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EXTREME RISK PROTECTIVE ORDER

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the Extreme Risk Protective Order Act.

Highlighted Provisions:

This bill:

- ▶ enacts the Extreme Risk Protective Order Act;
- ▶ defines terms;
- ▶ enables a family member or law enforcement to ask a court to restrain a person from possessing any firearms or ammunition for a specified length of time;
- ▶ requires the courts to develop and adopt uniform forms for all courts;
- ▶ requires that the court consider whether the respondent:
 - has made recent threats or acted violently;
 - violated a recent protective order;
 - has demonstrated a pattern of violent acts or threats within the past 12 months;
 - is dangerous; or
 - has attempted or threatened self harm;
- ▶ allows a court to issue a search warrant if a respondent refuses to surrender firearms and ammunition upon service of an order;
- ▶ requires the courts to enter the respondent's information into the national crime information center system upon issuance, and to remove the information upon expiration;



- 28 ▶ allows the respondent to surrender firearms and ammunition to a law enforcement
- 29 agency or a federal firearms licensee;
- 30 ▶ provides for disposal if the firearms and ammunition are not reclaimed upon
- 31 expiration;
- 32 ▶ requires the director of POST to create and implement training and materials; and
- 33 ▶ requires the courts to create and distribute an annual report on extreme risk
- 34 protective orders.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **53-10-208.1**, as last amended by Laws of Utah 2011, Chapter 366

42 ENACTS:

43 **78B-7-501**, Utah Code Annotated 1953

44 **78B-7-502**, Utah Code Annotated 1953

45 **78B-7-503**, Utah Code Annotated 1953

46 **78B-7-504**, Utah Code Annotated 1953

47 **78B-7-505**, Utah Code Annotated 1953

48 **78B-7-506**, Utah Code Annotated 1953

49 **78B-7-507**, Utah Code Annotated 1953

50 **78B-7-508**, Utah Code Annotated 1953

51 **78B-7-509**, Utah Code Annotated 1953

52 **78B-7-510**, Utah Code Annotated 1953

53 **78B-7-511**, Utah Code Annotated 1953



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

56 Section 1. Section **53-10-208.1** is amended to read:

57 **53-10-208.1. Magistrates and court clerks to supply information.**

58 Every magistrate or clerk of a court responsible for court records in this state shall,

59 within 30 days of the disposition and on forms and in the manner provided by the division,
60 furnish the division with information pertaining to:

- 61 (1) all dispositions of criminal matters, including:
 - 62 (a) guilty pleas;
 - 63 (b) convictions;
 - 64 (c) dismissals;
 - 65 (d) acquittals;
 - 66 (e) pleas held in abeyance;
 - 67 (f) judgments of not guilty by reason of insanity for a violation of:
 - 68 (i) a felony offense;
 - 69 (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - 70 (iii) Title 76, Chapter 10, Part 5, Weapons;
 - 71 (g) judgments of guilty with a mental illness;
 - 72 (h) finding of mental incompetence to stand trial for a violation of:
 - 73 (i) a felony offense;
 - 74 (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - 75 (iii) Title 76, Chapter 10, Part 5, Weapons; or
- 76 (2) probations granted; and
- 77 (2) orders of civil commitment under the terms of Section 62A-15-631;
- 78 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or
- 79 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303,
- 80 within one day of the action and in a manner provided by the division; and
- 81 (4) protective orders issued after notice and hearing, pursuant to:
 - 82 (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; [or]
 - 83 (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[-]; or
 - 84 (c) Title 78B, Chapter 7, Part 5, Extreme Risk Protective Order Act.

85 Section 2. Section 78B-7-501 is enacted to read:

86 **Part 5. Extreme Risk Protective Order Act**

87 **78B-7-501. Title.**

88 This part is known as the "Extreme Risk Protective Order Act."

89 Section 3. Section 78B-7-502 is enacted to read:

90 78B-7-502. Definitions.91 As used in this part:92 (1) "Dangerous" means a respondent:93 (a) presents an imminent risk of personal injury to himself, herself, or to others; or94 (b) may present a risk of personal injury to him or herself or to another individual in95 the near future and is the subject of relevant personal knowledge that would give rise to a96 reasonable belief that the respondent has a propensity for violent conduct.97 (2) "Ex parte extreme risk protective order" or "ex parte order" means an order by a98 district court in response to a filing by a petitioner that the respondent has not had the99 opportunity to respond to, and requires the respondent to surrender his or her firearms and100 ammunition to the law enforcement officer who serves the order pending a hearing.101 (3) "Family member" means a parent, stepparent, sibling, step-sibling, spouse, child, or102 stepchild of the respondent.103 (4) "Federal Firearm Licensee" means a person who is licensed under 18 U.S.C. Sec.104 923.105 (5) "Firearm" means the same as that term is defined in Section [76-10-501](#).106 (6) "Law Enforcement Officer" means only those officers described in Subsections107 [53-13-103\(1\)\(b\)\(i\)](#) and [\(ii\)](#).108 (7) "Recent" means within the previous 12 months.109 Section 4. Section **78B-7-503** is enacted to read:110 **78B-7-503. Extreme risk protective order -- Affidavit -- Filing -- Court to develop,**
111 **adopt, and provide forms.**112 (1) Any family member of the respondent, individual who has resided with the113 respondent within the previous six months, or a law enforcement officer may seek an extreme114 risk protective order from the district court in the county where the respondent resides115 restraining the respondent from possessing any firearms.116 (2) The request shall consist of a written affidavit on a form provided by the court in117 the county where the respondent resides. The Administrative Office of the Courts shall develop118 and adopt uniform forms in accordance with the provisions of this chapter to be distributed to119 all courts within the state.120 (a) The offices of the court clerk shall provide nonlegal assistance to persons filing

121 under this part.

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

125 (3) The affidavit shall include, if known, any information the petitioner has regarding
126 firearms the respondent may possess, including types, number, and location.

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

129 (a) filing a petition under this part;

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

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

133 (5) A petitioner may petition the court for an ex parte extreme risk protective order.
134 Before issuing an ex parte order, the court shall consider whether:

135 (a) there has been a recent threat of violence, or act of violence, by the respondent
136 toward himself, herself, or others, including the transmission of threats through electronic or
137 digital means;

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

139 (c) the respondent is dangerous;

140 (d) the respondent recently violated a protective order issued in accordance with any
141 other part of this chapter; or

142 (e) there has been a recent pattern of violent acts or threats by the respondent and other
143 less restrictive alternatives either have been tried and found to be ineffective or are inadequate
144 or inappropriate for the circumstances of the respondent.

145 (6) In determining whether grounds for an extreme risk protective order exist, the court
146 may also consider other evidence of an increased risk for violence, including evidence of any of
147 the following:

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

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

151 (c) an act or threat of violence against himself or herself;

- 152 (d) a prior arrest of the respondent for a violent felony offense or violent crime;
- 153 (e) evidence, including police reports and records of convictions, of either recent
- 154 criminal offenses by the respondent that involve controlled substances or alcohol or ongoing
- 155 abuse of controlled substances or alcohol by the respondent; and
- 156 (f) evidence of the recent acquisition of firearms or ammunition.
- 157 (7) The court shall make a concerted effort to set hearings in such a way that the
- 158 respondent is able to comply with the requirements of this chapter.
- 159 (8) Evidence that the respondent suffers from a mental illness may not be the sole
- 160 criteria for the issuance of an ex parte extreme risk protective order, however at any time
- 161 during the process and any subsequent hearings, the court may consider whether the respondent
- 162 suffers from a mental illness and, at its discretion, recommend an evaluation by a designated
- 163 examiner in accordance with Section [62A-15-631](#).

164 Section 5. Section **78B-7-504** is enacted to read:

165 **78B-7-504. Ex parte order -- Court responsibilities -- Surrender of firearms --**
166 **Hearing -- Expiration.**

- 167 (1) If the court determines by a preponderance of the evidence that the respondent
- 168 poses a serious risk of harm to himself, herself, or others, the court shall:
- 169 (a) issue an ex parte extreme risk protective order that prohibits the respondent from
- 170 purchasing, possessing, receiving, or having in his or her custody or control, or attempting to
- 171 purchase or receive, a firearm or ammunition, and expires no later than 20 days from the date
- 172 of issuance; and
- 173 (b) set a hearing date within 14 days of the date of the ex parte order.
- 174 (2) Upon the issuance of the ex parte extreme risk protective order in Subsection (1),
- 175 the petitioner shall deliver a copy of the ex parte order to the law enforcement agency with
- 176 jurisdiction over the area in which the respondent resides. The local law enforcement agency
- 177 shall serve a copy of the ex parte order upon the respondent.
- 178 (3) The ex parte extreme risk protective order shall order the respondent to surrender
- 179 all firearms and ammunition to the law enforcement officer serving the order at the time of
- 180 service.
- 181 (4) The law enforcement officer shall provide the respondent with:
- 182 (a) a receipt listing all firearms and ammunition received from the respondent; and

183 (b) an information sheet containing:
184 (i) the issuance and expiration dates of the ex parte extreme risk protective order;
185 (ii) notice of the date, time, and court in which the hearing on the order will be held;
186 (iii) a statement that it is a third degree felony to refuse to surrender all firearms and
187 ammunition to the law enforcement officer serving the order;
188 (iv) a statement that it is a third degree felony to possess, purchase, or receive a firearm
189 or ammunition while the order is in effect;
190 (v) a statement that failure to appear at the hearing may result in the court making the
191 ex parte order a permanent extreme risk protective order which would be in effect for up to a
192 year; and
193 (vi) the process for reclaiming the respondent's firearms and ammunition.
194 (5) The law enforcement officer shall file the return of service and a copy of the receipt
195 for any firearms received with the court within 48 hours, not including Saturdays, Sundays, and
196 legal holidays.
197 (6) (a) At the hearing the court shall determine by clear and convincing evidence
198 whether the respondent is dangerous and:
199 (i) issue an extreme risk protective order;
200 (ii) extend the ex parte extreme risk protective order up to 20 days and set another
201 hearing; or
202 (iii) if the court determines that the respondent is not dangerous, vacate the ex parte
203 extreme risk protective order.
204 (b) If the extension in Subsection (6)(a)(ii) is because the respondent was not present,
205 and the respondent fails to show for the second hearing, the court shall issue an extreme risk
206 protective order with an expiration date of one year from the date of issuance.
207 (7) (a) If a law enforcement officer has probable cause to believe, based on the officer's
208 experience and de-escalation training, that removing firearms and ammunition from the
209 respondent at the time the law enforcement officer is serving the ex parte order would increase
210 the risk of substantial danger to the respondent or others, the law enforcement officer may
211 exercise the discretion to only serve the ex parte extreme risk protective order, as permitted by
212 policies and procedures established by the officer's law enforcement agency and any applicable
213 federal or state statute.

214 (b) If a law enforcement officer exercises discretion under Subsection (7)(a) and only
215 serves the ex parte extreme risk protective order, the law enforcement officer shall document in
216 the return of service the details and circumstances that led to the law enforcement officer's
217 decision.

218 Section 6. Section **78B-7-505** is enacted to read:

219 **78B-7-505. Search warrant.**

220 (1) A court that issued an ex parte extreme risk protective order may issue a search
221 warrant for any firearms or ammunition possessed, or within the custody or control of the
222 respondent if:

223 (a) the respondent has been lawfully served and failed to surrender all firearms and
224 ammunition required by the ex parte order; or

225 (b) the law enforcement officer exercised discretion under Subsection [78B-7-504\(7\)](#)
226 and did not receive any firearms or ammunition.

227 (2) The search warrant shall:

228 (a) indicate the place or places to be searched; and

229 (b) limit the items to be retrieved to firearms and ammunition.

230 Section 7. Section **78B-7-506** is enacted to read:

231 **78B-7-506. Petition to vacate -- Expiration.**

232 (1) A respondent subject to an extreme risk protective order may petition the court to
233 vacate the extreme risk protective order not less than 180 days after issuance. Upon receipt of a
234 petition to vacate an extreme risk protective order, the court shall set a time and date for a
235 hearing and notify the original petitioner.

236 (2) In order to vacate an extreme risk protective order, the respondent shall prove by a
237 preponderance of the evidence that the respondent is no longer dangerous.

238 (3) If the court finds that the respondent is no longer dangerous, the court shall vacate
239 the extreme risk protective order.

240 (4) If the court denies the respondent's petition, the respondent may not petition the
241 court to vacate the order again, unless the order is extended in accordance with Subsection (5).

242 (5) An extreme risk protective order shall expire not later than one year from the date
243 the extreme risk protective order was issued by the court unless the petitioner, within 60 days
244 of the expiration date of the extreme risk protective order, petitions the court to extend it.

245 (6) If the court extends the order, the court shall set a date on which the extended order
246 shall expire. The respondent may petition the court to vacate the order not less than 180 days
247 after extension of the order.

248 (7) Upon the vacation or expiration of an extreme risk protective order, the individual
249 may reclaim any firearms surrendered to or seized by a law enforcement agency, unless the
250 individual is no longer eligible to own or possess a firearm in accordance with Section
251 76-10-503.

252 Section 8. Section **78B-7-507** is enacted to read:

253 **78B-7-507. Entry of order into national crime information center.**

254 (1) Upon the issuance of an extreme risk protective order, the court shall enter the
255 respondent's information into the national crime information center system.

256 (2) Upon the expiration of the order, the court shall remove the respondent from the
257 national crime information center system.

258 Section 9. Section **78B-7-508** is enacted to read:

259 **78B-7-508. Law enforcement agency responsibilities -- Federal firearms licensee**
260 **responsibilities -- Return of firearms.**

261 (1) If a respondent surrenders firearms and ammunition to a local law enforcement
262 agency, the local law enforcement agency shall provide to the respondent:

263 (a) a receipt for all firearms and ammunition received that includes the following
264 itemization:

265 (i) the case number and issue date of the ex parte extreme risk protective order;

266 (ii) type and description of each firearm; and

267 (iii) the number and type of rounds of ammunition received; and

268 (b) an information sheet explaining:

269 (i) the respondent's options for the storage or disposal of the firearms and ammunition;

270 and

271 (ii) when and how the respondent may reclaim the firearms from the local law
272 enforcement agency upon the expiration of the extreme risk protective order.

273 (2) Upon the expiration of an extreme risk protective order, the local law enforcement
274 agency storing the respondent's firearms and ammunition shall return the firearms and

275 ammunition to the respondent within 72 hours of the respondent's request, excluding Saturdays,

276 Sundays, and legal holidays. During the 72-hour period, the local law enforcement agency shall
277 verify that the respondent is not prohibited from owning or possessing a firearm under Section
278 76-10-503.

279 (3) If the respondent is prohibited from owning or possessing a firearm or ammunition
280 under Section 76-10-503, the local law enforcement agency shall provide the respondent with a
281 list of choices that include:

282 (a) retention and disposal of the firearm and ammunition by the local law enforcement
283 agency in accordance with Section 24-3-103.5;

284 (b) transfer of the firearm and ammunition to another member of the respondent's
285 family with the understanding that the respondent may not have access to the firearm or
286 ammunition; or

287 (c) transfer of the firearm and ammunition to a federal firearms licensee dealer to be
288 sold on the respondent's behalf.

289 (4) If the respondent chooses to surrender firearms and ammunition to a federal
290 firearms licensee for storage or disposal, the federal firearms licensee shall provide a receipt to
291 the respondent for all firearms and ammunition surrendered that includes:

292 (a) the date on which the firearms and ammunition were surrendered;

293 (b) an itemized listing of all firearms and ammunition surrendered;

294 (c) the case number and issue date of the ex parte extreme risk protective order;

295 (d) a statement indicating whether the surrendered items are to be stored or disposed

296 of;

297 (e) a statement that if the respondent does not reclaim any firearm or ammunition, it
298 will be provided to a local law enforcement agency for disposal; and

299 (f) the respondent's signature acknowledging the accuracy of the receipt and that the
300 respondent received the original and a copy of the receipt.

301 (5) The respondent shall file the original receipt with the court within one business day
302 of surrendering all firearms and ammunition to a federal firearms licensee.

303 (6) Upon vacation or expiration of an extreme risk protective order, the federal
304 firearms licensee shall perform a background check before returning any firearms or
305 ammunition to the respondent.

306 (7) If the respondent is prohibited from possessing a firearm or ammunition, the federal

307 firearms licensee shall provide the respondent with the same choices for disposal as in
308 Subsection (3).

309 (8) If a respondent does not reclaim or attempt to reclaim a surrendered firearm or
310 ammunition under this section within 36 months of the extreme risk protective order's original
311 expiration date the local law enforcement agency shall dispose of the firearm and ammunition
312 in accordance with Section [24-3-103.5](#).

313 Section 10. Section **78B-7-509** is enacted to read:

314 **78B-7-509. Development and distribution of training materials.**

315 (1) The director of the Peace Officer Standards and Training Division shall develop
316 and distribute training materials to aid law enforcement officers in the execution of the
317 requirements of this part.

318 (2) Materials on diffusion and de-escalation shall be included in all training materials.

319 Section 11. Section **78B-7-510** is enacted to read:

320 **78B-7-510. Penalties.**

321 (1) A petitioner who knowingly provides false information for the purpose of obtaining
322 an ex parte extreme risk protective order or extreme risk protective order is guilty of a third
323 degree felony.

324 (2) Any person who provides a firearm or ammunition to a respondent knowing that
325 the respondent is subject to an extreme risk protective order is guilty of a third degree felony.

326 (3) A respondent who possesses a firearm or ammunition while subject to an extreme
327 risk protective order is guilty of a third degree felony.

328 Section 12. Section **78B-7-511** is enacted to read:

329 **78B-7-511. Report.**

330 (1) Not later than December 31 of each year, the Administrative Office of the Courts
331 shall provide a written report on extreme risk protective orders to the Legislature.

332 (2) The report shall be provided to the chairs of the following committees:

333 (a) Law Enforcement and Criminal Justice Interim Committee;

334 (b) House Law Enforcement and Criminal Justice Standing Committee; and

335 (c) Senate Judiciary, Law Enforcement, and Criminal Justice Standing Committee.

336 (3) The report shall contain:

337 (a) the total number of ex parte extreme risk protective orders filed in that year;

338 (b) whether the petitioner was a law enforcement officer, family member, or a person
339 who resided with the respondent;

340 (c) how many ex parte extreme risk protective orders were granted and became
341 extreme risk protective orders;

342 (d) the number of ex parte extreme risk protective orders vacated;

343 (e) the number of ex parte extreme risk protective orders the court considered
344 fraudulent;

345 (f) the duration of each extreme risk protective order;

346 (g) the reasons given on each petition for an ex parte extreme risk protective order; and

347 (h) the race, ethnicity, and gender of the petitioner and respondent.