

**DOMESTIC VIOLENCE, DATING VIOLENCE, AND
STALKING AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Angela Romero

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

General Description:

This bill modifies provisions related to domestic violence, dating violence, and stalking.

Highlighted Provisions:

This bill:

- ▶ modifies definition of "crime victim" as it relates to dating violence;
- ▶ addresses violation of specified protective orders;
- ▶ modifies definition of "cohabitant" and "ex parte protective order";
- ▶ amends provisions for forms of petitions and protective orders;
- ▶ addresses duties of law enforcement officers;
- ▶ addresses when and how a court may act ex parte;
- ▶ modifies provisions related to mutual protective orders;
- ▶ amends continuing duty to inform court of other proceedings;
- ▶ addresses dismissal or expiration of protective orders; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **57-22-5.1**, as last amended by Laws of Utah 2011, Chapter 279
- 33 **76-5-106.5**, as last amended by Laws of Utah 2017, Chapter 380
- 34 **76-5-108**, as last amended by Laws of Utah 2013, Chapter 196
- 35 **78B-7-102**, as last amended by Laws of Utah 2017, Chapter 332
- 36 **78B-7-105**, as last amended by Laws of Utah 2017, Chapter 332
- 37 **78B-7-106**, as last amended by Laws of Utah 2014, Chapter 267
- 38 **78B-7-107**, as last amended by Laws of Utah 2010, Chapter 34
- 39 **78B-7-108**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 40 **78B-7-109**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 41 **78B-7-115**, as last amended by Laws of Utah 2017, Chapter 332

42 ENACTS:

- 43 **78B-7-115.5**, Utah Code Annotated 1953
- 44 **78B-7-408**, Utah Code Annotated 1953
- 45 **78B-7-409**, Utah Code Annotated 1953

46

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

48 Section 1. Section **57-22-5.1** is amended to read:

49 **57-22-5.1. Crime victim's right to new locks -- Domestic violence victim's right to**
50 **terminate rental agreement -- Limits an owner relating to assistance from public safety**
51 **agency.**

52 (1) As used in this section:

53 (a) "Crime victim" means a victim of:

- 54 (i) domestic violence, as defined in Section **77-36-1**;
- 55 (ii) stalking, as defined in Section **76-5-106.5**;
- 56 (iii) a crime under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 57 (iv) burglary or aggravated burglary under Section **76-6-202** or **76-6-203**; or
- 58 (v) dating violence, [~~consisting of verbal, emotional, psychological, physical, or sexual~~

59 ~~abuse of one person by another in a dating relationship]~~ as defined in Section [78B-7-402](#).

60 (b) "Public safety agency" means a governmental entity that provides fire protection,
61 law enforcement, ambulance, medical, or similar service.

62 (2) An acceptable form of documentation of an act listed in Subsection (1) is:

63 (a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, Part
64 1, Cohabitant Abuse Act, subsequent to a hearing of which the petitioner and respondent have
65 been given notice under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; or

66 (b) a copy of a police report documenting an act listed in Subsection (1).

67 (3) (a) A renter who is a crime victim may require the renter's owner to install a new
68 lock to the renter's residential rental unit if the renter:

69 (i) provides the owner with an acceptable form of documentation of an act listed in
70 Subsection (1); and

71 (ii) pays for the cost of installing the new lock.

72 (b) An owner may comply with Subsection (3)(a) by:

73 (i) rekeying the lock if the lock is in good working condition; or

74 (ii) changing the entire locking mechanism with a locking mechanism of equal or
75 greater quality than the lock being replaced.

76 (c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the
77 key that opens the new lock.

78 (d) Notwithstanding any rental agreement, an owner who installs a new lock under
79 Subsection (3)(a) shall refuse to provide a copy of the key that opens the new lock to the
80 perpetrator of the act listed in Subsection (1).

81 (e) Notwithstanding Section [78B-6-814](#), if an owner refuses to provide a copy of the
82 key under Subsection (3)(d) to a perpetrator who is not barred from the residential rental unit
83 by a protective order but is a renter on the rental agreement, the perpetrator may file a petition
84 with a court of competent jurisdiction within 30 days to:

85 (i) establish whether the perpetrator should be given a key and allowed access to the
86 residential rental unit; or

87 (ii) whether the perpetrator should be relieved of further liability under the rental
88 agreement because of the owner's exclusion of the perpetrator from the residential rental unit.

89 (f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further

90 liability under the rental agreement if the perpetrator is found by the court to have committed
91 the act upon which the landlord's exclusion of the perpetrator is based.

92 (4) A renter who is a victim of domestic violence, as defined in Section 77-36-1, may
93 terminate a rental agreement if the renter:

94 (a) is in compliance with:

95 (i) all provisions of Section 57-22-5; and

96 (ii) all obligations under the rental agreement;

97 (b) provides the owner:

98 (i) written notice of termination; and

99 (ii) a protective order protecting the renter from a domestic violence perpetrator or a

100 copy of a police report documenting that the renter is a victim of domestic violence and did not
101 participate in the violence; and

102 (c) no later than the date that the renter provides a notice of termination under
103 Subsection (4)(b)(i), pays the owner the equivalent of 45 days' rent for the period beginning on
104 the date that the renter provides the notice of termination.

105 (5) An owner may not:

106 (a) impose a restriction on a renter's ability to request assistance from a public safety
107 agency; or

108 (b) penalize or evict a renter because the renter makes reasonable requests for
109 assistance from a public safety agency.

110 Section 2. Section 76-5-106.5 is amended to read:

111 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law**
112 **enforcement officer.**

113 (1) As used in this section:

114 (a) "Conviction" means:

115 (i) a verdict or conviction;

116 (ii) a plea of guilty or guilty and mentally ill;

117 (iii) a plea of no contest; or

118 (iv) the acceptance by the court of a plea in abeyance.

119 (b) "Course of conduct" means two or more acts directed at or toward a specific
120 person, including:

121 (i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens,
122 or communicates to or about a person, or interferes with a person's property:

123 (A) directly, indirectly, or through any third party; and

124 (B) by any action, method, device, or means; or

125 (ii) when the actor engages in any of the following acts or causes someone else to
126 engage in any of these acts:

127 (A) approaches or confronts a person;

128 (B) appears at the person's workplace or contacts the person's employer or coworkers;

129 (C) appears at a person's residence or contacts a person's neighbors, or enters property
130 owned, leased, or occupied by a person;

131 (D) sends material by any means to the person or for the purpose of obtaining or
132 disseminating information about or communicating with the person to a member of the person's
133 family or household, employer, coworker, friend, or associate of the person;

134 (E) places an object on or delivers an object to property owned, leased, or occupied by
135 a person, or to the person's place of employment with the intent that the object be delivered to
136 the person; or

137 (F) uses a computer, the Internet, text messaging, or any other electronic means to
138 commit an act that is a part of the course of conduct.

139 ~~[(d)]~~ (c) "Emotional distress" means significant mental or psychological suffering,
140 whether or not medical or other professional treatment or counseling is required.

141 ~~[(e)]~~ (d) "Immediate family" means a spouse, parent, child, sibling, or any other person
142 who regularly resides in the household or who regularly resided in the household within the
143 prior six months.

144 (e) "Reasonable person" means a reasonable person in the victim's circumstances.

145 (f) "Stalking" means an offense as described in Subsection (2) or (3).

146 (g) "Text messaging" means a communication in the form of electronic text or one or
147 more electronic images sent by the actor from a telephone or computer to another person's
148 telephone or computer by addressing the communication to the recipient's telephone number.

149 (2) A person is guilty of stalking who intentionally or knowingly engages in a course of
150 conduct directed at a specific person and knows or should know that the course of conduct
151 would cause a reasonable person:

- 152 (a) to fear for the person's own safety or the safety of a third person; or
- 153 (b) to suffer other emotional distress.
- 154 (3) A person is guilty of stalking who intentionally or knowingly violates:
- 155 (a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions;
- 156 or
- 157 (b) a permanent criminal stalking injunction issued pursuant to this section.
- 158 (4) In any prosecution under this section, it is not a defense that the actor:
- 159 (a) was not given actual notice that the course of conduct was unwanted; or
- 160 (b) did not intend to cause the victim fear or other emotional distress.
- 161 (5) An offense of stalking may be prosecuted under this section in any jurisdiction
- 162 where one or more of the acts that is part of the course of conduct was initiated or caused an
- 163 effect on the victim.
- 164 (6) Stalking is a class A misdemeanor:
- 165 (a) upon the offender's first violation of Subsection (2); or
- 166 (b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a,
- 167 Stalking Injunctions.
- 168 (7) Stalking is a third degree felony if the offender:
- 169 (a) has been previously convicted of an offense of stalking;
- 170 (b) has been previously convicted in another jurisdiction of an offense that is
- 171 substantially similar to the offense of stalking;
- 172 (c) has been previously convicted of any felony offense in Utah or of any crime in
- 173 another jurisdiction which if committed in Utah would be a felony, in which the victim of the
- 174 stalking offense or a member of the victim's immediate family was also a victim of the
- 175 previous felony offense;
- 176 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9);
- 177 or
- 178 (e) has been or is at the time of the offense a cohabitant, as defined in Section
- 179 [78B-7-102](#), of the victim.
- 180 (8) Stalking is a second degree felony if the offender:
- 181 (a) used a dangerous weapon as defined in Section [76-1-601](#) or used other means or
- 182 force likely to produce death or serious bodily injury, in the commission of the crime of

183 stalking;

184 (b) has been previously convicted two or more times of the offense of stalking;

185 (c) has been convicted two or more times in another jurisdiction or jurisdictions of
186 offenses that are substantially similar to the offense of stalking;

187 (d) has been convicted two or more times, in any combination, of offenses under
188 Subsection (7)(a), (b), or (c);

189 (e) has been previously convicted two or more times of felony offenses in Utah or of
190 crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies,
191 in which the victim of the stalking was also a victim of the previous felony offenses; or

192 (f) has been previously convicted of an offense under Subsection (7)(d) or (e).

193 (9) (a) The following serve as an application for a permanent criminal stalking
194 injunction limiting the contact between the defendant and the victim:

195 (i) a conviction for:

196 (A) stalking; or

197 (B) attempt to commit stalking; or

198 (ii) a plea to any of the offenses described in Subsection (9)(a)(i) accepted by the court
199 and held in abeyance for a period of time.

200 (b) A permanent criminal stalking injunction shall be issued by the court at the time of
201 the conviction. The court shall give the defendant notice of the right to request a hearing.

202 (c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the
203 time of the conviction unless the victim requests otherwise, or for good cause.

204 (d) If the conviction was entered in a justice court, a certified copy of the judgment and
205 conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by
206 the victim in the district court as an application and request for a hearing for a permanent
207 criminal stalking injunction.

208 (10) A permanent criminal stalking injunction shall be issued by the district court
209 granting the following relief where appropriate:

210 (a) an order:

211 (i) restraining the defendant from entering the residence, property, school, or place of
212 employment of the victim; and

213 (ii) requiring the defendant to stay away from the victim, except as provided in

214 Subsection (11), and to stay away from any specified place that is named in the order and is
215 frequented regularly by the victim;

216 (b) an order restraining the defendant from making contact with or regarding the
217 victim, including an order forbidding the defendant from personally or through an agent
218 initiating any communication, except as provided in Subsection (11), likely to cause annoyance
219 or alarm to the victim, including personal, written, or telephone contact with or regarding the
220 victim, with the victim's employers, employees, coworkers, friends, associates, or others with
221 whom communication would be likely to cause annoyance or alarm to the victim; and

222 (c) any other orders the court considers necessary to protect the victim and members of
223 the victim's immediate family or household.

224 (11) If the victim and defendant have minor children together, the court may consider
225 provisions regarding the defendant's exercise of custody and parent-time rights while ensuring
226 the safety of the victim and any minor children. If the court issues a permanent criminal
227 stalking injunction, but declines to address custody and parent-time issues, a copy of the
228 stalking injunction shall be filed in any action in which custody and parent-time issues are
229 being considered and that court may modify the injunction to balance the parties' custody and
230 parent-time rights.

231 (12) Except as provided in Subsection (11), a permanent criminal stalking injunction
232 may be modified, dissolved, or dismissed only upon application of the victim to the court
233 which granted the injunction.

234 (13) Notice of permanent criminal stalking injunctions issued pursuant to this section
235 shall be sent by the court to the statewide warrants network or similar system.

236 (14) A permanent criminal stalking injunction issued pursuant to this section has effect
237 statewide.

238 (15) (a) Violation of an injunction issued pursuant to this section constitutes a third
239 degree felony offense of stalking under Subsection (7).

240 (b) Violations may be enforced in a civil action initiated by the stalking victim, a
241 criminal action initiated by a prosecuting attorney, or both.

242 (16) This section does not preclude the filing of a criminal information for stalking
243 based on the same act which is the basis for the violation of the stalking injunction issued
244 pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking

245 injunction.

246 (17) (a) A law enforcement officer who responds to an allegation of stalking shall use
247 all reasonable means to protect the victim and prevent further violence, including:

248 (i) taking action that, in the officer's discretion, is reasonably necessary to provide for
249 the safety of the victim and any family or household member;

250 (ii) confiscating the weapon or weapons involved in the alleged stalking;

251 (iii) making arrangements for the victim and any child to obtain emergency housing or
252 shelter;

253 (iv) providing protection while the victim removes essential personal effects;

254 (v) arranging, facilitating, or providing for the victim and any child to obtain medical
255 treatment; and

256 (vi) arranging, facilitating, or providing the victim with immediate and adequate notice
257 of the rights of victims and of the remedies and services available to victims of stalking, in
258 accordance with Subsection (17)(b).

259 (b) (i) A law enforcement officer shall give written notice to the victim in simple
260 language, describing the rights and remedies available under this section and Title 77, Chapter
261 3a, Stalking Injunctions.

262 (ii) The written notice shall also include:

263 (A) a statement that the forms needed in order to obtain a stalking injunction are
264 available from the court clerk's office in the judicial district where the victim resides or is
265 temporarily domiciled; and

266 (B) a list of shelters, services, and resources available in the appropriate community,
267 together with telephone numbers, to assist the victim in accessing any needed assistance.

268 Section 3. Section **76-5-108** is amended to read:

269 **76-5-108. Protective orders restraining abuse of another -- Violation.**

270 (1) Any person who is the respondent or defendant subject to a protective order, child
271 protective order, ex parte protective order, or ex parte child protective order issued under the
272 following who intentionally or knowingly violates that order after having been properly served
273 or having been present, in person or through court video conferencing, when the order was
274 issued, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title
275 77, Chapter 36, Cohabitant Abuse Procedures Act:

276 (a) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;
277 (b) Title 78A, Chapter 6, Juvenile Court Act;
278 (c) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
279 (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform
280 Interstate Enforcement of Domestic Violence Protection Orders Act~~[, who intentionally or~~
281 ~~knowingly violates that order after having been properly served, is guilty of a class A~~
282 ~~misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant~~
283 ~~Abuse Procedures Act].~~

284 (2) Violation of an order as described in Subsection (1) is a domestic violence offense
285 under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

286 Section 4. Section 78B-7-102 is amended to read:

287 **78B-7-102. Definitions.**

288 As used in this chapter:

289 (1) "Abuse" means intentionally or knowingly causing or attempting to cause a
290 cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear
291 of imminent physical harm.

292 (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person
293 who is 16 years of age or older who:

294 (a) is or was a spouse of the other party;

295 (b) is or was living as if a spouse of the other party;

296 (c) is related by blood or marriage to the other party as the person's parent, grandparent,
297 sibling, or any other person related to the person by consanguinity or affinity to the second
298 degree;

299 (d) has or had one or more children in common with the other party;

300 (e) is the biological parent of the other party's unborn child; ~~[or]~~

301 (f) resides or has resided in the same residence as the other party~~[-]; or~~

302 (g) is or was in a consensual sexual relationship with the other party.

303 (3) Notwithstanding Subsection (2), "cohabitant" does not include:

304 (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

305 (b) the relationship between natural, adoptive, step, or foster siblings who are under 18
306 years of age.

307 (4) "Court clerk" means a district court clerk.

308 (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

309 (6) "Ex parte protective order" means an order issued without notice to the [defendant]
310 respondent in accordance with this chapter.

311 (7) "Foreign protection order" means the same as that term is defined in Section
312 78B-7-302.

313 (8) "Law enforcement unit" or "law enforcement agency" means any public agency
314 having general police power and charged with making arrests in connection with enforcement
315 of the criminal statutes and ordinances of this state or any political subdivision.

316 (9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace
317 Officer Classifications.

318 (10) "Protective order" means:

319 (a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of
320 which the petitioner and respondent have been given notice in accordance with this chapter; or

321 (b) an order issued under Subsection 77-36-5.1(6).

322 Section 5. Section 78B-7-105 is amended to read:

323 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

324 (1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to
325 persons seeking to proceed under this chapter.

326 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for
327 petitions and orders for protection in accordance with the provisions of this chapter. That
328 office shall provide the forms to the clerk of each court authorized to issue protective orders.
329 The forms shall include:

330 (i) a statement notifying the petitioner for an ex parte protective order that knowing
331 falsification of any statement or information provided for the purpose of obtaining a protective
332 order may subject the petitioner to felony prosecution;

333 (ii) a separate portion of the form for those provisions, the violation of which is a
334 criminal offense, and a separate portion for those provisions, the violation of which is a civil
335 violation, as provided in Subsection 78B-7-106(5);

336 (iii) language in the criminal provision portion stating violation of any criminal
337 provision is a class A misdemeanor, and language in the civil portion stating violation of or

338 failure to comply with a civil provision is subject to contempt proceedings;

339 (iv) a space for information the petitioner is able to provide to facilitate identification
340 of the respondent, such as social security number, driver license number, date of birth, address,
341 telephone number, and physical description;

342 (v) a space for the petitioner to request a specific period of time for the civil provisions
343 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for
344 the requested extension of the length of time beyond 150 days;

345 (vi) a statement advising the petitioner that when a minor child is included in an ex
346 parte protective order or a protective order, as part of either the criminal or the civil portion of
347 the order, the petitioner may provide a copy of the order to the principal of the school where the
348 child attends; [~~and~~]

349 (vii) a statement advising the petitioner that if the respondent fails to return custody of
350 a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from
351 the court a writ of assistance[-]; and

352 (viii) a space for information the petitioner is able to provide related to a proceeding
353 for an order for protection, civil litigation, a proceeding in juvenile court, and a criminal case
354 involving either party, including:

355 (A) the case name;

356 (B) the file number;

357 (C) the county and state of the proceeding; and

358 (D) the judge's name.

359 (2) If the person seeking to proceed under this chapter is not represented by an
360 attorney, it is the responsibility of the court clerk's office to provide:

361 (a) the forms adopted pursuant to Subsection (1);

362 (b) all other forms required to petition for an order for protection including, but not
363 limited to, forms for service;

364 (c) clerical assistance in filling out the forms and filing the petition, in accordance with
365 Subsection (1)(a), except that a court clerk's office may designate any other entity, agency, or
366 person to provide that service, but the court clerk's office is responsible to see that the service is
367 provided;

368 (d) information regarding the means available for the service of process;

369 (e) a list of legal service organizations that may represent the petitioner in an action
370 brought under this chapter, together with the telephone numbers of those organizations; and

371 (f) written information regarding the procedure for transporting a jailed or imprisoned
372 respondent to the protective order hearing, including an explanation of the use of transportation
373 order forms when necessary.

374 (3) [~~No charges may be imposed by a~~] A court clerk, constable, or law enforcement
375 agency may not impose a charge for:

376 (a) filing a petition under this chapter;

377 (b) obtaining an ex parte protective order;

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

380 (d) fees for service of a petition, ex parte protective order, or protective order.

381 (4) A petition for an order of protection shall be in writing and verified.

382 (5) (a) An order for protection shall be issued in the form adopted by the Administrative
383 Office of the Courts pursuant to Subsection (1).

384 (b) A protective order issued, except orders issued ex parte, shall include the following
385 language:

386 "Respondent was afforded both notice and opportunity to be heard in the hearing that
387 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
388 108 Stat. 1796, 18 U.S.C.[~~A.~~] Sec. 2265, this order is valid in all the United States, the District
389 of Columbia, tribal lands, and United States territories. This order complies with the Uniform
390 Interstate Enforcement of Domestic Violence Protection Orders Act."

391 (c) A protective order issued in accordance with this part, including protective orders
392 issued ex parte and except for a continuous protective order issued under Subsection
393 [77-36-5.1\(6\)](#), shall include the following language:

394 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after
395 one year if it finds that the basis for the issuance of the protective order no longer exists and the
396 petitioner has repeatedly acted in contravention of the protective order provisions to
397 intentionally or knowingly induce the respondent to violate the protective order, demonstrating
398 to the court that the petitioner no longer has a reasonable fear of the respondent."

399 Section 6. Section **78B-7-106** is amended to read:

400 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
401 **orders -- Service of process -- Duties of the court.**

402 (1) If it appears from a petition for an order for protection or a petition to modify an
403 order for protection that domestic violence or abuse has occurred, that there is a substantial
404 likelihood domestic violence or abuse will occur, or that a modification of an order for
405 protection is required, a court may:

406 (a) without notice, immediately issue an order for protection ex parte or modify an
407 order for protection ex parte as it considers necessary to protect the petitioner and all parties
408 named to be protected in the petition; or

409 (b) upon notice, issue an order for protection or modify an order after a hearing,
410 whether or not the respondent appears.

411 (2) A court may grant the following relief without notice in an order for protection or a
412 modification issued ex parte:

413 (a) enjoin the respondent from threatening to commit [~~or~~] domestic violence or abuse,
414 committing domestic violence or abuse [~~against the petitioner and~~], or harassing the petitioner
415 or any designated family or household member;

416 (b) prohibit the respondent from [~~harassing;~~] telephoning, contacting, or otherwise
417 communicating with the petitioner or any designated family or household member, directly or
418 indirectly, with the exception of any parent-time provisions in the ex parte order;

419 [~~(c) order that the respondent is excluded from the petitioner's residence and its~~
420 ~~premises, and order the respondent to stay away from the residence, school, or place of~~
421 ~~employment of the petitioner, and the premises of any of these, or]~~

422 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified
423 distance of the petitioner;

424 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to
425 stay away from the following places and their premises:

426 (i) the petitioner's residence or any designated family or household member's residence;

427 (ii) the petitioner's school or any designated family or household member's school;

428 (iii) the petitioner's or any designated family or household member's place of
429 employment;

430 (iv) the petitioner's place of worship or any designated family or household member's

431 place of worship; or

432 (v) any specified place frequented by the petitioner [~~and~~] or any designated family or
433 household member;

434 (e) if the petitioner or designated family or household member attends the same school
435 as the respondent, is employed at the same place of employment as the respondent, or attends
436 the same place of worship, the court:

437 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent
438 from the respondent's school, place of employment, or place of worship; and

439 (ii) may enter an order governing the respondent's conduct at the respondent's school,
440 place of employment, or place of worship;

441 ~~[(d)]~~ (f) upon finding that the respondent's use or possession of a weapon may pose a
442 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
443 possessing a firearm or other weapon specified by the court;

444 ~~[(e)]~~ (g) order possession and use of an automobile and other essential personal effects,
445 and direct the appropriate law enforcement officer to accompany the petitioner to the residence
446 of the parties to ensure that the petitioner is safely restored to possession of the residence,
447 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
448 removal of personal belongings;

449 ~~[(f)]~~ (h) grant to the petitioner or someone other than the respondent temporary custody
450 of [~~any minor children~~] a minor child of the parties;

451 ~~[(g)]~~ (i) order the appointment of an attorney guardian ad litem under Sections
452 78A-2-703 and 78A-6-902;

453 ~~[(h)]~~ (j) order any further relief that the court considers necessary to provide for the
454 safety and welfare of the petitioner and any designated family or household member; and

455 ~~[(i)]~~ (k) if the petition requests child support or spousal support, at the hearing on the
456 petition order both parties to provide verification of current income, including year-to-date pay
457 stubs or employer statements of year-to-date or other period of earnings, as specified by the
458 court, and complete copies of tax returns from at least the most recent year.

459 (3) A court may grant the following relief in an order for protection or a modification
460 of an order after notice and hearing, whether or not the respondent appears:

461 (a) grant the relief described in Subsection (2); and

462 (b) specify arrangements for parent-time of any minor child by the respondent and
463 require supervision of that parent-time by a third party or deny parent-time if necessary to
464 protect the safety of the petitioner or child.

465 (4) Following the protective order hearing, the court shall:

466 (a) as soon as possible, deliver the order to the county sheriff for service of process;

467 (b) make reasonable efforts to ensure that the order for protection is understood by the
468 petitioner, and the respondent, if present;

469 (c) transmit electronically, by the end of the next business day after the order is issued,
470 a copy of the order for protection to the local law enforcement agency or agencies designated
471 by the petitioner; and

472 (d) transmit a copy of the order to the statewide domestic violence network described
473 in Section [78B-7-113](#).

474 (5) (a) Each protective order shall include two separate portions, one for provisions, the
475 violation of which are criminal offenses, and one for provisions, the violation of which are civil
476 violations, as follows:

477 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
478 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

479 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
480 as it refers to Subsections (2)(f), (h), and (i).

481 (b) The criminal provision portion shall include a statement that violation of any
482 criminal provision is a class A misdemeanor.

483 (c) The civil provision portion shall include a notice that violation of or failure to
484 comply with a civil provision is subject to contempt proceedings.

485 (6) The protective order shall include:

486 (a) a designation of a specific date, determined by the court, when the civil portion of
487 the protective order either expires or is scheduled for review by the court, which date may not
488 exceed 150 days after the date the order is issued, unless the court indicates on the record the
489 reason for setting a date beyond 150 days;

490 (b) information the petitioner is able to provide to facilitate identification of the
491 respondent, such as social security number, driver license number, date of birth, address,
492 telephone number, and physical description; and

493 (c) a statement advising the petitioner that:

494 (i) after two years from the date of issuance of the protective order, a hearing may be
495 held to dismiss the criminal portion of the protective order;

496 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
497 advise the court of the petitioner's current address for notice of any hearing; and

498 (iii) the address provided by the petitioner will not be made available to the respondent.

499 (7) Child support and spouse support orders issued as part of a protective order are
500 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
501 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
502 IV-D Cases, except when the protective order is issued ex parte.

503 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
504 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
505 chapter, and shall transmit verification of service of process, when the order has been served, to
506 the statewide domestic violence network described in Section [78B-7-113](#).

507 (b) This section does not prohibit any law enforcement agency from providing service
508 of process if that law enforcement agency:

509 (i) has contact with the respondent and service by that law enforcement agency is
510 possible; or

511 (ii) determines that under the circumstances, providing service of process on the
512 respondent is in the best interests of the petitioner.

513 (9) (a) When an order is served on a respondent in a jail or other holding facility, the
514 law enforcement agency managing the facility shall make a reasonable effort to provide notice
515 to the petitioner at the time the respondent is released from incarceration.

516 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
517 provide notification, including mailing a copy of the notification to the last-known address of
518 the victim.

519 (10) A court may modify or vacate an order of protection or any provisions in the order
520 after notice and hearing, except that the criminal provisions of a protective order may not be
521 vacated within two years of issuance unless the petitioner:

522 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
523 Rules of Civil Procedure, and the petitioner personally appears, in person or through court

524 video conferencing, before the court and gives specific consent to the vacation of the criminal
525 provisions of the protective order; or

526 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
527 provisions of the protective order.

528 (11) A protective order may be modified without a showing of substantial and material
529 change in circumstances.

530 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
531 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

532 Section 7. Section **78B-7-107** is amended to read:

533 **78B-7-107. Hearings on ex parte orders.**

534 (1) (a) When a court issues an ex parte protective order the court shall set a date for a
535 hearing on the petition to be held within 20 days after the ex parte order is issued.

536 (b) If at that hearing the court does not issue a protective order, the ex parte protective
537 order shall expire, unless it is otherwise extended by the court. Extensions beyond the 20-day
538 period may not be granted unless:

539 (i) the petitioner is unable to be present at the hearing;

540 (ii) the respondent has not been served;

541 (iii) the respondent has had the opportunity to present a defense at the hearing;

542 (iv) the respondent requests that the ex parte order be extended; or

543 (v) exigent circumstances exist.

544 (c) Under no circumstances may an ex parte order be extended beyond 180 days from
545 the date of initial issuance.

546 (d) If at that hearing the court issues a protective order, the ex parte protective order
547 remains in effect until service of process of the protective order is completed.

548 (e) A protective order issued after notice and a hearing is effective until further order of
549 the court.

550 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or
551 respondent may file an objection within 10 days of the entry of the recommended order and the
552 assigned judge shall hold a hearing within 20 days of the filing of the objection.

553 (2) Upon a hearing under this section, the court may grant any of the relief described in
554 Section **78B-7-106**.

555 (3) When a court denies a petition for an ex parte protective order or a petition to
556 modify an order for protection ex parte, upon the request of the petitioner, the court shall set
557 the matter for hearing and notify the petitioner and serve the respondent.

558 (4) A respondent who has been served with an ex parte protective order may seek to
559 vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a)
560 by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice
561 of hearing on that motion shall be personally served on the petitioner at least two days prior to
562 the hearing on the motion to vacate.

563 Section 8. Section **78B-7-108** is amended to read:

564 **78B-7-108. Mutual protective orders.**

565 (1) A court may not grant a mutual order or mutual orders for protection to opposing
566 parties, unless each party:

567 (a) ~~[has filed]~~ files an independent petition against the other for a protective order, and
568 both petitions ~~[have been]~~ are served;

569 (b) makes a showing at a due process protective order hearing of abuse or domestic
570 violence committed by the other party; and

571 (c) demonstrates the abuse or domestic violence did not occur in self-defense.

572 (2) If the court issues mutual protective orders, ~~[the circumstances justifying those~~
573 ~~orders shall be documented in the case file.]~~ the court shall include specific findings of all
574 elements of Subsection (1) in the court order justifying the entry of the court order.

575 (3) A court may not grant an order for protection to a civil petitioner who is the
576 respondent or defendant subject to a protective order, child protective order, ex parte child
577 protective order:

578 (a) issued under:

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

580 (ii) Title 78A, Chapter 6, Juvenile Court Act;

581 (iii) Chapter 7, Part 1, Cohabitant Abuse Act; or

582 (iv) a foreign protection order enforceable under Chapter 7, Part 3, Uniform Interstate
583 Enforcement of Domestic Violence Protection Orders Act; and

584 (b) unless the court determines that the requirements of Subsection (1) are met, and:

585 (i) the same court issued the order for protection against the respondent; or

- 586 (ii) if the matter is before a subsequent court, the subsequent court:
587 (A) determines it would be impractical for the original court to consider the matter; or
588 (B) confers with the court that issued the order for protection.

589 Section 9. Section **78B-7-109** is amended to read:

590 **78B-7-109. Continuing duty to inform court of other proceedings -- Effect of**
591 **other proceedings.**

592 (1) [~~At any hearing in a proceeding to obtain an order for protection, each~~] Each party
593 has a continuing duty to inform the court of each proceeding for an order for protection, any
594 civil litigation, each proceeding in juvenile court, and each criminal case involving either party,
595 including the case name, the file number, and the county and state of the proceeding, if that
596 information is known by the party.

597 (2) (a) An order for protection issued pursuant to this chapter is in addition to and not
598 in lieu of any other available civil or criminal proceeding.

599 (b) A petitioner is not barred from seeking a protective order because of other pending
600 proceedings.

601 (c) A court may not delay granting relief under this chapter because of the existence of
602 a pending civil action between the parties.

603 (3) A petitioner may omit [~~his or her~~] the petitioner's address from all documents filed
604 with the court under this chapter, but shall separately provide the court with a mailing address
605 that is not to be made part of the public record, but that may be provided to a peace officer or
606 entity for service of process.

607 Section 10. Section **78B-7-115** is amended to read:

608 **78B-7-115. Dismissal of protective order -- Expiration.**

609 (1) Except as provided in Subsections (6) and (8), a protective order that has been in
610 effect for at least two years may be dismissed if the court determines that the petitioner no
611 longer has a reasonable fear of future harm or abuse. In determining whether the petitioner no
612 longer has a reasonable fear of future harm or abuse, the court shall consider the following
613 factors:

614 (a) whether the respondent has complied with treatment recommendations related to
615 domestic violence, entered at the time the protective order was entered;

616 (b) whether the protective order was violated during the time it was in force;

- 617 (c) claims of harassment, abuse, or violence by either party during the time the
618 protective order was in force;
- 619 (d) counseling or therapy undertaken by either party;
- 620 (e) impact on the well-being of any minor children of the parties, if relevant; and
- 621 (f) any other factors the court considers relevant to the case before it.
- 622 (2) Except as provided in Subsections (6) and (8), the court may amend or dismiss a
623 protective order issued in accordance with this part that has been in effect for at least one year
624 if it finds that:
- 625 (a) the basis for the issuance of the protective order no longer exists;
- 626 (b) the petitioner has repeatedly acted in contravention of the protective order
627 provisions to intentionally or knowingly induce the respondent to violate the protective order;
- 628 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable
629 fear of the respondent; and
- 630 (d) the respondent has not been convicted of a protective order violation or any crime
631 of violence subsequent to the issuance of the protective order, and there are no unresolved
632 charges involving violent conduct still on file with the court.
- 633 (3) The court shall enter sanctions against either party if the court determines that
634 either party acted:
- 635 (a) in bad faith; or
- 636 (b) with intent to harass or intimidate either party.
- 637 (4) Notice of a motion to dismiss a protective order shall be made by personal service
638 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil
639 Procedure.
- 640 (5) Except as provided in Subsection (8), if a divorce proceeding is pending between
641 parties to a protective order action, the protective order shall be dismissed when the court
642 issues a decree of divorce for the parties if:
- 643 ~~[(a) the petitioner in the protective order action is present or has been given notice in~~
644 ~~both the divorce and protective order action of the hearing; and]~~
- 645 ~~[(b) the court specifically finds that the order need not continue, and, as provided in~~
646 ~~Subsection (1), the petitioner no longer has a reasonable fear of future harm or abuse.]~~
- 647 (a) the respondent files a motion to dismiss a protective order in both the divorce

648 action and the protective order action and personally serves the petitioner; and

649 (b) (i) the parties stipulate in writing or on the record to dismiss the protective order; or

650 (ii) based on evidence at the divorce trial, the court determines that the petitioner no

651 longer has a reasonable fear of future harm or abuse after considering the factors listed in

652 Subsections (1)(a) through (f).

653 (6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a

654 protective order that has been entered under this chapter concerning a petitioner and a

655 respondent who are divorced shall automatically expire, subject to [~~Subsections (6)(b) and (c)~~]

656 Subsection (6)(b), 10 years from the day on which [~~one of the following occurs: (i) the decree~~

657 ~~of divorce between the petitioner and respondent became absolute; or (ii)] the protective order~~

658 [~~was~~] is entered.

659 (b) The protective order shall automatically expire, as described in Subsection (6)(a),

660 unless[~~:(i)~~] the petitioner files a motion before expiration of the protective order and

661 demonstrates that:

662 (i) the petitioner has a reasonable fear of future harm or abuse, as described in

663 Subsection (1); or

664 (ii) the respondent has been convicted of a protective order violation or any crime of

665 domestic violence subsequent to the issuance of the protective order.

666 [~~(c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the~~

667 ~~respondent is incarcerated.]~~

668 (c) If the court grants the motion under Subsection (6)(b), the court shall set a new date

669 on which the protective order expires. The protective order will expire unless the petitioner

670 files a motion described in Subsection (6)(b) to extend the protective order.

671 (7) When the court dismisses a protective order, the court shall immediately:

672 (a) issue an order of dismissal to be filed in the protective order action; and

673 (b) transmit a copy of the order of dismissal to the statewide domestic violence

674 network as described in Section [78B-7-113](#).

675 (8) Notwithstanding the other provisions of this section, a continuous protective order

676 may not be modified or dismissed except as provided in Subsection [77-36-5.1\(6\)](#).

677 Section 11. Section [78B-7-115.5](#) is enacted to read:

678 **[78B-7-115.5](#). Expiration of protective order.**

679 (1) Subject to the other provisions of this section, a civil protective order issued under
680 this part automatically expires 10 years from the day on which the protective order is entered.

681 (2) The protective order automatically expires as described in Subsection (1), unless
682 the petitioner files a motion before expiration of the protective order and demonstrates that:

683 (a) the petitioner has a current reasonable fear of future harm or abuse, as described in
684 Subsection 78B-7-115(1); or

685 (b) the respondent has been convicted of a protective order violation or any crime of
686 domestic violence subsequent to the issuance of the protective order.

687 (3) If the court grants the motion under Subsection (2), the court shall set a new date on
688 which the protective order expires. The protective order will expire unless the petitioner files a
689 motion described in Subsection (2) to extend the protective order.

690 Section 12. Section **78B-7-408** is enacted to read:

691 **78B-7-408. Duties of law enforcement officers -- Notice to victims.**

692 (1) A law enforcement officer who responds to an allegation of dating violence shall
693 use all reasonable means to protect the victim and prevent further violence, including:

694 (a) taking action that, in the officer's discretion, is reasonably necessary to provide for
695 the safety of the victim and any family or household member;

696 (b) confiscating the weapon or weapons involved in the alleged dating violence;

697 (c) making arrangements for the victim and any child to obtain emergency housing or
698 shelter;

699 (d) providing protection while the victim removes essential personal effects;

700 (e) arranging, facilitating, or providing for the victim and any child to obtain medical
701 treatment; and

702 (f) arranging, facilitating, or providing the victim with immediate and adequate notice
703 of the rights of victims and of the remedies and services available to victims of dating violence,
704 in accordance with Subsection (2).

705 (2) (a) A law enforcement officer shall give written notice to the victim in simple
706 language, describing the rights and remedies available under this chapter.

707 (b) The written notice shall also include:

708 (i) a statement that the forms needed in order to obtain an order for protection are
709 available from the court clerk's office in the judicial district where the victim resides or is

710 temporarily domiciled; and

711 (ii) a list of shelters, services, and resources available in the appropriate community,
712 together with telephone numbers, to assist the victim in accessing any needed assistance.

713 Section 13. Section **78B-7-409** is enacted to read:

714 **78B-7-409. Mutual protective orders.**

715 (1) A court may not grant a mutual order or mutual orders for protection to opposing
716 parties, unless each party:

717 (a) files an independent petition against the other for a protective order, and both
718 petitions are served;

719 (b) makes a showing at a due process protective order hearing of abuse or dating
720 violence committed by the other party; and

721 (c) demonstrates the abuse or dating violence did not occur in self-defense.

722 (2) If the court issues mutual protective orders, the court shall include specific findings
723 of all elements of Subsection (1) in the court order justifying the entry of the court order.

724 (3) A court may not grant an order for protection to a civil petitioner who is the
725 respondent or defendant subject to a protective order, child protective order, or ex parte child
726 protective order:

727 (a) issued under:

728 (i) this chapter;

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

730 (iii) Title 78A, Chapter 6, Juvenile Court Act;

731 (iv) Chapter 7, Part 1, Cohabitant Abuse Act; or

732 (v) a foreign protection order enforceable under Chapter 7, Part 3, Uniform Interstate
733 Enforcement of Domestic Violence Protection Orders Act; and

734 (b) unless the court determines that the requirements of Subsection (1) are met, and:

735 (i) the same court issued the order for protection against the respondent; or

736 (ii) if the matter is before a subsequent court, the subsequent court:

737 (A) determines it would be impractical for the original court to consider the matter; or

738 (B) confers with the court that issued the order for protection.

Legislative Review Note
Office of Legislative Research and General Counsel