

HB0209S01 compared with HB0209

~~{deleted text}~~ shows text that was in HB0209 but was deleted in HB0209S01.

Inserted text shows text that was not in HB0209 but was inserted into HB0209S01.

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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;

HB0209S01 compared with HB0209

- 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}~~ report the respondent's information ~~{into}~~ to the ~~{national crime information center system}~~ Bureau of Criminal Identification upon issuance, and to remove the information upon expiration;
- ▶ allows the respondent to surrender firearms and ammunition to a law enforcement agency or a federal firearms licensee;
- ▶ provides for disposal if the firearms and ammunition are not reclaimed upon expiration;
- ▶ requires the director of POST to create and implement training and materials; and
- ▶ requires the courts to create and distribute an annual report on extreme risk protective orders.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

78B-7-501, Utah Code Annotated 1953

78B-7-502, Utah Code Annotated 1953

78B-7-503, Utah Code Annotated 1953

78B-7-504, Utah Code Annotated 1953

78B-7-505, Utah Code Annotated 1953

78B-7-506, Utah Code Annotated 1953

78B-7-507, Utah Code Annotated 1953

78B-7-508, Utah Code Annotated 1953

HB0209S01 compared with HB0209

78B-7-509, Utah Code Annotated 1953

78B-7-510, Utah Code Annotated 1953

78B-7-511, Utah Code Annotated 1953

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

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

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

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

- (1) all dispositions of criminal matters, including:
 - (a) guilty pleas;
 - (b) convictions;
 - (c) dismissals;
 - (d) acquittals;
 - (e) pleas held in abeyance;
 - (f) judgments of not guilty by reason of insanity for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons;
 - (g) judgments of guilty with a mental illness;
 - (h) finding of mental incompetence to stand trial for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons; or
 - (i) probations granted; and
- (2) orders of civil commitment under the terms of Section 62A-15-631;
- (3) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and
- (4) protective orders issued after notice and hearing, pursuant to:

HB0209S01 compared with HB0209

- (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; ~~[or]~~
- (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act~~[-]; or~~
- (c) Title 78B, Chapter 7, Part 5, Extreme Risk Protective Order Act.

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

Part 5. Extreme Risk Protective Order Act

78B-7-501. Title.

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

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

78B-7-502. Definitions.

As used in this part:

(1) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201.

~~(1)~~(2) "Dangerous" means a respondent:

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

or

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

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

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

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

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

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

HB0209S01 compared with HB0209

~~(6)~~(8) "Law Enforcement Officer" means only those officers described in Subsections 53-13-103(1)(b)(i) and (ii).

~~(7)~~(9) "Recent" means within the previous 12 months.

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

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

(1) Any family member of the respondent, individual who has resided with the respondent within the previous six months, or a law enforcement officer may seek an extreme risk protective order from the district court in the county where the respondent resides restraining the respondent from possessing any firearms.

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

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

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

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

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

(a) filing a petition under this part;

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

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

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

(a) there has been a recent threat of violence, or act of violence, by the respondent

HB0209S01 compared with HB0209

toward himself, herself, or others, including the transmission of threats through electronic or digital means;

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

(c) the respondent is dangerous;

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

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

(6) In determining whether grounds for an extreme risk protective order exist, the court may also consider 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) an act or threat of violence against himself or herself;

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

(e) 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

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

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

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

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

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

HB0209S01 compared with HB0209

(1) If the court determines by a preponderance of the evidence that the respondent ~~poses a serious risk of harm to himself, herself, or others~~ is dangerous, the court shall:

(a) issue an ex parte extreme risk protective order that ~~prohibits the respondent from 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 issuance~~ includes:

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

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

(iii) the date and time the order expires;

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

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

(vi) a description of the requirements for surrender of firearms under Section 78B-7-504; and

(vii) the following statement:

"TO THE SUBJECT OF THIS PROTECTION ORDER: THIS ORDER IS VALID UNTIL THE DATE AND TIME NOTED ABOVE. YOU ARE REQUIRED TO SURRENDER ALL FIREARMS IN YOUR CUSTODY, CONTROL, OR POSSESSION. YOU MAY NOT HAVE IN YOUR CUSTODY OR CONTROL, PURCHASE, POSSESS, RECEIVE, OR ATTEMPT TO PURCHASE OR RECEIVE, A FIREARM WHILE THIS ORDER IS IN EFFECT. YOU MUST SURRENDER TO (INSERT NAME OF LOCAL LAW ENFORCEMENT AGENCY) OR, WITHIN 24 HOURS, TO A FEDERALLY LICENSED FIREARMS DEALER ALL FIREARMS IN YOUR CUSTODY OR UNDER YOUR CONTROL. A HEARING WILL BE HELD ON THE DATE AND AT THE TIME NOTED ABOVE TO DETERMINE IF AN EXTREME RISK PROTECTIVE ORDER SHOULD BE ISSUED. FAILURE TO APPEAR AT THAT HEARING MAY RESULT IN THE COURT ISSUING AN ORDER AGAINST YOU THAT IS VALID FOR A MINIMUM OF SIX MONTHS. YOU MAY SEEK THE ADVICE OF AN ATTORNEY AS TO ANY MATTER CONNECTED WITH THIS ORDER."; and

(b) set a hearing date within 14 days of the date of the ex parte order.

(2) Upon the issuance of the ex parte extreme risk protective order in Subsection (1), the petitioner shall deliver a copy of the ex parte order to the law enforcement agency with

HB0209S01 compared with HB0209

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.

(3) The ex parte extreme risk protective order shall order the respondent to surrender all firearms and ammunition to the law enforcement officer serving the order at the time of service **or to a federal firearms licensee within 24 hours.**

(4) 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 containing:

(i) the issuance and expiration dates of the ex parte extreme risk protective order;

(ii) notice of the date, time, and court in which the hearing on the order will be held;

(iii) a statement that it is a third degree felony to refuse to surrender all firearms and ammunition to the law enforcement officer serving the order;

(iv) a statement that it is a third degree felony to possess, purchase, or receive a firearm or ammunition while the order is in effect;

(v) a statement that failure to appear at the hearing may result in the court making the ex parte order a permanent extreme risk protective order which would be in effect for up to a year; and

(vi) the process for reclaiming the respondent's firearms and ammunition.

(5) The law enforcement officer shall file the return of service and a copy of the receipt for any firearms received with the court within 48 hours, not including Saturdays, Sundays, and legal holidays.

(6) (a) At the hearing the court shall determine by clear and convincing evidence whether the respondent is dangerous and:

(i) issue an extreme risk protective order **for not less than 180 days;**

(ii) extend the ex parte extreme risk protective order up to 20 days and set another hearing; or

(iii) if the court determines that the respondent is not dangerous, vacate the ex parte extreme risk protective order.

(b) If the court vacates the ex parte order under Subsection (6)(a)(iii), the law enforcement agency shall return the respondent's firearms and ammunition in accordance with Subsection 78B-7-508(2).

HB0209S01 compared with HB0209

(~~f~~b)c) If the extension in Subsection (6)(a)(ii) is because the respondent was not present, and the respondent fails to show for the second hearing, the court shall issue an extreme risk protective order with an expiration date of ~~one year~~ 180 days from the date of issuance.

(7) The extreme risk protective order shall include:

(a) a statement of the grounds supporting the issuance of the order;

(b) the date and time the order was issued;

(c) the date and time the order expires;

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

(e) a description of the requirements for relinquishment of firearms under section 78B-7-504 of this part; and

(f) the following statement:

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

(~~f~~7)8) (a) If a law enforcement officer has probable cause to believe, based on the officer's experience and ~~de-escalation~~ training, that removing firearms and ammunition from the respondent at the time the law enforcement officer is serving the ex parte order would increase the risk of substantial danger to the respondent, law enforcement officers, or others, the law enforcement officer may exercise the discretion to only serve the ex parte extreme risk protective order, as permitted by policies and procedures established by the officer's law enforcement agency and any applicable federal or state statute.

HB0209S01 compared with HB0209

(b) If a law enforcement officer exercises discretion under ~~this~~ Subsection (~~(7)(a)~~8) and only serves the ex parte extreme risk protective order, the law enforcement officer shall document in the return of service the details and circumstances that led to the law enforcement officer's decision.

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

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

78B-7-505. Search warrant.

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

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

(b) the law enforcement officer exercised discretion under Subsection 78B-7-504(~~(7)~~8) and did not receive any firearms or ammunition.

(2) The search warrant shall:

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

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

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

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

(1) A respondent subject to an extreme risk protective order may petition the court to vacate the extreme risk protective order not less than ~~(180)~~90 days after issuance. Upon receipt of a petition to vacate an extreme risk protective order, the court shall set a time and date for a hearing and notify the original petitioner.

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

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

HB0209S01 compared with HB0209

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

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

(6) If the court extends the order, the court shall set a date on which the extended order shall expire. The respondent may petition the court to vacate the order not less than ~~180~~ 90 days ~~after extension of~~ before the order is due to expire.

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

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

78B-7-507. ~~{ Entry of order into national crime}~~ **Court to provide** information ~~{center}~~ **to the bureau.**

~~{(1)}~~ Upon the issuance or expiration of an extreme risk protective order, the court shall ~~{enter}~~ provide the respondent's information ~~{into the national crime information center system}~~.

~~Upon the expiration of the order, the court shall remove the respondent from the national crime information center system}~~ **to the bureau.**

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

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

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

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

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

(ii) type and description of each firearm; and

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

HB0209S01 compared with HB0209

(b) an information sheet explaining:

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

and

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

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

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

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

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

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

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

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

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

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

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

of;

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

HB0209S01 compared with HB0209

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

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

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

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

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

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

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

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

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

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

78B-7-510. Penalties.

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

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

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

HB0209S01 compared with HB0209

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

78B-7-511. Report.

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

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

(a) Law Enforcement and Criminal Justice Interim Committee;

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

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

(3) The report shall contain:

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

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

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

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

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

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

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

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

~~;~~

Section 13. Effective date.

This bill takes effect on July 1, 2019.