

## HB0483S01 compared with HB0483

~~text~~ shows text that was in HB0483 but was deleted in HB0483S01.

Inserted text shows text that was not in HB0483 but was inserted into HB0483S01.

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Representative Stephen G. Handy proposes the following substitute bill:

### **EXTREME RISK ~~PROTECTIVE~~ RESTRAINING ORDER**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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#### **LONG TITLE**

##### **General Description:**

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

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~~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:

~~{AMENDS:~~

~~78A-2-301, as last amended by Laws of Utah 2015, Chapters 99 and 313~~

~~{ENACTS:~~

~~76-10-533, Utah Code Annotated 1953~~

~~76-10-534, Utah Code Annotated 1953~~

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

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

**76-10-533. Extreme risk ~~{protective}~~restraining order.**

(1) As used in this section and Section 76-10-534:

(a) "Dangerous" means an individual:

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

individual; or

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

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

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

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

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

(3) Before an ex parte extreme risk ~~{protective}~~restraining order may be issued, the

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petitioner shall submit a written affidavit on a form provided by the court in the county where the respondent resides.

(4) Before issuing an ex parte ~~{protective}~~restraining order, the court shall consider whether:

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

~~(b) the respondent is a restricted person in accordance with Section 76-10-503.~~

~~{b}c~~ the respondent is dangerous;

~~{c}d~~ the respondent recently violated a protective order issued in accordance with Title 78B, Chapter 7, Protective Orders;~~f~~

~~(d) the respondent was recently convicted of an offense that would prohibit the purchase and possession of a firearm; and} or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) At the hearing, the court shall:

(a) extend the ex parte extreme risk ~~{protective}~~ restraining order up to 20 days and set another hearing;

(b) issue an extreme risk ~~{protective}~~ restraining order; or

(c) allow the ex parte extreme risk ~~{protective}~~ restraining order to expire.

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

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

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

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

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

(15) Upon the vacation or expiration of an extreme risk ~~{protective}~~ restraining order,

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the individual may reclaim any firearms surrendered to or seized by a law enforcement agency, unless the individual is no longer eligible to own or possess a firearm in accordance with Section 76-10-503.

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

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

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

(a) filing a petition under this Section;

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

(c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials.

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

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

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

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

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

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

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

(c) the district court determines that probable cause exists to believe that the individual is dangerous and in possession of a firearm.

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(2) If the court issues a warrant to seize a firearm under this section, the court shall also issue an ex parte extreme risk ~~{protective}~~restraining order that prohibits the respondent from owning, purchasing, possessing, receiving, or having in his or her custody or control, or attempting to purchase or receive, a firearm or ammunition, and expires no later than 20 days from the date of the order.

(3) If the court issues a warrant to seize a firearm and an ex parte extreme risk ~~{protective}~~restraining order under this section, the law enforcement officer who serves the warrant and ex parte extreme risk ~~{protective}~~restraining order shall, not later than 48 hours after the warrant was served, file a return with the court that provides:

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

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

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

(4) The court shall set a hearing not more than 20 days from the date of the seizure to determine whether any firearms seized should be:

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

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

(5) Notice of the hearing shall be given to the individual from whom the firearm was seized and the county or district attorney.

(6) At the hearing, the ~~{state}~~county or district attorney has the burden of proving that the individual is dangerous by clear and convincing evidence.

(7) If the court determines that the individual is dangerous, the court ~~{may}~~shall order:

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

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

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

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

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

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

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

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

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

~~{ Section 3. Section 78A-2-301 is amended to read:~~

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

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

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

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

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

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

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

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

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

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

~~(c) The fee for filing a small claims affidavit is:~~

~~(i) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;~~

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~~—— (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and~~

~~—— (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$7,500 or more.~~

~~—— (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:~~

~~—— (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;~~

~~—— (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;~~

~~—— (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is \$10,000 or more, or the party seeks relief other than monetary damages; and~~

~~—— (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.~~

~~—— (e) The fee for filing a small claims counter affidavit is:~~

~~—— (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;~~

~~—— (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and~~

~~—— (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is \$7,500 or more.~~

~~—— (f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.~~

~~—— (g) The fee for filing a petition is:~~

~~—— (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims department; and~~

~~—— (ii) \$65 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.~~

~~—— (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or~~



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~~petition for writ of certiorari is \$225.~~

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

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

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

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

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

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

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

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

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

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

~~—— (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is \$50.~~

~~—— (o) The fee for filing a judgment by confession without action under Section~~

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~~78B-5-205 is \$35.~~

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

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

~~—— (r) (i) The fee for filing an extreme risk protective order under Section 76-10-533 is \$30.~~

~~—— (ii) The fee for filing a petition to vacate an extreme risk protective order under Section 76-10-533 is \$30.~~

~~—— (iii) The fee for filing a petition to return a firearm under Section 76-10-534 is \$30.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6, Part 8, Emancipation, is \$50.~~

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

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

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per page:

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

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

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

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

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

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

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

~~——— (B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.~~

~~——— (C) After the courts complex is completed and all bills connected with its construction~~

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~~have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building:~~

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

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

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

~~—— (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2):~~

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

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

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

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

~~—— (3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.~~

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

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~~—— (i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and~~  
~~—— (ii) to cover operations and maintenance costs on the court complex.~~

**Legislative Review Note**

**Office of Legislative Research and General Counsel**