

**FIREARMS REMOVAL AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Joel K. Briscoe**

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

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**LONG TITLE**

**General Description:**

This bill creates the Firearms Restraining Order Act.

**Highlighted Provisions:**

This bill:

- ▶ enacts the Firearms Restraining Order Act;
- ▶ defines terms;
- ▶ enables a family member, medical professional, or law enforcement officer 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 Identification upon issuance, and to remove the information upon expiration;



- 28           ▶ requires the respondent to surrender firearms and ammunition to a law enforcement  
29 agency;  
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 firearms restraining  
34 orders.

35 **Money Appropriated in this Bill:**

36           None

37 **Other Special Clauses:**

38           This bill provides a special effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

41           **53-10-208.1**, as last amended by Laws of Utah 2019, Chapters 33 and 365

42 ENACTS:

43           **78B-7-601**, Utah Code Annotated 1953

44           **78B-7-602**, Utah Code Annotated 1953

45           **78B-7-603**, Utah Code Annotated 1953

46           **78B-7-604**, Utah Code Annotated 1953

47           **78B-7-605**, Utah Code Annotated 1953

48           **78B-7-606**, Utah Code Annotated 1953

49           **78B-7-607**, Utah Code Annotated 1953

50           **78B-7-608**, Utah Code Annotated 1953

51           **78B-7-609**, Utah Code Annotated 1953

52           **78B-7-610**, Utah Code Annotated 1953

53           **78B-7-611**, Utah Code Annotated 1953

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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           (1) 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:

(a) all dispositions of criminal matters, including:

(i) guilty pleas;

(ii) convictions;

(iii) dismissals;

(iv) acquittals;

(v) pleas held in abeyance;

(vi) judgments of not guilty by reason of insanity;

(vii) judgments of guilty with a mental illness;

(viii) finding of mental incompetence to stand trial; and

(ix) probations granted;

(b) orders of civil commitment under the terms of Section 62A-15-631;

(c) 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

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

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

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

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

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

(v) Title 78B, Chapter 7, Part 6, Firearms Restraining Order Act.

(2) The court in the county where a determination or finding was made shall transmit a record of the determination or finding to the bureau no later than 48 hours after the determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:

(a) adjudicated as a mental defective; or

(b) involuntarily committed to a mental institution in accordance with Subsection 62A-15-631(16).

(3) The record described in Subsection (2) shall include:

(a) an agency record identifier;

(b) the individual's name, sex, race, and date of birth; and

(c) the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

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

**Part 6. Firearms Restraining Order Act**

**78B-7-601. Title -- Firearms Restraining Order Act.**

This part is known as the "Firearms Restraining Order Act."

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

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

As used in this part:

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

(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.

(3) "Ex parte firearms restraining 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) "Family or household member" means any of the following in relation to the respondent:

(a) spouse;

(b) person with one or more children in common with the respondent;

(c) parent or grandparent;

(d) child;

(e) person who is or has acted as the respondent's legal guardian; or

(f) an adult cohabiting.

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

(6) "Firearms restraining order" means an order that is in place for one year from the date of issuance 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.

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

(8) "Medical professional" means a licensed physician, advanced practice registered nurse, psychologist, or psychiatrist who has treated the respondent.

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

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

**78B-7-603. Firearms restraining order -- Affidavit -- Filing -- Court to develop, adopt, and provide forms.**

(1) A law enforcement officer, family or household member, or medical professional may seek an ex parte firearm restraining order from the district court or family court in the county where the respondent resides restraining the respondent from possessing or purchasing 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 a firearms restraining 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 a firearms restraining order or an ex parte order; or

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

154 (5) A petitioner may petition the court for an ex parte firearms restraining order. In  
155 determining if a respondent is dangerous, the court shall consider whether:

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

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

160 (c) the respondent is dangerous;

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

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

166 (6) In determining whether grounds for a firearms restraining order exist, the court may  
167 also consider other evidence of an increased risk for violence, including evidence of any of the  
168 following:

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

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

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

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

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

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

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

180 (8) Evidence that the respondent suffers from a mental illness may not be the sole  
181 criteria for the issuance of an ex parte firearms restraining order, however at any time during  
182 the process and any subsequent hearings, the court may consider whether the respondent

suffers from a mental illness and, at the court's discretion, recommend an evaluation by a designated examiner in accordance with Section [62A-15-631](#).

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

**78B-7-604. Ex parte order -- Court responsibilities -- Surrender of firearms -- Hearing -- Expiration.**

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

(a) issue an ex parte firearms restraining order that 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; and

(vi) a description of the requirements for surrender of firearms under Section [78B-7-604](#); 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 firearms restraining order in Subsection (1), the petitioner shall deliver a copy of the ex parte order to the law enforcement agency with jurisdiction over the area in which the respondent resides. The local law enforcement agency shall serve a copy of the ex parte order upon the respondent.

(3) The ex parte firearms restraining 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 firearms restraining 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 firearms restraining 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 a preponderance of the evidence whether the respondent is dangerous and:

(i) issue a firearms restraining order for not less than one year;

(ii) extend the ex parte firearms restraining order up to 21 days and set another hearing;

or

(iii) if the court determines that the respondent is not dangerous, vacate the ex parte firearms restraining 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-7-608(2).

(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 a firearms restraining order with an expiration date of one year from the date of issuance.

(7) The firearms restraining 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-7-604 of this part; and

(f) the following statement: "TO THE SUBJECT OF THIS FIREARM  
RESTRAINING ORDER: THIS ORDER WILL LAST UNTIL THE DATE AND TIME  
NOTED ABOVE. IF YOU HAVE NOT DONE SO ALREADY, YOU MUST SURRENDER



245 TO THE (NAME OF LOCAL LAW ENFORCEMENT AGENCY) ALL FIREARMS IN  
246 YOUR CUSTODY, CONTROL, OR POSSESSION IMMEDIATELY. YOU MAY NOT  
247 HAVE IN YOUR CUSTODY OR CONTROL, PURCHASE, POSSESS, RECEIVE, OR  
248 ATTEMPT TO PURCHASE OR RECEIVE, A FIREARM WHILE THIS ORDER IS IN  
249 EFFECT. YOU HAVE THE RIGHT TO REQUEST ONE HEARING TO TERMINATE THIS  
250 ORDER DURING THE TIME PERIOD THAT THIS ORDER IS IN EFFECT, STARTING  
251 FROM THE DATE OF THIS ORDER AND CONTINUING THROUGH ANY RENEWALS.  
252 YOU MAY SEEK THE ADVICE OF AN ATTORNEY AS TO ANY MATTER  
253 CONNECTED WITH THIS ORDER.".

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

255 **78B-7-605. Search warrant.**

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

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

260 (b) the law enforcement officer exercised discretion under Subsection [78B-7-604\(8\)](#)  
261 and did not receive any firearms or ammunition.

262 (2) The search warrant shall:

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

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

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

266 **78B-7-606. Petition to vacate -- Expiration.**

267 (1) A respondent subject to a firearms restraining order may petition the court to vacate  
268 the firearm restraining order not less than 180 days after issuance. Upon receipt of a petition to  
269 vacate a firearms restraining order, the court shall set a time and date for a hearing and notify  
270 the original petitioner.

271 (2) In order to vacate a firearms restraining order, the respondent shall prove by a  
272 preponderance of the evidence that the respondent is no longer dangerous.

273 (3) If the court finds by a preponderance of the evidence that the respondent is no  
274 longer dangerous, the court shall vacate the firearms restraining order.

275 (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) A firearms restraining order shall expire not less than one year from the date the firearms restraining order was issued by the court unless the petitioner, within 60 days of the expiration date of the firearms restraining order, petitions the court to extend the order.

(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 days before the order is due to expire.

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

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

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

Upon the issuance or expiration of a firearms restraining order, the court shall provide the respondent's information to the bureau.

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

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

(1) When 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 firearms restraining order;

(ii) type and description of each firearm; and

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

(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 firearms restraining order.

(2) Upon the expiration of a firearm restraining 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 a respondent does not reclaim or attempt to reclaim a surrendered firearm or ammunition under this section within 36 months of the firearms restraining 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-7-609 is enacted to read:

**78B-7-609. 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 de-escalation shall be included in all training materials.

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

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

(1) A petitioner who knowingly provides false information for the purpose of obtaining an ex parte firearms restraining order or firearms restraining order is guilty of a misdemeanor.

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

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

Section 12. Section **78B-7-611** is enacted to read:

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

(1) Not later than December 31, 2021, and each year thereafter, the Administrative Office of the Courts shall provide a written report on firearms restraining 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 firearms restraining 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 firearms restraining orders were granted and became firearms restraining orders;

(d) the number of ex parte firearms restraining orders vacated;

(e) the number of ex parte firearms restraining orders the court considered fraudulent;

(f) the duration of each firearms restraining order; and

(g) the reasons given on each petition for an ex parte firearms restraining order.

Section 13. **Effective date.**

This bill takes effect on July 1, 2020.