

Representative Stephen G. Handy proposes the following substitute bill:

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 report the respondent's information to the Bureau of Criminal



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

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides a special effective date.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **53-10-208.1**, as last amended by Laws of Utah 2011, Chapter 366

41 ENACTS:

42 **78B-7-501**, Utah Code Annotated 1953

43 **78B-7-502**, Utah Code Annotated 1953

44 **78B-7-503**, Utah Code Annotated 1953

45 **78B-7-504**, Utah Code Annotated 1953

46 **78B-7-505**, Utah Code Annotated 1953

47 **78B-7-506**, Utah Code Annotated 1953

48 **78B-7-507**, Utah Code Annotated 1953

49 **78B-7-508**, Utah Code Annotated 1953

50 **78B-7-509**, Utah Code Annotated 1953

51 **78B-7-510**, Utah Code Annotated 1953

52 **78B-7-511**, Utah Code Annotated 1953

53

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

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

56 **53-10-208.1. Magistrates and court clerks to supply information.**

57 Every magistrate or clerk of a court responsible for court records in this state shall,
 58 within 30 days of the disposition and on forms and in the manner provided by the division,
 59 furnish the division with information pertaining to:

60 (1) all dispositions of criminal matters, including:

61 (a) guilty pleas;

62 (b) convictions;

63 (c) dismissals;

64 (d) acquittals;

65 (e) pleas held in abeyance;

66 (f) judgments of not guilty by reason of insanity for a violation of:

67 (i) a felony offense;

68 (ii) Title 76, Chapter 5, Offenses Against the Person; or

69 (iii) Title 76, Chapter 10, Part 5, Weapons;

70 (g) judgments of guilty with a mental illness;

71 (h) finding of mental incompetence to stand trial for a violation of:

72 (i) a felony offense;

73 (ii) Title 76, Chapter 5, Offenses Against the Person; or

74 (iii) Title 76, Chapter 10, Part 5, Weapons; or

75 (i) probations granted; and

76 (2) orders of civil commitment under the terms of Section [62A-15-631](#);

77 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or

78 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section [78B-6-303](#),

79 within one day of the action and in a manner provided by the division; and

80 (4) protective orders issued after notice and hearing, pursuant to:

81 (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; ~~[or]~~

82 (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act~~[-];~~ or

83 (c) Title 78B, Chapter 7, Part 5, Extreme Risk Protective Order Act.

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

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

86 **78B-7-501. Title.**

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

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

89 **78B-7-502. Definitions.**

90 As used in this part:

91 (1) "Bureau" means the Bureau of Criminal Identification created in Section

92 [53-10-201.](#)

93 (2) "Dangerous" means a respondent:

94 (a) presents an imminent risk of serious personal injury to himself, herself, or to others;

95 or

96 (b) may present a risk of serious personal injury to him or herself or to another
97 individual in the near future and is the subject of relevant personal knowledge that would give
98 rise to a reasonable belief that the respondent has a propensity for violent conduct.

99 (3) "Ex parte extreme risk protective order" or "ex parte order" means an order by a
100 district court in response to a filing by a petitioner that the respondent has not had the
101 opportunity to respond to, and requires the respondent to surrender his or her firearms and
102 ammunition to the law enforcement officer who serves the order pending a hearing.

103 (4) "Extreme risk protective order" means an order that is in place for at least 180 days
104 that prohibits the respondent from purchasing or possessing firearms, and is issued by a district
105 court after a hearing where the respondent had an opportunity to be heard and a finding was
106 made that the respondent is dangerous.

107 (5) "Family member" means a parent, stepparent, sibling, step-sibling, spouse, child, or
108 stepchild of the respondent.

109 (6) "Federal Firearm Licensee" means a person who is licensed under 18 U.S.C. Sec.
110 923.

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

112 (8) "Law Enforcement Officer" means only those officers described in Subsections
113 [53-13-103\(1\)\(b\)\(i\) and \(ii\).](#)

114 (9) "Recent" means within the previous 12 months.

115 Section 4. Section **78B-7-503** is enacted to read:

116 **78B-7-503. Extreme risk protective order -- Affidavit -- Filing -- Court to develop,**
117 **adopt, and provide forms.**

118 (1) Any family member of the respondent, individual who has resided with the

119 respondent within the previous six months, or a law enforcement officer may seek an extreme
120 risk protective order from the district court in the county where the respondent resides
121 restraining the respondent from possessing any firearms.

122 (2) The request shall consist of a written affidavit on a form provided by the court in
123 the county where the respondent resides. The Administrative Office of the Courts shall develop
124 and adopt uniform forms in accordance with the provisions of this chapter to be distributed to
125 all courts within the state.

126 (a) The offices of the court clerk shall provide nonlegal assistance to persons filing
127 under this part.

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

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

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

135 (a) filing a petition under this part;

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

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

139 (5) A petitioner may petition the court for an ex parte extreme risk protective order. In
140 determining if a respondent is dangerous, the court shall consider whether:

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

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

145 (c) the respondent is dangerous;

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

148 (e) there has been a recent pattern of violent acts or threats by the respondent and other
149 less restrictive alternatives either have been tried and found to be ineffective or are inadequate

150 or inappropriate for the circumstances of the respondent.

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

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

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

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

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

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

162 (f) evidence of the recent acquisition of firearms or ammunition.

163 (7) The court shall make a concerted effort to set hearings in such a way that the
164 respondent is able to comply with the requirements of this chapter.

165 (8) Evidence that the respondent suffers from a mental illness may not be the sole
166 criteria for the issuance of an ex parte extreme risk protective order, however at any time
167 during the process and any subsequent hearings, the court may consider whether the respondent
168 suffers from a mental illness and, at its discretion, recommend an evaluation by a designated
169 examiner in accordance with Section [62A-15-631](#).

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

171 **78B-7-504. Ex parte order -- Court responsibilities -- Surrender of firearms --**
172 **Hearing -- Expiration.**

173 (1) If the court determines by a preponderance of the evidence that the respondent is
174 dangerous, the court shall:

175 (a) issue an ex parte extreme risk protective order that includes:

176 (i) a statement of the grounds asserted for the order;

177 (ii) the date and time the order was issued;

178 (iii) the date and time the order expires;

179 (iv) the address of the court in which any responsive pleading should be filed;

180 (v) the date and time of the scheduled hearing;

181 (vi) a description of the requirements for surrender of firearms under Section
182 78B-7-504; and
183 (vii) the following statement:
184 "TO THE SUBJECT OF THIS PROTECTION ORDER: THIS ORDER IS VALID
185 UNTIL THE DATE AND TIME NOTED ABOVE. YOU ARE REQUIRED TO
186 SURRENDER ALL FIREARMS IN YOUR CUSTODY, CONTROL, OR POSSESSION.
187 YOU MAY NOT HAVE IN YOUR CUSTODY OR CONTROL, PURCHASE, POSSESS,
188 RECEIVE, OR ATTEMPT TO PURCHASE OR RECEIVE, A FIREARM WHILE THIS
189 ORDER IS IN EFFECT. YOU MUST SURRENDER TO (INSERT NAME OF LOCAL LAW
190 ENFORCEMENT AGENCY) OR, WITHIN 24 HOURS, TO A FEDERALLY LICENSED
191 FIREARMS DEALER ALL FIREARMS IN YOUR CUSTODY OR UNDER YOUR
192 CONTROL. A HEARING WILL BE HELD ON THE DATE AND AT THE TIME NOTED
193 ABOVE TO DETERMINE IF AN EXTREME RISK PROTECTIVE ORDER SHOULD BE
194 ISSUED. FAILURE TO APPEAR AT THAT HEARING MAY RESULT IN THE COURT
195 ISSUING AN ORDER AGAINST YOU THAT IS VALID FOR A MINIMUM OF SIX
196 MONTHS. YOU MAY SEEK THE ADVICE OF AN ATTORNEY AS TO ANY MATTER
197 CONNECTED WITH THIS ORDER."; and
198 (b) set a hearing date within 14 days of the date of the ex parte order.
199 (2) Upon the issuance of the ex parte extreme risk protective order in Subsection (1),
200 the petitioner shall deliver a copy of the ex parte order to the law enforcement agency with
201 jurisdiction over the area in which the respondent resides. The local law enforcement agency
202 shall serve a copy of the ex parte order upon the respondent.
203 (3) The ex parte extreme risk protective order shall order the respondent to surrender
204 all firearms and ammunition to the law enforcement officer serving the order at the time of
205 service or to a federal firearms licensee within 24 hours.
206 (4) The law enforcement officer shall provide the respondent with:
207 (a) a receipt listing all firearms and ammunition received from the respondent; and
208 (b) an information sheet containing:
209 (i) the issuance and expiration dates of the ex parte extreme risk protective order;
210 (ii) notice of the date, time, and court in which the hearing on the order will be held;
211 (iii) a statement that it is a third degree felony to refuse to surrender all firearms and

212 ammunition to the law enforcement officer serving the order;
213 (iv) a statement that it is a third degree felony to possess, purchase, or receive a firearm
214 or ammunition while the order is in effect;
215 (v) a statement that failure to appear at the hearing may result in the court making the
216 ex parte order a permanent extreme risk protective order which would be in effect for up to a
217 year; and
218 (vi) the process for reclaiming the respondent's firearms and ammunition.
219 (5) The law enforcement officer shall file the return of service and a copy of the receipt
220 for any firearms received with the court within 48 hours, not including Saturdays, Sundays, and
221 legal holidays.
222 (6) (a) At the hearing the court shall determine by clear and convincing evidence
223 whether the respondent is dangerous and:
224 (i) issue an extreme risk protective order for not less than 180 days;
225 (ii) extend the ex parte extreme risk protective order up to 20 days and set another
226 hearing; or
227 (iii) if the court determines that the respondent is not dangerous, vacate the ex parte
228 extreme risk protective order.
229 (b) If the court vacates the ex parte order under Subsection (6)(a)(iii), the law
230 enforcement agency shall return the respondent's firearms and ammunition in accordance with
231 Subsection [78B-7-508\(2\)](#).
232 (c) If the extension in Subsection (6)(a)(ii) is because the respondent was not present,
233 and the respondent fails to show for the second hearing, the court shall issue an extreme risk
234 protective order with an expiration date of 180 days from the date of issuance.
235 (7) The extreme risk protective order shall include:
236 (a) a statement of the grounds supporting the issuance of the order;
237 (b) the date and time the order was issued;
238 (c) the date and time the order expires;
239 (d) the address of the court in which any responsive pleading should be filed;
240 (e) a description of the requirements for relinquishment of firearms under section
241 [78B-7-504](#) of this part; and
242 (f) the following statement:

243 "TO THE SUBJECT OF THIS PROTECTION ORDER: THIS ORDER WILL LAST
244 UNTIL THE DATE AND TIME NOTED ABOVE. IF YOU HAVE NOT DONE SO
245 ALREADY, YOU MUST SURRENDER TO THE (NAME OF LOCAL LAW
246 ENFORCEMENT AGENCY) OR A FEDERALLY LICENSED FIREARMS DEALER ALL
247 FIREARMS IN YOUR CUSTODY, CONTROL, OR POSSESSION IMMEDIATELY. YOU
248 MAY NOT HAVE IN YOUR CUSTODY OR CONTROL, PURCHASE, POSSESS,
249 RECEIVE, OR ATTEMPT TO PURCHASE OR RECEIVE, A FIREARM WHILE THIS
250 ORDER IS IN EFFECT. YOU HAVE THE RIGHT TO REQUEST ONE HEARING TO
251 TERMINATE THIS ORDER DURING THE TIME PERIOD THAT THIS ORDER IS IN
252 EFFECT, STARTING FROM THE DATE OF THIS ORDER AND CONTINUING
253 THROUGH ANY RENEWALS. YOU MAY SEEK THE ADVICE OF AN ATTORNEY AS
254 TO ANY MATTER CONNECTED WITH THIS ORDER."

255 (8) (a) If a law enforcement officer has probable cause to believe, based on the officer's
256 experience and training, that removing firearms and ammunition from the respondent at the
257 time the law enforcement officer is serving the ex parte order would increase the risk of
258 substantial danger to the respondent, law enforcement officers, or others, the law enforcement
259 officer may exercise the discretion to only serve the ex parte extreme risk protective order, as
260 permitted by policies and procedures established by the officer's law enforcement agency and
261 any applicable federal or state statute.

262 (b) If a law enforcement officer exercises discretion under this Subsection (8) and only
263 serves the ex parte extreme risk protective order, the law enforcement officer shall document in
264 the return of service the details and circumstances that led to the law enforcement officer's
265 decision.

266 (c) If a law enforcement officer exercises discretion under this Subsection (8), the law
267 enforcement officer and the law enforcement officer's employing agency is not liable in a civil
268 action for subsequent actions taken by the respondent or actions by law enforcement officers in
269 the course of reasonable efforts to serve the ex parte order or to remove firearms and
270 ammunition from the respondent.

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

272 **78B-7-505. Search warrant.**

273 (1) A court that issued an ex parte extreme risk protective order may issue a search

274 warrant for any firearms or ammunition possessed, or within the custody or control of the
275 respondent if:

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

278 (b) the law enforcement officer exercised discretion under Subsection [78B-7-504\(8\)](#)
279 and did not receive any firearms or ammunition.

280 (2) The search warrant shall:

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

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

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

284 **78B-7-506. Petition to vacate -- Expiration.**

285 (1) A respondent subject to an extreme risk protective order may petition the court to
286 vacate the extreme risk protective order not less than 90 days after issuance. Upon receipt of a
287 petition to vacate an extreme risk protective order, the court shall set a time and date for a
288 hearing and notify the original petitioner.

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

291 (3) If the court finds by a preponderance of the evidence that the respondent is no
292 longer dangerous, the court shall vacate the extreme risk protective order.

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

295 (5) An extreme risk protective order shall expire not less than 180 days from the date
296 the extreme risk protective order was issued by the court unless the petitioner, within 60 days
297 of the expiration date of the extreme risk protective order, petitions the court to extend it.

298 (6) If the court extends the order, the court shall set a date on which the extended order
299 shall expire. The respondent may petition the court to vacate the order not less than 90 days
300 before the order is due to expire.

301 (7) Upon the vacation or expiration of an extreme risk protective order, the respondent
302 may reclaim any firearms surrendered to or seized by a law enforcement agency, unless the
303 respondent is no longer eligible to own or possess a firearm in accordance with Section
304 [76-10-503](#).

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

306 **78B-7-507. Court to provide information to the bureau.**

307 Upon the issuance or expiration of an extreme risk protective order, the court shall
308 provide the respondent's information to the bureau.

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

310 **78B-7-508. Law enforcement agency responsibilities -- Federal firearms licensee**
311 **responsibilities -- Return of firearms.**

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

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

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

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

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

319 (b) an information sheet explaining:

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

321 and

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

324 (2) Upon the expiration of an extreme risk protective order, the local law enforcement
325 agency storing the respondent's firearms and ammunition shall return the firearms and
326 ammunition to the respondent within 72 hours of the respondent's request, excluding Saturdays,
327 Sundays, and legal holidays. During the 72-hour period, the local law enforcement agency shall
328 verify that the respondent is not prohibited from owning or possessing a firearm under Section
329 76-10-503.

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

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

335 (b) transfer of the firearm and ammunition to another member of the respondent's

336 family with the understanding that the respondent may not have access to the firearm or
337 ammunition; or

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

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

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

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

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

346 (d) a statement indicating whether the surrendered items are to be stored or disposed
347 of;

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

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

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

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

357 (7) If the respondent is prohibited from possessing a firearm or ammunition, the federal
358 firearms licensee shall provide the respondent with the same choices for disposal as in
359 Subsection (3).

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

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

365 **78B-7-509. Development and distribution of training materials.**

366 (1) The director of the Peace Officer Standards and Training Division shall develop

367 and distribute training materials to aid law enforcement officers in the execution of the
368 requirements of this part.

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

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

371 **78B-7-510. Penalties.**

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

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

377 (3) A respondent who possesses a firearm or ammunition while subject to an ex parte
378 extreme risk protective order or an extreme risk protective order is guilty of a third degree
379 felony.

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

381 **78B-7-511. Report.**

382 (1) Not later than December 31, 2020, and each year thereafter, the Administrative
383 Office of the Courts shall provide a written report on extreme risk protective orders to the
384 Legislature.

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

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

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

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

389 (3) The report shall contain:

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

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

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

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

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

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

399 (g) the reasons given on each petition for an ex parte extreme risk protective order.

400 Section 13. **Effective date.**

401 This bill takes effect on July 1, 2019.