

Effective 5/13/2014

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

- (1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:
 - (a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or
 - (b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.
- (2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:
 - (a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;
 - (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;
 - (c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;
 - (d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;
 - (e) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
 - (f) grant to the petitioner temporary custody of any minor children of the parties;
 - (g) order the appointment of an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902;
 - (h) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and
 - (i) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.
- (3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:
 - (a) grant the relief described in Subsection (2); and
 - (b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.
- (4) Following the protective order hearing, the court shall:
 - (a) as soon as possible, deliver the order to the county sheriff for service of process;
 - (b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

- (c) transmit electronically, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
 - (d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113.
- (5)
- (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:
 - (i) criminal offenses are those under Subsections (2)(a) through (e), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and
 - (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a) as it refers to Subsections (2)(f), (h), and (i).
 - (b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.
 - (c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.
- (6) The protective order shall include:
- (a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;
 - (b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description; and
 - (c) a statement advising the petitioner that:
 - (i) after two years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;
 - (ii) the petitioner should, within the 30 days prior to the end of the two-year period, advise the court of the petitioner's current address for notice of any hearing; and
 - (iii) the address provided by the petitioner will not be made available to the respondent.
- (7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.
- (8)
- (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.
 - (b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:
 - (i) has contact with the respondent and service by that law enforcement agency is possible; or
 - (ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.
- (9)

- (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.
 - (b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.
- (10) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:
- (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or
 - (b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.
- (11) A protective order may be modified without a showing of substantial and material change in circumstances.
- (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Amended by Chapter 267, 2014 General Session