature should consider adding health care professionals to the list of reporting parties.

2024 will bring additional training opportunities to professions beyond law enforcement, health care field, and the public. We will hopefully see more law enforcement trainers who may train additional trainers. The ERFPO TF will continue to explore methods by which a causal relationship between ERFPOs entered and lives saved may be measured. The ERFPO TF hopes to find a way to evaluate whether lives lost might have been saved by this tool.

The ERFPO TF extends its gratitude to Governor Lujan Grisham for her sincere concern for the prevention of gun violence and making this TF a priority. The ERFPO TF would also like to thank Santa Fe County, Albuquerque Police Department, Department of Public Safety, New Mexico State Police, Human Services Division, and El Centro Family Health for allowing us to serve on this task force.