

Representative Stephen G. Handy proposes the following substitute bill:

EXTREME RISK RESTRAINING ORDER

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates an extreme risk restraining 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 restraining order;
- ▶ allows a family member or an individual who has resided with the subject individual to file for a restraining 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; 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



26 **Utah Code Sections Affected:**

27 ENACTS:

28 [76-10-533](#), Utah Code Annotated 1953

29 [76-10-534](#), Utah Code Annotated 1953

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

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

33 **76-10-533. Extreme risk restraining order.**

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

35 (a) "Dangerous" means an individual:

36 (i) presents an imminent risk of personal injury to the individual or to another
37 individual; or

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

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

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

43 (d) "Recent" means within the previous 12 months.

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

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

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

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

53 (b) the respondent is a restricted person in accordance with Section [76-10-503](#).

54 (c) the respondent is dangerous;

55 (d) the respondent recently violated a protective order issued in accordance with Title
56 78B, Chapter 7, Protective Orders; or

57 (e) there has been a pattern of violent acts or threats by the respondent within the past
58 12 months.

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

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

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

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

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

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

70 (6) If the court determines by preponderance of the evidence that the respondent poses
71 a serious risk of harm to him or herself or others, the court shall:

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

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

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

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

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

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

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

88 (a) extend the ex parte extreme risk restraining order up to 20 days and set another
89 hearing;

90 (b) issue an extreme risk restraining order; or

91 (c) allow the ex parte extreme risk restraining order to expire.

92 (10) An extreme risk restraining order shall expire not later than one year from the date
93 of the original ex parte order unless the petitioner, within 60 days of the expiration date of the
94 extreme risk restraining order, petitions the court to extend it.

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

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

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

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

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

109 (16) Forms provided by the court to file for an ex parte extreme risk restraining order
110 shall include a statement informing the petitioner that knowing falsification of any statement or
111 information provided for the purpose of obtaining a restraining order is a third degree felony.

112 (17) Upon the issuance of an ex parte extreme risk restraining order or an extreme risk
113 restraining order, the court clerk shall provide notification to the Bureau of Criminal
114 Identification for entry into the national instant criminal background check system and any
115 other system used to identify persons prohibited from purchasing firearms. The Bureau of
116 Criminal Identification shall enter the information into the background check system as soon as
117 possible.

118 (18) No charges may be imposed by a court clerk, constable, or law enforcement

119 agency for:

120 (a) filing a petition under this Section;

121 (b) obtaining an ex parte extreme risk restraining order; or

122 (c) obtaining copies, either certified or not certified, necessary for service or delivery to

123 law enforcement officials.

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

125 **76-10-534. Warrant to seize firearms from dangerous individual.**

126 (1) A district court judge may issue a warrant to search for and seize any firearm in the

127 possession of an individual who is dangerous if:

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

129 (i) states why the law enforcement officer believes that the individual is dangerous and

130 in possession of a firearm; and

131 (ii) describes the law enforcement officer's interactions and conversations with the

132 individual who is alleged to be dangerous or another individual, if the law enforcement officer

133 believes that the information obtained from the other individual is credible and reliable;

134 (b) the affidavit specifically describes the location of the firearm; and

135 (c) the district court determines that probable cause exists to believe that the individual

136 is dangerous and in possession of a firearm.

137 (2) If the court issues a warrant to seize a firearm under this section, the court shall also

138 issue an ex parte extreme risk restraining order that prohibits the respondent from owning,

139 purchasing, possessing, receiving, or having in his or her custody or control, or attempting to

140 purchase or receive, a firearm or ammunition, and expires no later than 20 days from the date

141 of the order.

142 (3) If the court issues a warrant to seize a firearm and an ex parte extreme risk

143 restraining order under this section, the law enforcement officer who serves the warrant and ex

144 parte extreme risk restraining order shall, not later than 48 hours after the warrant was served,

145 file a return with the court that provides:

146 (a) the date and time that the warrant was served;

147 (b) the name and address of the individual named in the warrant; and

148 (c) a description of all firearms seized by the law enforcement officer.

149 (4) The court shall set a hearing not more than 20 days from the date of the seizure to

150 determine whether any firearms seized should be:

151 (a) returned to the individual from whom the firearm was seized; or

152 (b) retained by the law enforcement agency having custody of the firearm.

153 (5) Notice of the hearing shall be given to the individual from whom the firearm was

154 seized and the county or district attorney.

155 (6) At the hearing, the county or district attorney has the burden of proving that the

156 individual is dangerous by clear and convincing evidence.

157 (7) If the court determines that the individual is dangerous, the court shall order:

158 (a) that the law enforcement agency having custody of the seized firearm retain the
159 firearm; and

160 (b) the suspension of the person's concealed firearm permit, if the person has a
161 concealed firearm permit.

162 (8) If the court determines that the firearm seized from the individual is owned by
163 another individual, it may order the firearm returned to the owner of the firearm.

164 (9) The individual may petition the court for return of the firearm not less than 180
165 days after the court ordered the law enforcement agency to retain the firearm. Upon receipt of a
166 petition for return of a firearm, the court shall set a date for a hearing on the petition and inform
167 the petitioner and the county or district attorney of the date and time of the hearing.

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

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

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

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

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