

DATING VIOLENCE PROTECTION ACT

2013 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill provides for the issuance, modification, and enforcement of protective orders between individuals who are, or have been, in a dating relationship.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for the issuance, modification, and enforcement of protective orders between parties who are, or who have been, in a dating relationship when:
 - the parties are emancipated or 18 years of age or older;
 - the parties are, or have been, in a dating relationship with each other; and
 - a party commits abuse or dating violence against the other party;
- ▶ describes the restrictions that a court may include in a protective order; and
- ▶ describes the conditions that may be placed on an alleged perpetrator of dating violence in a protective order.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-7-401, Utah Code Annotated 1953

78B-7-402, Utah Code Annotated 1953

78B-7-403, Utah Code Annotated 1953

78B-7-404, Utah Code Annotated 1953

78B-7-405, Utah Code Annotated 1953

78B-7-406, Utah Code Annotated 1953

78B-7-407, Utah Code Annotated 1953

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

35 Section 1. Section **78B-7-401** is enacted to read:

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Part 4. Dating Violence Protection Act

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78B-7-401. Title.

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This part is known as the "Dating Violence Protection Act."

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Section 2. Section **78B-7-402** is enacted to read:

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78B-7-402. Definitions.

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As used in this part:

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(1) "Abuse" means intentionally or knowingly:

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(a) causing or attempting to cause physical harm to a dating partner; or

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(b) placing a dating partner in reasonable fear of imminent physical harm.

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(2) (a) "Dating partner" means a person who:

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(i) (A) is an emancipated person under Section 15-2-1 or Title 78A, Chapter 6, Part 8,

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Emancipation; or

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(B) is 18 years of age or older; and

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(ii) is, or has been, in a dating relationship with the other party.

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(b) "Dating partner" does not include an intimate partner, as defined in federal law in

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Title 18 U.S.C. Section 921.

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(3) (a) "Dating relationship" means a social relationship of a romantic or intimate

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nature, regardless of whether the relationship involves sexual intimacy.

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(b) "Dating relationship" does not mean casual fraternization in a business,

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educational, or social context.

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(c) In determining, based on a totality of the circumstances, whether a dating

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relationship exists:

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(i) all relevant factors shall be considered, including:

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(A) whether the parties developed interpersonal bonding above a mere casual

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fraternization;

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(B) the length of the parties' relationship;

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(C) the nature and the frequency of the parties' interactions;

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(D) the ongoing expectations of the parties, individual or jointly, with respect to the

64 relationship:

65 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
66 relationship to others; and

67 (F) whether other reasons exist that support or detract from a finding that a dating
68 relationship exists; and

69 (ii) it is not necessary that all, or a particular number, of the factors described in
70 Subsection (3)(c)(i) are found to support the existence of a dating relationship.

71 (4) "Dating violence" means:

72 (a) any criminal offense involving violence or physical harm, or threat of violence or
73 physical harm, when committed by a person against a dating partner of the person; or

74 (b) any attempt, conspiracy, or solicitation by a person to commit a criminal offense
75 involving violence or physical harm against a dating partner of the person.

76 (5) "Dating violence protective order" means an order issued pursuant to this part
77 subsequent to a hearing on the petition, as described in Section 78B-7-403.

78 (6) "Ex parte dating violence protective order" means an order issued without notice to
79 the defendant, in accordance with the requirements of this part.

80 (7) "Protective order" means:

81 (a) a dating violence protective order; or

82 (b) an ex parte dating violence protective order.

83 Section 3. Section **78B-7-403** is enacted to read:

84 **78B-7-403. Abuse or danger of abuse -- Dating violence protective orders.**

85 (1) A person may seek a protective order if the person is subjected to, or there is a
86 substantial likelihood the person will be subjected to:

87 (a) abuse by a dating partner of the person; or

88 (b) dating violence by a dating partner of the person.

89 (2) A person may seek an order described in Subsection (1) whether or not the person
90 has taken other action to end the relationship.

91 (3) A person seeking a protective order may include another party in the petition for a
92 protective order if:

93 (a) the person seeking the order meets the requirements of Subsection (1); and

94 (b) the other party:

95 (i) is a family or household member of the person seeking the protective order; and
96 (ii) there is a substantial likelihood the other party will be subjected to abuse by the
97 dating party of the person.

98 (4) A person seeking a protective order under this part shall, to the extent possible,
99 provide information to facilitate identification of the respondent, including a name, Social
100 Security number, driver license number, date of birth, address, telephone number, and physical
101 description.

102 (5) A petition seeking a protective order under this part may not be withdrawn without
103 written order of the court.

104 (6) (a) A person may not seek a protective order against an intimate partner, as defined
105 by federal law in Title 18 U.S.C. Section 931, of the person under this part.

106 (b) A person may seek a protective order against an intimate partner, as defined by
107 federal law, of the person under title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

108 Section 4. Section **78B-7-404** is enacted to read:

109 **78B-7-404. Dating violence orders -- Ex parte dating violence protective orders --**
110 **Modification of orders -- Service of process -- Duties of the court.**

111 (1) If it appears from a petition for a protective order or a petition to modify an existing
112 protective order that a dating partner of the petitioner has abused or committed dating violence
113 against the petitioner, a court may:

114 (a) without notice, immediately issue an ex parte dating violence protective order
115 against the dating partner or modify an existing dating protect order ex parte if necessary to
116 protect the petitioner and all parties named in the petition; or

117 (b) upon notice to the respondent, issue a dating violence protective order or modify a
118 dating violence protective order after a hearing, regardless of whether the respondent appears.

119 (2) A court may grant the following relief without notice in a dating violence protective
120 order or a modification issued ex parte:

121 (a) prohibit the respondent from threatening to commit or committing dating violence
122 or abuse against the petitioner and any designated family or household member described in the
123 protective order;

124 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
125 with the petitioner or any designated family or household member, directly or indirectly;

- 126 (c) order that the respondent:
- 127 (i) is excluded and shall stay away from the petitioner's residence and its premises;
- 128 (ii) except as provided in Subsection (4), stay away from the petitioner's:
- 129 (A) school and the school's premises; and
- 130 (B) place of employment and its premises; and
- 131 (iii) stay away from any specified place frequented by the petitioner or any designated
- 132 family or household member;
- 133 (d) prohibit the respondent from being within a specified distance of the petitioner; and
- 134 (e) order any further relief that the court considers necessary to provide for the safety
- 135 and welfare of the petitioner and any designated family or household member.
- 136 (3) A court may grant the following relief in a dating violence protective order or a
- 137 modification of a dating violence protective order, after notice and a hearing, regardless of
- 138 whether the respondent appears:
- 139 (a) the relief described in Subsection (2); and
- 140 (b) except as provided in Subsection (5), upon finding that the respondent's use or
- 141 possession of a weapon poses a serious threat of harm to the petitioner or any designated family
- 142 or household member, prohibit the respondent from purchasing, using, or possessing a firearm
- 143 or other weapon specified by the court.
- 144 (4) If the petitioner or designated family or household member attends the same school
- 145 as the respondent, or is employed at the same place of employment as the respondent, the court:
- 146 (a) may not enter an order under Subsection (2)(c)(ii) that excludes the respondent
- 147 from the respondent's school or place of employment; and
- 148 (b) may enter an order governing the respondent's conduct at the respondent's school or
- 149 place of employment.
- 150 (5) The court may not prohibit the respondent from possessing a firearm:
- 151 (a) if the respondent has not been given notice of the petition for a protective order and
- 152 an opportunity to be heard; and
- 153 (b) unless there is clear and convincing evidence that the respondent has committed
- 154 abuse or dating violence against the petitioner.
- 155 (6) Any protective order issued under this part shall expire 180 days after the day on
- 156 which the order is issued.

- 157 (7) After the court issues a dating violence protective order, the court shall:
158 (a) as soon as possible, deliver the order to the county sheriff for service of process;
159 (b) make reasonable efforts at the hearing to ensure that the dating violence protective
160 order is understood by the petitioner and the respondent, if present;
161 (c) transmit electronically, by the end of the business day after the day on which the
162 order is issued, a copy of the dating violence protective order to the local law enforcement
163 agency designated by the petitioner; and
164 (d) transmit a copy of the protective order issued under this part in the same manner as
165 described in Section 78B-7-113.
- 166 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
167 (7)(a), shall:
168 (i) provide expedited service for protective orders issues in accordance with this part;
169 and
170 (ii) after the order has been served, transmit verification of service of process to the
171 statewide network described in Section 78B-7-110.
- 172 (b) This section does not prohibit another law enforcement agency from providing
173 service of process if that law enforcement agency:
174 (i) has contact with the respondent and service by that law enforcement agency is
175 possible; or
176 (ii) determines that, under the circumstances, providing service of process on the
177 respondent is in the best interests of the petitioner.
- 178 (9) When a protective order is served on a respondent in jail, or other holding facility,
179 the law enforcement agency managing the facility shall make a reasonable effort to provide
180 notice to the petitioner at the time the respondent is released from incarceration.
- 181 (10) A court may modify or vacate a protective order under this part after notice and
182 hearing, if the petitioner:
183 (a) is personally served with notice of the hearing, as provided in the Utah Rules of
184 Civil Procedure, and appears before the court to give specific consent to the modification or
185 vacation of the provisions of the protective order; or
186 (b) submits an affidavit agreeing to the modification or vacation of the provisions of
187 the protective order.

188 (11) To the extent that the provisions of this part are more specific than the Utah Rules
189 of Civil Procedure regarding protective orders, the provisions of this part govern.

190 Section 5. Section **78B-7-405** is enacted to read:

191 **78B-7-405. Hearings on ex parte dating violence protective orders.**

192 (1) (a) Within 20 days after the day on which the court issues an ex parte protective
193 order, the court shall set a date for a hearing on the petition.

194 (b) If, at the hearing described in Subsection (1)(a) the court does not issue a dating
195 violence protective order, the ex parte dating protective order shall expire, unless it is extended
196 by the court. Extensions beyond the 20-day period may not be granted unless:

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

198 (ii) the respondent has not been served; or

199 (iii) exigent circumstances exist.

200 (c) Under no circumstances may an ex parte order be extended beyond 180 days from
201 the day on which the court issues the initial ex parte protective order.

202 (d) If, at the hearing described in Subsection (1)(a), the court issues a dating violence
203 protective order, the ex parte protective order shall remain in effect until service of process of
204 the dating violence protective order is completed.

205 (e) A dating violence protective order issued after notice and a hearing shall remain in
206 effect from 180 days after the day on which the petition is issued.

207 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or
208 respondent may file an objection within 10 calendar days after the day on which the
209 recommended order is entered, and the assigned judge shall hold a hearing on the objection
210 within 20 days after the day on which the objection is filed.

211 (2) Upon a hearing under this section, the court may grant any of the relief permitted
212 under Section 78B-7-404, except the court shall not grant the relief described in Subsection
213 78B-7-404(3)(b) without providing the respondent notice and an opportunity to be heard.

214 (3) If a court denies a petition for an ex parte dating violence protective order or a
215 petition to modify a dating violence protective order ex parte, the court shall, upon the
216 petitioner's request:

217 (a) set the matter for hearing; and

218 (b) notify and serve the respondent.

219 Section 6. Section **78B-7-406** is enacted to read:

220 **78B-7-406. Fees -- Service of process.**

221 (1) Protective orders issued under this part shall be served by the sheriff's office,
222 constable's office, or any law enforcement agency or peace officer, in accordance with
223 Subsection 78B-7-404(8).

224 (2) Fees may not be imposed by a court clerk, sheriff, constable, or law enforcement
225 agency for:

226 (a) filing a petition under this part;

227 (b) obtaining a protective order under this part; or

228 (c) service of a protective order issued under this part.

229 Section 7. Section **78B-7-407** is enacted to read:

230 **78B-7-407. Enforcement.**

231 (1) A law enforcement officer shall, without a warrant, arrest a person if the officer has
232 probable cause to believe that the person has violated a protective order issued under this part,
233 regardless of whether the violation occurred in the presence of the officer.

234 (2) A violation of a protective order issued under this part constitutes a class B
235 misdemeanor.

Legislative Review Note
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Office of Legislative Research and General Counsel