

1 EXTREME RISK PROTECTION ORDER REQUIREMENTS

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Todd Weiler

5 House Sponsor: _____

6
7 LONG TITLE

8 General Description:

9 This bill creates the Extreme Risk Protective Order Act.

10 Highlighted Provisions:

11 This bill:

- 12 ▶ enacts the Extreme Risk Protective Order Act;
- 13 ▶ defines terms;
- 14 ▶ enables a law enforcement officer to ask a court to restrain a person from possessing
- 15 any firearms or ammunition for a specified length of time;
- 16 ▶ requires the courts to develop and adopt uniform forms for all courts;
- 17 ▶ requires the courts to provide expedited hearings for petitions for extreme risk
- 18 protective orders;
- 19 ▶ requires that the court consider whether the respondent:
 - 20 • has made recent threats or acted violently;
 - 21 • violated a recent protective order;
 - 22 • has demonstrated a pattern of violent acts or threats within the past 12 months;
 - 23 • is dangerous; or
 - 24 • has attempted or threatened self-harm;
- 25 ▶ allows a court to issue a search warrant if a respondent refuses to surrender firearms
- 26 and ammunition upon service of an order;
- 27 ▶ requires the courts to report the respondent's information to the Bureau of Criminal



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

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **53-10-208**, as last amended by Laws of Utah 2019, Chapters 33 and 365

43 ENACTS:

44 **78B-7-601**, Utah Code Annotated 1953

45 **78B-7-602**, Utah Code Annotated 1953

46 **78B-7-603**, Utah Code Annotated 1953

47 **78B-7-604**, Utah Code Annotated 1953

48 **78B-7-605**, Utah Code Annotated 1953

49 **78B-7-606**, Utah Code Annotated 1953

50 **78B-7-607**, Utah Code Annotated 1953

51 **78B-7-608**, Utah Code Annotated 1953

52 **78B-7-609**, Utah Code Annotated 1953

53 **78B-7-610**, Utah Code Annotated 1953

54 **78B-7-611**, Utah Code Annotated 1953



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

57 Section 1. Section **53-10-208** is amended to read:

58 **53-10-208. Definition -- Offenses included on statewide warrant system --**

59 **Transportation fee to be included -- Statewide warrant system responsibility -- Quality**
60 **control -- Training -- Technical support -- Transaction costs.**

61 (1) "Statewide warrant system" means the portion of the state court computer system
62 that is accessible by modem from the state mainframe computer and contains:

63 (a) records of criminal warrant information; and

64 (b) after notice and hearing, records of protective orders issued pursuant to:

65 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

66 (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

67 (iii) Title 78B, Chapter 7, Part 4, Dating Violence Protection Act; [~~or~~]

68 (iv) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act[~~;~~]; or

69 (v) Title 78B, Chapter 7, Part 6, Extreme Risk Protective Order Act.

70 (2) (a) The division shall include on the statewide warrant system all warrants issued
71 for felony offenses and class A, B, and C misdemeanor offenses in the state.

72 (b) The division shall include on the statewide warrant system all warrants issued for
73 failure to appear on a traffic citation as ordered by a magistrate under Subsection [77-7-19\(3\)](#).

74 (c) For each warrant, the division shall indicate whether the magistrate ordered under
75 Section [77-7-5](#) and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

76 (3) The division is the agency responsible for the statewide warrant system and shall:

77 (a) ensure quality control of all warrants of arrest or commitment and protective orders
78 contained in the statewide warrant system by conducting regular validation checks with every
79 clerk of a court responsible for entering the information on the system;

80 (b) upon the expiration of the protective orders and in the manner prescribed by the
81 division, purge information regarding protective orders described in Subsection
82 [53-10-208.1\(1\)\(d\)](#) within 30 days of the time after expiration;

83 (c) establish system procedures and provide training to all criminal justice agencies
84 having access to information contained on the state warrant system;

85 (d) provide technical support, program development, and systems maintenance for the
86 operation of the system; and

87 (e) pay data processing and transaction costs for state, county, and city law
88 enforcement agencies and criminal justice agencies having access to information contained on
89 the state warrant system.

90 (4) (a) Any data processing or transaction costs not funded by legislative appropriation
91 shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

92 (b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

93 Section 2. Section **78B-7-601** is enacted to read:

94 **Part 6. Extreme Risk Protective Order Act**

95 **78B-7-601. Title.**

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

97 Section 3. Section **78B-7-602** is enacted to read:

98 **78B-7-602. Definitions.**

99 As used in this part:

100 (1) "Bureau" means the Bureau of Criminal Identification created in Section
101 53-10-201.

102 (2) "Dangerous" means a respondent:

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

104 or

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

108 (3) "Extreme risk protective order" means an order that is in place for one year from
109 the date of issuance that prohibits the respondent from purchasing or possessing firearms, and
110 is issued by a district court after a hearing where the respondent had an opportunity to be heard
111 and a finding was made that the respondent is dangerous.

112 (4) "Family member" means a parent, step-parent, sibling, step-sibling, spouse, child,
113 or stepchild of the respondent.

114 (5) "Federal firearm licensee" means a person who is licensed under 18 U.S.C. Sec.
115 923.

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

117 (7) "Law enforcement officer" means only those officers described in Subsections
118 53-13-103(1)(b)(i) and (ii).

119 (8) "Recent" means within the previous 12 months.

120 Section 4. Section **78B-7-603** is enacted to read:

121 78B-7-603. Extreme risk protective order -- Petition -- Filing -- Court to develop,
122 adopt, and provide forms.

123 (1) Any family member of the respondent or an individual who has resided with the
124 respondent within the previous six months may request that a law enforcement officer may
125 seek an extreme risk protective order from the district court in the county where the respondent
126 resides restraining the respondent from possessing any firearms. The law enforcement officer
127 shall consult with the county or district attorney before filing a petition for an extreme risk
128 protective order.

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

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

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

137 (a) filing a petition under this part;

138 (b) obtaining an extreme risk protective order; or

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

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

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

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

147 (c) the respondent is dangerous;

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

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

152 or inappropriate for the circumstances of the respondent.

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

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

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

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

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

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

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

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

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

172 Section 5. Section **78B-7-604** is enacted to read:

173 **78B-7-604. Summons -- Court responsibilities -- Hearing.**

174 (1) Upon the filing of a petition for an extreme risk protective order, the court shall set
175 a date for an expedited hearing not including Saturdays, Sundays, or legal holidays.

176 (2) The petition and summons shall be accompanied by the following statement:

177 "TO THE SUBJECT OF THIS PETITION: YOU ARE ORDERED TO APPEAR ON
178 THE DATE AND TIME AT THE COURT NOTED ABOVE FOR A HEARING TO
179 DETERMINE IF AN EXTREME RISK PROTECTIVE ORDER SHOULD BE ISSUED
180 AGAINST YOU. FAILURE TO APPEAR AT THAT HEARING MAY RESULT IN THE
181 COURT ISSUING AN ORDER AGAINST YOU THAT IS VALID FOR ONE YEAR. YOU
182 MAY SEEK THE ADVICE OF AN ATTORNEY AS TO ANY MATTER CONNECTED

183 WITH THIS ORDER."

184 (3) The local law enforcement agency shall serve a copy of the order upon the
185 respondent as soon as practicable.

186 (4) At the hearing, the court shall determine by clear and convincing evidence whether
187 the respondent is dangerous and:

188 (a) issue an extreme risk protective order for not less than one year; or

189 (b) if the court determines that the respondent is not dangerous, dismiss the petition.

190 (5) If the respondent was not present, and fails to show for a second hearing, the court
191 shall issue an extreme risk protective order with an expiration date of one year from the date of
192 issuance.

193 (6) The extreme risk protective order shall include:

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

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

196 (c) the date and time the order expires; and

197 (d) the following statement:

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

209 (7) (a) If a law enforcement officer has probable cause to believe, based on the officer's
210 experience and training, that removing firearms and ammunition from the respondent at the
211 time the law enforcement officer is serving an order would increase the risk of substantial
212 danger to the respondent, law enforcement officers, or others, the law enforcement officer may
213 exercise the discretion to only serve the extreme risk protective order, as permitted by policies

214 and procedures established by the officer's law enforcement agency and any applicable federal
215 or state statute.

216 (b) If a law enforcement officer exercises discretion under this Subsection (7) and only
217 serves the extreme risk protective order, the law enforcement officer shall document the details
218 and circumstances that led to the law enforcement officer's decision.

219 (c) If a law enforcement officer exercises discretion under this Subsection (7), the law
220 enforcement officer and the law enforcement officer's employing agency is not liable in a civil
221 action for subsequent actions taken by the respondent or actions by law enforcement officers in
222 the course of reasonable efforts to serve the order or to remove firearms and ammunition from
223 the respondent.

224 Section 6. Section **78B-7-605** is enacted to read:

225 **78B-7-605. Search warrant.**

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

228 (a) the respondent has been lawfully served and provided a hearing and failed to
229 surrender all firearms and ammunition required by the order; or

230 (b) the law enforcement officer exercised discretion under Subsection [78B-7-604\(7\)](#)
231 and did not receive any firearms or ammunition.

232 (2) The search warrant shall:

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

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

235 Section 7. Section **78B-7-606** is enacted to read:

236 **78B-7-606. Petition to vacate -- Expiration.**

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

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

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

245 (4) If the court denies the respondent's petition, the respondent may not petition the
246 court to vacate the order again, unless the order is extended in accordance with Subsection (6).

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

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

253 (7) Upon the vacation or expiration of an extreme risk protective order, the respondent
254 may reclaim any firearms surrendered to or seized by a law enforcement agency, unless the
255 respondent is no longer eligible to own or possess a firearm in accordance with Section
256 [76-10-503](#).

257 Section 8. Section **78B-7-607** is enacted to read:

258 **78B-7-607. Court to provide information to the bureau.**

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

261 Section 9. Section **78B-7-608** is enacted to read:

262 **78B-7-608. Law enforcement agency responsibilities -- Federal firearms licensee**
263 **responsibilities -- Return of firearms.**

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

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

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

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

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

271 (b) an information sheet explaining:

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

273 and

274 (ii) when and how the respondent may reclaim the firearms from the local law

275 enforcement agency upon the expiration of the extreme risk protective order.

276 (2) Upon the expiration of an extreme risk protective order, the local law enforcement
277 agency storing the respondent's firearms and ammunition shall return the firearms and
278 ammunition to the respondent within 72 hours of the respondent's request, excluding Saturdays,
279 Sundays, and legal holidays. During the 72-hour period, the local law enforcement agency shall
280 verify that the respondent is not prohibited from owning or possessing a firearm under Section
281 76-10-503.

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

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

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

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

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

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

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

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

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

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

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

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

306 (6) Upon vacation or expiration of an extreme risk protective order, the federal

307 firearms licensee shall perform a background check before returning any firearms or
308 ammunition to the respondent.

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

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

316 Section 10. Section **78B-7-609** is enacted to read:

317 **78B-7-609. Development and distribution of training materials.**

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

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

322 Section 11. Section **78B-7-610** is enacted to read:

323 **78B-7-610. Penalties.**

324 (1) 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 (2) 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-7-611** is enacted to read:

329 **78B-7-611. Report.**

330 (1) Not later than December 31, 2021, and each year thereafter, the Administrative
331 Office of the Courts shall provide a written report on extreme risk protective orders to the
332 Legislature.

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

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

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

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

337 (3) The report shall contain:

- 338 (a) the total number of extreme risk protective orders filed in that year;
- 339 (b) whether the petitioner was a law enforcement officer, family member, or a person
- 340 who resided with the respondent;
- 341 (c) how many extreme risk protective orders were granted;
- 342 (d) the duration of each extreme risk protective order; and
- 343 (e) the reasons given on each petition for an extreme risk protective order.