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EXTREME RISK PROTECTIVE ORDER

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates an extreme risk protective order and a method for law enforcement to remove firearms from a person who is shown to be violent.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates an extreme risk protective order;
- ▶ allows a family member or an individual who has resided with the subject individual to file for a protective order if the family member or other individual considers the person dangerous;
- ▶ creates the ability for a law enforcement officer to obtain a warrant to seize a firearm from a person who is dangerous;
- ▶ creates fees for filing certain petitions; and
- ▶ provides how long the firearm can be kept and under what circumstances it must be returned to the owner.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 [78A-2-301](#), as last amended by Laws of Utah 2015, Chapters 99 and 313

30 ENACTS:

31 [76-10-533](#), Utah Code Annotated 1953

32 [76-10-534](#), Utah Code Annotated 1953

33

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **76-10-533** is enacted to read:

36 **76-10-533. Extreme risk protective order.**

37 (1) As used in this section and Section [76-10-534](#):

38 (a) "Dangerous" means an individual:

39 (i) presents an imminent risk of personal injury to the individual or to another

40 individual; or

41 (ii) may present a risk of personal injury to the individual or to another individual in
42 the future and is the subject of documented evidence that would give rise to a reasonable belief
43 that the individual has a propensity for violent or emotionally unstable conduct.

44 (b) "Family member" means a parent, sibling, spouse, or child of the individual.

45 (c) "Firearm" means the same as that term is defined in Section [76-10-501](#).

46 (2) Any family member or individual who has resided with the respondent within the
47 previous six months may request an ex parte extreme risk protective order from the district
48 court restraining the respondent from possessing any firearms.

49 (3) Before an ex parte extreme risk protective order may be issued, the petitioner shall
50 submit a written affidavit on a form provided by the court in the county where the respondent
51 resides.

52 (4) Before issuing an ex parte protective order, the court shall consider whether:

53 (a) there has been a recent threat of violence, or act of violence, by the respondent
54 toward others or him or herself;

55 (b) the respondent is dangerous;

56 (c) the respondent recently violated a protective order issued in accordance with Title
57 [78B](#), Chapter 7, Protective Orders;

58 (d) the respondent was recently convicted of an offense that would prohibit the

59 purchase and possession of a firearm; and

60 (e) there has been a pattern of violent acts or threats by the respondent within the past
61 12 months.

62 (5) In determining whether grounds for an extreme risk restraining order exist, the
63 court may consider any other evidence of an increased risk for violence, including evidence of
64 any of the following:

65 (a) the reckless use, display, or brandishing of a firearm by the respondent;

66 (b) the history of use, attempted use, or threatened use of physical force by the
67 respondent against another individual;

68 (c) a prior arrest of the respondent for a felony offense or violent crime;

69 (d) documentary evidence, including police reports and records of convictions, of
70 either recent criminal offenses by the respondent that involve controlled substances or alcohol
71 or ongoing abuse of controlled substances or alcohol by the respondent; and

72 (e) evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

73 (6) If the court determines by clear and convincing evidence that the respondent poses
74 a serious risk of harm to him or herself or others, the court shall:

75 (a) issue an ex parte extreme risk protective order that prohibits the respondent from
76 owning, purchasing, possessing, receiving, or having in his or her custody or control, or
77 attempting to purchase or receive, a firearm or ammunition, and expires no later than 20 days
78 from the date of the order; and

79 (b) set a hearing date within 20 days of the date of the order.

80 (7) Upon the issuance of the ex parte order in Subsection (6), the petitioner shall
81 deliver a copy of the order to the law enforcement agency with jurisdiction over the area in
82 which the respondent resides. The local law enforcement agency shall serve a copy of the ex
83 parte order upon the respondent.

84 (8) The ex parte order shall order the respondent to surrender all firearms and
85 ammunition to the law enforcement officer serving the order at the time of service. The law
86 enforcement officer shall provide the respondent with:

87 (a) a receipt listing all firearms and ammunition received from the respondent; and

88 (b) an information sheet explaining the process for reclaiming the respondent's firearms
89 and ammunition.

90 (9) At the hearing, the court shall:

91 (a) extend the ex parte extreme risk protective order up to 20 days and set another
92 hearing;

93 (b) issue an extreme risk protective order; or

94 (c) allow the ex parte extreme risk protective order to expire.

95 (10) An extreme risk protective order shall expire not later than one year from the date
96 of the original ex parte order.

97 (11) The respondent may petition the court to vacate an extreme risk protective order
98 not less than 180 days after issuance. Upon receipt of a petition to vacate an extreme risk
99 protective order, the court shall set a time and date for a hearing and notify the original
100 petitioner.

101 (12) The individual petitioning the court to vacate an extreme risk protective order
102 shall prove by a preponderance of the evidence that the individual is not dangerous.

103 (13) If the court finds that the individual is not dangerous, the court shall vacate the
104 extreme risk protective order.

105 (14) If the court denies the petition, the individual may not petition the court to vacate
106 the protective order again.

107 (15) Upon the vacation or expiration of an extreme risk protective order, the individual
108 may reclaim any firearms surrendered to or seized by a law enforcement agency, unless the
109 individual is no longer eligible to own or possess a firearm in accordance with Section
110 [76-10-503](#).

111 Section 2. Section **76-10-534** is enacted to read:

112 **76-10-534. Warrant to seize firearms from dangerous individual.**

113 (1) A district court judge may issue a warrant to search for and seize any firearm in the
114 possession of an individual who is dangerous if:

115 (a) a law enforcement officer provides a sworn affidavit that:

116 (i) states why the law enforcement officer believes that the individual is dangerous and
117 in possession of a firearm; and

118 (ii) describes the law enforcement officer's interactions and conversations with the
119 individual who is alleged to be dangerous or another individual, if the law enforcement officer
120 believes that the information obtained from the other individual is credible and reliable;

- 121 (b) the affidavit specifically describes the location of the firearm; and
122 (c) the district court determines that probable cause exists to believe that the individual
123 is dangerous and in possession of a firearm.
- 124 (2) If the court issues a warrant to seize a firearm under this section, the court shall also
125 issue an ex parte extreme risk protective order that prohibits the respondent from owning,
126 purchasing, possessing, receiving, or having in his or her custody or control, or attempting to
127 purchase or receive, a firearm or ammunition, and expires no later than 20 days from the date
128 of the order.
- 129 (3) If the court issues a warrant to seize a firearm and an ex parte extreme risk
130 protective order under this section, the law enforcement officer who serves the warrant and ex
131 parte extreme risk protective order shall, not later than 48 hours after the warrant was served,
132 file a return with the court that provides:
- 133 (a) the date and time that the warrant was served;
134 (b) the name and address of the individual named in the warrant; and
135 (c) a description of all firearms seized by the law enforcement officer.
- 136 (4) The court shall set a hearing not more than 20 days from the date of the seizure to
137 determine whether any firearms seized should be:
- 138 (a) returned to the individual from whom the firearm was seized; or
139 (b) retained by the law enforcement agency having custody of the firearm.
- 140 (5) Notice of the hearing shall be given to the individual from whom the firearm was
141 seized and the county or district attorney.
- 142 (6) At the hearing, the state has the burden of proving that the individual is dangerous
143 by clear and convincing evidence.
- 144 (7) If the court determines that the individual is dangerous, the court may order:
- 145 (a) that the law enforcement agency having custody of the seized firearm retain the
146 firearm; and
- 147 (b) the suspension of the person's concealed firearm permit, if the person has a
148 concealed firearm permit.
- 149 (8) If the court determines that the firearm seized from the individual is owned by
150 another individual, it may order the firearm returned to the owner of the firearm.
- 151 (9) The individual may petition the court for return of the firearm not less than 180

152 days after the court ordered the law enforcement agency to retain the firearm. Upon receipt of a
153 petition for return of a firearm, the court shall set a date for a hearing on the petition and inform
154 the petitioner and the county or district attorney of the date and time of the hearing.

155 (10) The individual petitioning the court for return of the firearm shall prove by a
156 preponderance of the evidence that the individual is not dangerous.

157 (11) If the court, upon completion of the hearing and consideration of the record, finds
158 that the individual is not dangerous, the court shall order:

159 (a) the law enforcement agency having custody of the firearm to return the firearm to
160 the individual; and

161 (b) the reinstatement of the individual's concealed firearm permit, if the individual
162 originally had a concealed firearm permit.

163 (12) If the court denies an individual's petition for return of the firearm, the individual
164 may not file a subsequent petition until at least 180 days after the date on which the court
165 denied the petition.

166 Section 3. Section **78A-2-301** is amended to read:

167 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

168 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
169 court of record not governed by another subsection is \$360.

170 (b) The fee for filing a complaint or petition is:

171 (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs,
172 interest, and attorney fees is \$2,000 or less;

173 (ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
174 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

175 (iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;

176 (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
177 4, Separate Maintenance;

178 (v) \$35 for a motion for temporary separation order filed under Section [30-3-4.5](#);

179 (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender
180 Registry under Section [77-41-112](#); and

181 (vii) \$35 if the petition is for guardianship and the prospective ward is the biological or
182 adoptive child of the petitioner.

- 183 (c) The fee for filing a small claims affidavit is:
- 184 (i) \$60 if the claim for damages or amount in interpleader exclusive of court costs,
185 interest, and attorney fees is \$2,000 or less;
- 186 (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs,
187 interest, and attorney fees is greater than \$2,000, but less than \$7,500; and
- 188 (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
189 interest, and attorney fees is \$7,500 or more.
- 190 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
191 complaint, or other claim for relief against an existing or joined party other than the original
192 complaint or petition is:
- 193 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
194 \$2,000 or less;
- 195 (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is
196 greater than \$2,000 and less than \$10,000;
- 197 (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is
198 \$10,000 or more, or the party seeks relief other than monetary damages; and
- 199 (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
200 Chapter 4, Separate Maintenance.
- 201 (e) The fee for filing a small claims counter affidavit is:
- 202 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
203 \$2,000 or less;
- 204 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
205 greater than \$2,000, but less than \$7,500; and
- 206 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
207 \$7,500 or more.
- 208 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
209 action already before the court is determined under Subsection (1)(b) based on the amount
210 deposited.
- 211 (g) The fee for filing a petition is:
- 212 (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims
213 department; and

214 (ii) \$65 for an appeal of a municipal administrative determination in accordance with
215 Section [10-3-703.7](#).

216 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
217 petition for writ of certiorari is \$225.

218 (i) The fee for filing a petition for expungement is \$135.

219 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
220 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
221 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
222 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
223 Act.

224 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
225 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
226 Defense Account, as provided in Section [51-9-408](#).

227 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
228 and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided
229 in Section [78B-6-209](#).

230 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
231 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
232 deposited in the restricted account, Court Security Account, as provided in Section [78A-2-602](#).

233 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
234 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
235 Security Account, as provided in Section [78A-2-602](#).

236 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
237 United States is \$35.

238 (l) The fee for filing a renewal of judgment in accordance with Section [78B-6-1801](#) is
239 50% of the fee for filing an original action seeking the same relief.

240 (m) The fee for filing probate or child custody documents from another state is \$35.

241 (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
242 Utah State Tax Commission is \$30.

243 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
244 or a judgment, order, or decree of an administrative agency, commission, board, council, or

245 hearing officer of this state or of its political subdivisions other than the Utah State Tax
246 Commission, is \$50.

247 (o) The fee for filing a judgment by confession without action under Section
248 [78B-5-205](#) is \$35.

249 (p) The fee for filing an award of arbitration for confirmation, modification, or
250 vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an
251 action before the court is \$35.

252 (q) The fee for filing a petition or counter-petition to modify a domestic relations order
253 other than a protective order or stalking injunction is \$100.

254 (r) (i) The fee for filing an extreme risk protective order under Section [76-10-533](#) is
255 \$30.

256 (ii) The fee for filing a petition to vacate an extreme risk protective order under Section
257 [76-10-533](#) is \$30.

258 (iii) The fee for filing a petition to return a firearm under Section [76-10-534](#) is \$30.

259 ~~(r)~~ (s) The fee for filing any accounting required by law is:

260 (i) \$15 for an estate valued at \$50,000 or less;

261 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

262 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

263 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

264 (v) \$175 for an estate valued at more than \$168,000.

265 ~~(s)~~ (t) The fee for filing a demand for a civil jury is \$250.

266 ~~(t)~~ (u) The fee for filing a notice of deposition in this state concerning an action
267 pending in another state under Utah Rules of Civil Procedure, Rule 30 is \$35.

268 ~~(u)~~ (v) The fee for filing documents that require judicial approval but are not part of
269 an action before the court is \$35.

270 ~~(v)~~ (w) The fee for a petition to open a sealed record is \$35.

271 ~~(w)~~ (x) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
272 addition to any fee for a complaint or petition.

273 ~~(x)~~ (y) (i) The fee for a petition for authorization for a minor to marry required by
274 Section [30-1-9](#) is \$5.

275 (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6,

276 Part 8, Emancipation, is \$50.

277 ~~[(y)]~~ (z) The fee for a certificate issued under Section 26-2-25 is \$8.

278 ~~[(z)]~~ (aa) The fee for a certified copy of a document is \$4 per document plus 50 cents
279 per page.

280 ~~[(aa)]~~ (bb) The fee for an exemplified copy of a document is \$6 per document plus 50
281 cents per page.

282 ~~[(bb)]~~ (cc) The Judicial Council shall by rule establish a schedule of fees for copies of
283 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
284 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall
285 be credited to the court as a reimbursement of expenditures.

286 ~~[(cc)]~~ (dd) There is no fee for services or the filing of documents not listed in this
287 section or otherwise provided by law.

288 ~~[(dd)]~~ (ee) Except as provided in this section, all fees collected under this section are
289 paid to the General Fund. Except as provided in this section, all fees shall be paid at the time
290 the clerk accepts the pleading for filing or performs the requested service.

291 ~~[(ee)]~~ (ff) The filing fees under this section may not be charged to the state, its
292 agencies, or political subdivisions filing or defending any action. In judgments awarded in
293 favor of the state, its agencies, or political subdivisions, except the Office of Recovery
294 Services, the court shall order the filing fees and collection costs to be paid by the judgment
295 debtor. The sums collected under this Subsection (1)(ee) shall be applied to the fees after
296 credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

297 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
298 shall transfer all revenues representing the difference between the fees in effect after May 2,
299 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
300 Facilities Construction and Management Capital Projects Fund.

301 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
302 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
303 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
304 initiate the development of a courts complex in Salt Lake City.

305 (B) If the Legislature approves funding for construction of a courts complex in Salt
306 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and

307 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
308 (2)(a)(ii) to construct a courts complex in Salt Lake City.

309 (C) After the courts complex is completed and all bills connected with its construction
310 have been paid, the Division of Facilities Construction and Management shall use any money
311 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
312 District Court building.

313 (iii) The Division of Facilities Construction and Management may enter into
314 agreements and make expenditures related to this project before the receipt of revenues
315 provided for under this Subsection (2)(a)(iii).

316 (iv) The Division of Facilities Construction and Management shall:

317 (A) make those expenditures from unexpended and unencumbered building funds
318 already appropriated to the Capital Projects Fund; and

319 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
320 under this Subsection (2).

321 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
322 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
323 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
324 account.

325 (c) The Division of Finance shall deposit all revenues received from the court
326 administrator into the restricted account created by this section.

327 (d) (i) From May 1, 1995, until June 30, 1998, the administrator of the courts shall
328 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
329 Vehicles, in a court of record to the Division of Facilities Construction and Management
330 Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be
331 calculated on the balance of the fine or bail forfeiture paid.

332 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
333 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in
334 a court of record to the Division of Finance for deposit in the restricted account created by this
335 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the
336 balance of the fine or bail forfeiture paid.

337 (3) (a) There is created within the General Fund a restricted account known as the State

338 Courts Complex Account.

339 (b) The Legislature may appropriate money from the restricted account to the
340 administrator of the courts for the following purposes only:

341 (i) to repay costs associated with the construction of the court complex that were
342 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

343 (ii) to cover operations and maintenance costs on the court complex.

Legislative Review Note
Office of Legislative Research and General Counsel