

1 **DOMESTIC VIOLENCE RELATED AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to domestic violence.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends definition provisions;
- 13 ▶ addresses the designation of a person that communicates between a defendant and
- 14 victim;
- 15 ▶ addresses enforcement of restitution requirements;
- 16 ▶ provides the process for the issuance of continuous protective orders;
- 17 ▶ addresses form for protective orders;
- 18 ▶ modifies conditions for dismissals of protective orders; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **77-20-1**, as last amended by Laws of Utah 2016, Chapter 234

27 **77-36-1**, as last amended by Laws of Utah 2016, Chapter 422

28 **77-36-2.1**, as last amended by Laws of Utah 2011, Chapter 113

29 **77-36-2.4**, as last amended by Laws of Utah 2010, Chapter 384

- 30 [77-36-2.6](#), as last amended by Laws of Utah 2010, Chapter 384
- 31 [77-36-5](#), as last amended by Laws of Utah 2016, Chapter 422
- 32 [77-36-5.1](#), as last amended by Laws of Utah 2010, Chapter 384
- 33 [78B-7-102](#), as last amended by Laws of Utah 2013, Chapter 348
- 34 [78B-7-105](#), as last amended by Laws of Utah 2009, Chapter 232
- 35 [78B-7-115](#), as last amended by Laws of Utah 2016, Chapter 196

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

38 Section 1. Section **77-20-1** is amended to read:

39 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

40 (1) As used in this chapter:

- 41 (a) "Bail bond agency" means the same as that term is defined in Section [31A-35-102](#).
- 42 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
- 43 (c) "Surety insurer" means the same as that term is defined in Section [31A-35-102](#).

44 (2) A person charged with or arrested for a criminal offense shall be admitted to bail as
 45 a matter of right, except if the person is charged with a:

- 46 (a) capital felony, when the court finds there is substantial evidence to support the
 47 charge;
- 48 (b) felony committed while on probation or parole, or while free on bail awaiting trial
 49 on a previous felony charge, when the court finds there is substantial evidence to support the
 50 current felony charge;
- 51 (c) felony when there is substantial evidence to support the charge and the court finds
 52 by clear and convincing evidence that the person would constitute a substantial danger to any
 53 other person or to the community, or is likely to flee the jurisdiction of the court, if released on
 54 bail; or
- 55 (d) felony when the court finds there is substantial evidence to support the charge and
 56 it finds by clear and convincing evidence that the person violated a material condition of
 57 release while previously on bail.

58 (3) Any person who may be admitted to bail may be released either on the person's own
59 recognizance or upon posting bail, on condition that the person appear in court for future court
60 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate
61 or court that will reasonably:

- 62 (a) ensure the appearance of the accused;
- 63 (b) ensure the integrity of the court process;
- 64 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
65 appropriate; and
- 66 (d) ensure the safety of the public.

67 (4) (a) Except as otherwise provided, the initial order denying or fixing the amount of
68 bail shall be issued by the magistrate or court issuing the warrant of arrest.

69 (b) A magistrate may set bail upon determining that there was probable cause for a
70 warrantless arrest.

71 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
72 Sections [10-3-920](#) and [17-32-1](#).

73 (d) A person arrested for a violation of a jail release agreement or jail release order
74 issued pursuant to Section [77-36-2.5](#):

- 75 (i) may not be released before the accused's first judicial appearance; and
- 76 (ii) may be denied bail by the court under Subsection [77-36-2.5\(8\)](#) or ~~[(12)]~~ [\(11\)](#).

77 (5) The magistrate or court may rely upon information contained in:

- 78 (a) the indictment or information;
- 79 (b) any sworn probable cause statement;
- 80 (c) information provided by any pretrial services agency; or
- 81 (d) any other reliable record or source.

82 (6) (a) A motion to modify the initial order may be made by a party at any time upon
83 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and
84 to permit any victim to be notified and be present.

85 (b) Hearing on a motion to modify may be held in conjunction with a preliminary

86 hearing or any other pretrial hearing.

87 (c) The magistrate or court may rely on information as provided in Subsection (5) and
88 may base its ruling on evidence provided at the hearing so long as each party is provided an
89 opportunity to present additional evidence or information relevant to bail.

90 (7) Subsequent motions to modify bail orders may be made only upon a showing that
91 there has been a material change in circumstances.

92 (8) An appeal may be taken from an order of any court denying bail to the Supreme
93 Court, which shall review the determination under Subsection (2).

94 (9) For purposes of this section, any arrest or charge for a violation of Section
95 76-5-202, Aggravated murder, is a capital felony unless:

- 96 (a) the prosecutor files a notice of intent to not seek the death penalty; or
- 97 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
98 has not filed a notice to seek the death penalty.

99 Section 2. Section 77-36-1 is amended to read:

100 **77-36-1. Definitions.**

101 As used in this chapter:

- 102 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.
- 103 (2) "Department" means the Department of Public Safety.
- 104 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
105 3, Divorce.
- 106 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
107 involving violence or physical harm or threat of violence or physical harm, or any attempt,
108 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
109 when committed by one cohabitant against another. "Domestic violence" or "domestic
110 violence offense" also means commission or attempt to commit, any of the following offenses
111 by one cohabitant against another:
 - 112 (a) aggravated assault, as described in Section 76-5-103;
 - 113 (b) assault, as described in Section 76-5-102;

- 114 (c) criminal homicide, as described in Section 76-5-201;
- 115 (d) harassment, as described in Section 76-5-106;
- 116 (e) electronic communication harassment, as described in Section 76-9-201;
- 117 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
- 118 76-5-301, 76-5-301.1, and 76-5-302;
- 119 (g) mayhem, as described in Section 76-5-105;
- 120 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 121 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 122 (i) stalking, as described in Section 76-5-106.5;
- 123 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 124 76-5-304;
- 125 (k) violation of a protective order or ex parte protective order, as described in Section
- 126 76-5-108;
- 127 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 128 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
- 129 Part 3, Robbery;
- 130 (m) possession of a deadly weapon with intent to assault, as described in Section
- 131 76-10-507;
- 132 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 133 person, building, or vehicle, as described in Section 76-10-508;
- 134 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
- 135 conduct is the result of a plea agreement in which the defendant was originally charged with a
- 136 domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly
- 137 conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does
- 138 not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is
- 139 exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or
- 140 (p) child abuse as described in Section 76-5-109.1.
- 141 (5) "Jail release agreement" means a written agreement:

142 (a) specifying and limiting the contact a person arrested for a domestic violence offense
143 may have with an alleged victim or other specified individuals; and

144 (b) specifying other conditions of release from jail as required in Subsection
145 [77-36-2.5\(2\)](#).

146 (6) "Jail release court order" means a written court order:

147 (a) specifying and limiting the contact a person arrested for a domestic violence offense
148 may have with an alleged victim or other specified individuals; and

149 (b) specifying other conditions of release from jail as required in Subsection
150 [77-36-2.5\(2\)](#).

151 (7) "Marital status" means married and living together, divorced, separated, or not
152 married.

153 (8) "Married and living together" means a man and a woman whose marriage was
154 solemnized under Section [30-1-4](#) or [30-1-6](#) and who are living in the same residence.

155 (9) "Not married" means any living arrangement other than married and living together,
156 divorced, or separated.

157 (10) "Protective order" includes an order issued under Subsection [77-36-5.1\(6\)](#).

158 ~~[(10)]~~ (11) "Pretrial protective order" means a written order:

159 (a) specifying and limiting the contact a person who has been charged with a domestic
160 violence offense may have with an alleged victim or other specified individuals; and

161 (b) specifying other conditions of release pursuant to Subsection [77-36-2.5\(2\)](#),
162 Subsection [77-36-2.6\(3\)](#), or Section [77-36-2.7](#), pending trial in the criminal case.

163 ~~[(11)]~~ (12) "Sentencing protective order" means a written order of the court as part of
164 sentencing in a domestic violence case that limits the contact a person who has been convicted
165 of a domestic violence offense may have with a victim or other specified individuals pursuant
166 to Sections [77-36-5](#) and [77-36-5.1](#).

167 ~~[(12)]~~ (13) "Separated" means a man and a woman who have had their marriage
168 solemnized under Section [30-1-4](#) or [30-1-6](#) and who are not living in the same residence.

169 ~~[(13)]~~ (14) "Victim" means a cohabitant who has been subjected to domestic violence.

170 Section 3. Section 77-36-2.1 is amended to read:

171 **77-36-2.1. Duties of law enforcement officers -- Notice to victims.**

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

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

176 (b) confiscating the weapon or weapons involved in the alleged domestic violence;

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

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

180 (e) arrange, facilitate, or provide for the victim and any child to obtain medical
181 treatment; and

182 (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the
183 rights of victims and of the remedies and services available to victims of domestic violence, in
184 accordance with Subsection (2).

185 (2) (a) A law enforcement officer shall give written notice to the victim in simple
186 language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7,
187 Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

188 (b) The written notice shall also include:

189 (i) a statement that the forms needed in order to obtain an order for protection are
190 available from the court clerk's office in the judicial district where the victim resides or is
191 temporarily domiciled;

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

194 (iii) the information required to be provided to both parties in accordance with

195 ~~Subsection 77-36-2.5(8)]~~ Subsections 77-36-2.5(9) and (10).

196 Section 4. Section 77-36-2.4 is amended to read:

197 **77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.**

198 (1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator
199 whenever there is probable cause to believe that the alleged perpetrator has violated any of the
200 provisions of an ex parte protective order or protective order.

201 (2) (a) Intentional or knowing violation of any ex parte protective order or protective
202 order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater
203 penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section
204 77-36-1.

205 (b) Second or subsequent violations of ex parte protective orders or protective orders
206 carry increased penalties, in accordance with Section 77-36-1.1.

207 (3) As used in this section, "ex parte protective order" or "protective order" includes:

208 (a) [any] a protective order or ex parte protective order issued under Title 78B, Chapter
209 7, Part 1, Cohabitant Abuse Act;

210 (b) [any] a jail release agreement, jail release court order, pretrial protective order, [or]
211 sentencing protective order, or continuous protective order issued under [~~Title 77, Chapter 36,~~
212 ~~Cohabitant Abuse Procedures Act~~] this chapter;

213 (c) any child protective order or ex parte child protective order issued under Title 78B,
214 Chapter 7, Part 2, Child Protective Orders; or

215 (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform
216 Interstate Enforcement of Domestic Violence Protection Orders Act.

217 Section 5. Section 77-36-2.6 is amended to read:

218 **77-36-2.6. Appearance of defendant required -- Determinations by court --**
219 **Pretrial protective order.**

220 (1) A defendant who has been arrested for an offense involving domestic violence shall
221 appear in person or by video before the court or a magistrate within one judicial day after the
222 arrest.

223 (2) A defendant who has been charged by citation, indictment, or information with an
224 offense involving domestic violence but has not been arrested, shall appear before the court in
225 person for arraignment or initial appearance as soon as practicable, but no later than 14 days

226 after the next day on which court is in session following the issuance of the citation or the
 227 filing of the indictment or information.

228 (3) At the time of an appearance under Subsection (1) or (2), the court shall:
 229 (a) determine the necessity of imposing a pretrial protective order or other condition of
 230 pretrial release, including ~~[, but not limited to,]~~ participating in an electronic or other type of
 231 monitoring program ~~[, and shall];~~

232 (b) identify the individual designated by the victim to communicate between the
 233 defendant and the victim if and to the extent necessary for family related matters; and

234 (c) state its findings and determination in writing.

235 (4) Appearances required by this section are mandatory and may not be waived.

236 Section 6. Section 77-36-5 is amended to read:

237 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**
 238 **Counseling -- Cost assessed against defendant -- Sentencing protective order --**
 239 **Continuous protective order.**

240 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a
 241 condition of the sentence restricts the defendant's contact with the victim, a sentencing
 242 protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's
 243 probation or a continuous protective order may be issued under Subsection 77-36-5.1(6).

244 (b) (i) The sentencing protective order or continuous protective order shall be in
 245 writing, and the prosecutor shall provide a certified copy of that order to the victim.

246 (ii) The court shall transmit the sentencing protective order or continuous protective
 247 order to the statewide domestic violence network.

248 (c) Violation of a sentencing protective order or continuous protective order issued
 249 pursuant to this Subsection (1) is a class A misdemeanor.

250 (2) In determining its sentence the court, in addition to penalties otherwise provided by
 251 law, may require the defendant to participate in an electronic or other type of monitoring
 252 program.

253 (3) The court may also require the defendant to pay all or part of the costs of

254 counseling incurred by the victim and any children affected by or exposed to the domestic
255 violence offense, as well as the costs for the defendant's own counseling.

256 (4) The court shall:

257 (a) assess against the defendant, as restitution, any costs for services or treatment
258 provided to the victim and affected children of the victim or the defendant by the Division of
259 Child and Family Services under Section 62A-4a-106; and

260 (b) order those costs to be paid directly to the division or its contracted provider.

261 (5) The court may order the defendant to obtain and satisfactorily complete treatment
262 or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is
263 licensed by the Department of Human Services.

264 Section 7. Section 77-36-5.1 is amended to read:

265 **77-36-5.1. Conditions of probation for person convicted of domestic violence**
266 **offense -- Continuous protective orders.**

267 (1) Before any perpetrator who has been convicted of a domestic violence offense may
268 be placed on probation, the court shall consider the safety and protection of the victim and any
269 member of the victim's family or household.

270 (2) The court may condition probation or a plea in abeyance on the perpetrator's
271 compliance with one or more orders of the court, which may include a sentencing protective
272 order:

273 (a) enjoining the perpetrator from threatening to commit or committing acts of
274 domestic violence against the victim or other family or household member;

275 (b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise
276 communicating with the victim, directly or indirectly;

277 (c) requiring the perpetrator to stay away from the victim's residence, school, place of
278 employment, and the premises of any of these, or a specified place frequented regularly by the
279 victim or any designated family or household member;

280 (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled
281 substances;

282 (e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other
283 specified weapon;

284 (f) directing the perpetrator to surrender any weapons the perpetrator owns or
285 possesses;

286 (g) directing the perpetrator to participate in and complete, to the satisfaction of the
287 court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or
288 psychiatric or psychological treatment;

289 (h) directing the perpetrator to pay restitution to the victim, enforcement of which shall
290 be in accordance with Chapter 38a, Crime Victims Restitution Act; and

291 (i) imposing any other condition necessary to protect the victim and any other
292 designated family or household member or to rehabilitate the perpetrator.

293 (3) The perpetrator is responsible for the costs of any condition of probation, according
294 to the perpetrator's ability to pay.

295 (4) (a) Adult Probation and Parole, or other provider, shall immediately report to the
296 court and notify the victim of any offense involving domestic violence committed by the
297 perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and
298 any violation of any sentencing criminal protective order issued by the court.

299 (b) Notification of the victim under Subsection (4)(a) shall consist of a good faith
300 reasonable effort to provide prompt notification, including mailing a copy of the notification to
301 the last-known address of the victim.

302 (5) The court shall transmit all dismissals, terminations, and expirations of pretrial and
303 sentencing criminal protective orders issued by the court to the statewide domestic violence
304 network.

305 (6) (a) Because of the serious, unique, and highly traumatic nature of domestic violence
306 crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of
307 continued acts of violence subsequent to the release of a perpetrator who is convicted of
308 domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the
309 issuance of continuous protective orders under this Subsection (6) because of the need to

310 provide ongoing protection for the victim and to be consistent with the purposes of protecting
311 victims' rights under Chapter 37, Victims' Rights, and Chapter 38, Rights of Crime Victims
312 Act, and Article I, Section 28 of the Utah Constitution.

313 (b) If a perpetrator is convicted of a domestic violence offense resulting in a sentence
314 of imprisonment, including jail, that is to be served after conviction, the court shall issue a
315 continuous protective order at the time of the conviction or sentencing limiting the contact
316 between the perpetrator and the victim unless the court determines by clear and convincing
317 evidence that the victim does not have a reasonable fear of future harm or abuse.

318 (c) (i) The court shall notify the perpetrator of the right to request a hearing.

319 (ii) If the perpetrator requests a hearing under this Subsection (6)(c), the court shall
320 hold the hearing at the time determined by the court. The continuous protective order shall be
321 in effect while the hearing is being scheduled and while the hearing is pending.

322 (d) A continuous protective order is permanent in accordance with this Subsection
323 (6)(d) and may grant the following relief:

324 (i) enjoining the perpetrator from threatening to commit or committing acts of
325 domestic violence against the victim or other family or household member;

326 (ii) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise
327 communicating with the victim, directly or indirectly;

328 (iii) prohibiting the perpetrator from going to the victim's residence, school, place of
329 employment, and the premises of any of these, or a specified place frequented regularly by the
330 victim or any designated family or other household member;

331 (iv) directing the perpetrator to pay restitution to the victim as may apply, and shall be
332 enforced in accordance with Chapter 38a, Crime Victims Restitution Act; and

333 (v) any other order the court considers necessary to fully protect the victim and
334 members of the victim's family or other household member.

335 (e) A continuous protective order may be modified or dismissed only if the court
336 determines by clear and convincing evidence that all requirements of this Subsection (6) have
337 been met and the victim does not have a reasonable fear of future harm or abuse.

338 (f) Notice of a continuous protective order issued pursuant to this section shall be sent
339 by the court to the statewide domestic violence network.

340 (g) Violation of a continuous protective order issued pursuant to this Subsection (6) is
341 a class A misdemeanor, is a domestic violence offense under Section 77-36-1, and is subject to
342 increased penalties in accordance with Section 77-36-1.1.

343 (h) In addition to the process of issuing a continuous protective order described in
344 Subsection (6)(a), a district court may issue a continuous protective order at any time if the
345 victim files a petition with the district court, and after notice and hearing the district court finds
346 that a continuous protective order is necessary to protect the victim.

347 (7) (a) Before release of a person who is subject to a continuous protective order issued
348 under Subsection (6), the victim shall receive notice of the imminent release by the law
349 enforcement agency that is releasing the person who is subject to the continuous protective
350 order:

351 (i) if the victim has provided the law enforcement contact information; and

352 (ii) in accordance with Section 64-13-14.7, if applicable.

353 (b) Before release, the law enforcement agency shall notify in writing the person being
354 released that a violation of the continuous protective order issued at the time of conviction or
355 sentencing continues to apply, and that a violation of the continuous protective order is a class
356 A misdemeanor, is a separate domestic violence offense under Section 77-36-1, and is subject
357 to increased penalties in accordance with Section 77-36-1.1.

358 Section 8. Section **78B-7-102** is amended to read:

359 **78B-7-102. Definitions.**

360 As used in this chapter:

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

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

- 366 (a) is or was a spouse of the other party;
- 367 (b) is or was living as if a spouse of the other party;
- 368 (c) is related by blood or marriage to the other party;
- 369 (d) has or had one or more children in common with the other party;
- 370 (e) is the biological parent of the other party's unborn child; or
- 371 (f) resides or has resided in the same residence as the other party.
- 372 (3) Notwithstanding Subsection (2), "cohabitant" does not include:
- 373 (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
- 374 (b) the relationship between natural, adoptive, step, or foster siblings who are under 18
- 375 years of age.
- 376 (4) "Court clerk" means a district court clerk.
- 377 (5) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).
- 378 (6) "Ex parte protective order" means an order issued without notice to the defendant in
- 379 accordance with this chapter.
- 380 (7) "Foreign protection order" [~~is as~~] means the same as that term is defined in Section
- 381 [78B-7-302](#).
- 382 (8) "Law enforcement unit" or "law enforcement agency" means any public agency
- 383 having general police power and charged with making arrests in connection with enforcement
- 384 of the criminal statutes and ordinances of this state or any political subdivision.
- 385 (9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace
- 386 Officer Classifications.
- 387 (10) "Protective order" means:
- 388 (a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of
- 389 which the petitioner and respondent have been given notice in accordance with this chapter[-];
- 390 or
- 391 (b) an order issued under Subsection [77-36-5.1\(6\)](#).
- 392 Section 9. Section **78B-7-105** is amended to read:
- 393 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

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

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

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

403 (ii) a separate portion of the form for those provisions, the violation of which is a
404 criminal offense, and a separate portion for those provisions, the violation of which is a civil
405 violation, as provided in Subsection [78B-7-106\(5\)](#);

406 (iii) language in the criminal provision portion stating violation of any criminal
407 provision is a class A misdemeanor, and language in the civil portion stating violation of or
408 failure to comply with a civil provision is subject to contempt proceedings;

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

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

415 (vi) a statement advising the petitioner that when a minor child is included in an ex
416 parte protective order or a protective order, as part of either the criminal or the civil portion of
417 the order, the petitioner may provide a copy of the order to the principal of the school where the
418 child attends; and

419 (vii) a statement advising the petitioner that if the respondent fails to return custody of
420 a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from
421 the court a writ of assistance.

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

424 (a) the forms adopted pursuant to Subsection (1);
425 (b) all other forms required to petition for an order for protection including, but not
426 limited to, forms for service;
427 (c) clerical assistance in filling out the forms and filing the petition, in accordance with
428 Subsection (1)(a)~~[-A]~~, except that a court clerk's office may designate any other entity, agency,
429 or person to provide that service, but the court clerk's office is responsible to see that the
430 service is provided;

431 (d) information regarding the means available for the service of process;
432 (e) a list of legal service organizations that may represent the petitioner in an action
433 brought under this chapter, together with the telephone numbers of those organizations; and
434 (f) written information regarding the procedure for transporting a jailed or imprisoned
435 respondent to the protective order hearing, including an explanation of the use of transportation
436 order forms when necessary.

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

439 (a) filing a petition under this chapter;
440 (b) obtaining an ex parte protective order;
441 (c) obtaining copies, either certified or not certified, necessary for service or delivery to
442 law enforcement officials; or
443 (d) fees for service of a petition, ex parte protective order, or protective order.

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

445 (5) (a) ~~[All orders]~~ An order for protection shall be issued in the form adopted by the
446 Administrative Office of the Courts pursuant to Subsection (1).

447 (b) ~~[Each]~~ A protective order issued, except orders issued ex parte, shall include the
448 following language:
449 "Respondent was afforded both notice and opportunity to be heard in the hearing that

450 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
451 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
452 Columbia, tribal lands, and United States territories. This order complies with the Uniform
453 Interstate Enforcement of Domestic Violence Protection Orders Act."

454 (c) ~~[Each]~~ A protective order issued in accordance with this part, including protective
455 orders issued ex parte and except for a continuous protective order issued under Subsection
456 77-36-5.1(6), shall include the following language:

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

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

463 **78B-7-115. Dismissal of protective order.**

464 (1) Except as provided in [~~Subsection (6),~~] Subsections (6) and (8), a protective order
465 that has been in effect for at least two years may be dismissed if the court determines that the
466 petitioner no longer has a reasonable fear of future harm or abuse. In determining whether the
467 petitioner no longer has a reasonable fear of future harm or abuse, the court shall consider the
468 following factors:

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

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

472 (c) claims of harassment, abuse, or violence by either party during the time the
473 protective order was in force;

474 (d) counseling or therapy undertaken by either party;

475 (e) impact on the well-being of any minor children of the parties, if relevant; and

476 (f) any other factors the court considers relevant to the case before it.

477 (2) Except as provided in [~~Subsection (6),~~] Subsections (6) and (8), the court may

478 amend or dismiss a protective order issued in accordance with this part that has been in effect
479 for at least one year if it finds that:

480 (a) the basis for the issuance of the protective order no longer exists;
481 (b) the petitioner has repeatedly acted in contravention of the protective order
482 provisions to intentionally or knowingly induce the respondent to violate the protective order;

483 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable
484 fear of the respondent; and

485 (d) the respondent has not been convicted of a protective order violation or any crime
486 of violence subsequent to the issuance of the protective order, and there are no unresolved
487 charges involving violent conduct still on file with the court.

488 (3) The court shall enter sanctions against either party if the court determines that
489 either party acted:

490 (a) in bad faith; or
491 (b) with intent to harass or intimidate either party.

492 (4) Notice of a motion to dismiss a protective order shall be made by personal service
493 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil
494 Procedure.

495 (5) [Hf] Except as provided in Subsection (8), if a divorce proceeding is pending
496 between parties to a protective order action, the protective order shall be dismissed when the
497 court issues a decree of divorce for the parties if:

498 (a) the petitioner in the protective order action is present or has been given notice in
499 both the divorce and protective order action of the hearing; and

500 (b) the court specifically finds that the order need not continue, and₂ as provided in
501 Subsection (1), the petitioner no longer has a reasonable fear of future harm or abuse.

502 (6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a
503 protective order that has been entered under this chapter concerning a petitioner and a
504 respondent who are divorced shall automatically expire, subject to Subsections (6)(b) and (c),
505 10 years from the day on which one of the following occurs:

506 (i) the decree of divorce between the petitioner and respondent became absolute; or
507 (ii) the protective order was entered.
508 (b) The protective order shall automatically expire, as described in Subsection (6)(a),
509 unless:
510 (i) the petitioner demonstrates that the petitioner has a reasonable fear of future harm or
511 abuse, as described in Subsection (1); or
512 (ii) the respondent has been convicted of a protective order violation or any crime of
513 violence subsequent to the issuance of the protective order.
514 (c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the
515 respondent is incarcerated.
516 (7) When the court dismisses a protective order, the court shall immediately:
517 (a) issue an order of dismissal to be filed in the protective order action; and
518 (b) transmit a copy of the order of dismissal to the statewide domestic violence
519 network as described in Section [78B-7-113](#).
520 (8) Notwithstanding the other provisions of this section, a continuous protective order
521 may not be modified or dismissed except as provided in Subsection [77-36-5.1\(6\)](#).