

Senator Terry R. Spencer proposes to substitute the following bill:

COHABITANT ABUSE ACT AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

AN ACT RELATING TO THE COHABITANT ABUSE ACT; REQUIRING CLEAR AND CONVINCING EVIDENCE OF DOMESTIC VIOLENCE OR ABUSE BEFORE AN EX PARTE PROTECTIVE ORDER MAY BE ISSUED; REQUIRING PROTECTIVE ORDER TO BE FILED AS PART OF ANY PENDING DIVORCE PROCEEDING EXCLUSIVELY IN DISTRICT COURT; PROHIBITING PROTECTIVE ORDERS FROM GRANTING TEMPORARY CUSTODY OF MINOR CHILDREN; LIMITING ABILITY OF PROTECTIVE ORDER TO AFFECT VISITATION OF MINOR CHILDREN AND REQUIRING ADDITIONAL HEARING; ALLOWING MUTUAL PROTECTIVE ORDERS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-6-2, as last amended by Chapter 244, Laws of Utah 1996

30-6-4, as last amended by Chapter 10, Laws of Utah 1997

30-6-4.2, as last amended by Chapter 10, Laws of Utah 1997

30-6-4.3, as last amended by Chapter 83, Laws of Utah 1998

78-3a-104, as last amended by Chapters 274 and 315, Laws of Utah 1998

78-3a-105, as last amended by Chapter 274, Laws of Utah 1998

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

Section 1. Section **30-6-2** is amended to read:

30-6-2. Abuse or danger of abuse -- Protective orders.

(1) Any cohabitant or any child residing with a cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of immediate danger of abuse

26 or domestic violence, may seek an ex parte protective order or a protective order in accordance
27 with this chapter, whether or not that person has left the residence or the premises in an effort to
28 avoid further abuse.

29 (2) (a) A petition for a protective order may be filed under this chapter regardless of
30 whether an action for divorce between the parties is pending.

31 (b) If a complaint for divorce has already been filed in district court, a petition under this
32 chapter ~~may~~ shall be filed as part of the divorce proceedings, and the petitioner shall provide
33 notice, in accordance with the provisions of this chapter, to the respondent or counsel representing
34 the respondent.

35 (3) A cohabitant, the department, or any person or institution interested in a minor may
36 seek a protective order on behalf of the minor under the circumstances described in Subsection (1),
37 regardless of whether the minor could have filed a petition on his own behalf. If a cohabitant
38 intends to seek a protective order on his own behalf and on behalf of a minor, a single petition may
39 be filed.

40 (4) The court shall appoint a guardian ad litem to represent the minor if the court considers
41 the appointment necessary for the welfare of the minor.

42 (5) The county attorney or district attorney, if appropriate, shall represent the department
43 where the department appears as a petitioner.

44 (6) A petition seeking a protective order may not be withdrawn without approval of the
45 court.

46 Section 2. Section **30-6-4** is amended to read:

47 **30-6-4. Forms for petitions and protective orders -- Assistance.**

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

50 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for
51 petitions and orders for protection in accordance with the provisions of this chapter on or before
52 September 1, 1995. That office shall provide the forms to the clerk of each court authorized to
53 issue protective orders. The forms shall include:

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

57 (ii) a separate portion of the form for those provisions, the violation of which is a criminal
58 offense, and a separate portion for those provisions, the violation of which is a civil violation, as
59 provided in Subsection 30-6-4.2(5);

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

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

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

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

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

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

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

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

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

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

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

87 (f) written information regarding the procedure for transporting a jailed or imprisoned

88 respondent to the protective order hearing, including an explanation of the use of transportation
89 order forms when necessary.

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

91 (a) filing a petition under this chapter;

92 (b) obtaining an ex parte protective order;

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

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

96 (4) A petition for an order of protection shall be in writing [~~and~~], verified, and shall

97 ~~h~~ ~~[include § [documentation] CORROBORATING EVIDENCE § demonstrating, under a preponderance of the~~
97a ~~evidence standard, the need~~

98 ~~for an order of protection. That evidence shall be in the form of a police report, medical report,~~

99 ~~or other § [documentation] CORROBORATING EVIDENCE § of domestic violence or abuse]~~

99a ~~DEMONSTRATE, BY A PREPONDERANCE OF THE EVIDENCE, THE OCCURRENCE OF DOMESTIC~~

99b ~~VIOLENCE OR ABUSE AND OF THE NEED FOR A PROTECTIVE ORDER~~ h .

100 (5) (a) All orders for protection shall be issued in the form adopted by the Administrative
101 Office of the Courts pursuant to Subsection (1).

102 (b) Each protective order issued, except orders issued ex parte, shall include the following
103 language:

104 "Respondent was afforded both notice and opportunity to be heard in the hearing that gave
105 rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat.
106 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal
107 lands, and United States territories."

108 Section 3. Section **30-6-4.2** is amended to read:

109 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders --**
110 **Service of process -- Duties of the court.**

111 (1) If it appears from a petition for an order for protection or a petition to modify an order
112 for protection that domestic violence or abuse has occurred or a modification of an order for
113 protection is required, a court may:

114 (a) without notice, upon receipt of a petition demonstrating, by a preponderance of the
115 evidence, the occurrence of domestic violence or abuse and of the need for an ex parte protective
116 order, immediately issue an order for protection ex parte or modify an order for protection ex parte
117 as it considers necessary to protect the petitioner and all parties named to be protected in the
118 petition; or

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

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

123 (a) enjoin the respondent from threatening to commit or committing domestic violence or
124 abuse against the petitioner and any designated family or household member;

125 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
126 communicating with the petitioner, directly or indirectly;

127 (c) order that the respondent is excluded from the petitioner's residence and its premises,
128 and order the respondent to stay away from the residence, school, or place of employment of the
129 petitioner, and the premises of any of these, or any specified place frequented by the petitioner and
130 any designated family or household member;

131 (d) upon finding that the respondent's use or possession of a weapon may pose a serious
132 threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a
133 firearm or other weapon specified by the court;

134 (e) order possession and use of an automobile and other essential personal effects, and
135 direct the appropriate law enforcement officer to accompany the petitioner to the residence of the
136 parties to ensure that the petitioner is safely restored to possession of the residence, automobile,
137 and other essential personal effects, or to supervise the petitioner's or respondent's removal of
138 personal belongings;

139 (f) grant temporary custody of any minor children to the petitioner;

140 (g) order any further relief that the court considers necessary to provide for the safety and
141 welfare of the petitioner and any designated family or household member; and

142 (h) if the petition requests child support or spousal support, at the hearing on the petition
143 order both parties to provide verification of current income, including year-to-date pay stubs or
144 employer statements of year-to-date or other period of earnings, as specified by the court, and
145 complete copies of tax returns from at least the most recent year.

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

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

149 (b) specify arrangements for visitation of any minor child by the respondent and require

150 supervision of that visitation by a third party or deny visitation if necessary to protect the safety
151 of the petitioner or child.

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

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

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

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

158 and

159 (d) transmit a copy of the order to the statewide domestic violence network described in
160 Section 30-6-8.

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

164 (i) criminal offenses are those under Subsections 30-6-4.2(2)(a) through (e), and under
165 Subsection 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(a) through (e); and

166 (ii) civil offenses are those under Subsections 30-6-4.2(2)(f) through (h), and Subsection
167 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(f) through (h).

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

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

172 (6) The protective order shall include:

173 (a) a designation of a specific date, determined by the court, when the civil portion of the
174 protective order either expires or is scheduled for review by the court, which date may not exceed
175 150 days after the date the order is issued, unless the court indicates on the record the reason for
176 setting a date beyond 150 days;

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

180 (c) a statement advising the petitioner that:

181 (i) after three years from the date of issuance of the protective order, a hearing may be held
182 to dismiss the criminal portion of the protective order;

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

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

186 (7) Child support and spouse support orders issued as part of a protective order are subject
187 to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in
188 IV-D Cases, and Title 62A, Chapter 11, Part 5, [~~Universal~~] Income Withholding [=] in Non IV-D
189 [~~Obligees~~] Cases, except when the protective order is issued ex parte.

190 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
191 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
192 chapter, and shall transmit verification of service of process, when the order has been served, to
193 the statewide domestic violence network described in Section 30-6-8.

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

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

197 or

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

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

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

205 (10) (a) A court may modify or vacate an order of protection or any provisions in the order
206 after notice and hearing, except as limited under Subsection (10)(b).

207 (b) Criminal provisions of a protective order may not be vacated within three years of
208 issuance unless the petitioner:

209 (i) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules
210 of Civil Procedure, and the petitioner personally appears before the court and gives specific
211 consent to the vacation of the criminal provisions of the protective order; or

212 (ii) submits a verified affidavit, stating agreement to the vacation of the criminal
213 provisions of the protective order.

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

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

218 Section 4. Section **30-6-4.3** is amended to read:

219 **30-6-4.3. Hearings on ex parte orders.**

220 (1) (a) When a court issues an ex parte protective order the court shall set a date for a
221 hearing on the petition within 20 days after the ex parte order is issued. ~~h~~ [~~§~~-~~SUBJECT TO~~
221aa ~~AVAILABLE~~

221a ~~RESOURCES THE, [The] § hearing § [shall] MAY § be an~~
222 ~~evidentiary hearing upon request of either party § [.] WITH THE EVIDENCE PRESENTED LIMITED~~
222a ~~TO PROTECTIVE ORDER ISSUANCE. §] h~~

223 (b) If an evidentiary hearing is requested after the issuance of an ex parte protective order,
224 the burden is on the petitioner to show, by a preponderance of the evidence, that a protective order
225 should be issued. No presumption of correctness may be attached to the ex parte protective order
226 or its accompanying documentation at the time of that evidentiary hearing.

227 ~~[(b)]~~ (c) If, at that hearing, the court does not issue a protective order, the ex parte
228 protective order shall expire, unless it is otherwise ~~[modified]~~ extended by the court.

229 ~~[(c)]~~ (d) If at that hearing the court issues a protective order, the ex parte protective order
230 remains in effect until service of process of the protective order is completed.

231 ~~[(d)]~~ (e) A protective order issued after notice and a hearing is effective until further order
232 of the court.

233 (2) Upon a hearing under this section, the court may grant any of the relief described in
234 Section 30-6-4.2.

235 (3) When a court denies a petition for an ex parte protective order or a petition to modify
236 an order for protection ex parte, the court shall, at the request of the petitioner, set the matter for
237 hearing upon notice to the respondent. That hearing § [shall] MAY § be an evidentiary hearing upon
237a request
238 of either party.

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

243 motion to vacate.

244 Section 5. Section **78-3a-104** is amended to read:

245 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

246 (1) Except as otherwise provided by law, the juvenile court has exclusive original
247 jurisdiction in proceedings concerning:

248 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a
249 person younger than 21 years of age who has violated any law or ordinance before becoming 18
250 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

251 (b) a person 21 years of age or older who has failed or refused to comply with an order of
252 the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st
253 birthday; however, the continuing jurisdiction is limited to causing compliance with existing
254 orders;

255 (c) a minor who is an abused child, neglected child, or dependent child, as those terms are
256 defined in Section 78-3a-103;

257 (d) a protective order for a minor who is alleged to be an abused child or neglected child,
258 except as provided in Section 78-3a-105, and unless:

259 (i) the petition is filed by a natural parent of the minor against a natural parent of the
260 minor; or

261 (ii) the petition is otherwise filed during the pendency of a divorce proceeding between
262 the child's parents, one of whom is alleged to have abused or neglected the child;

263 (e) the determination of the custody of a minor or to appoint a guardian of the person or
264 other guardian of a minor who comes within the court's jurisdiction under other provisions of this
265 section;

266 (f) the termination of the legal parent-child relationship in accordance with Part 4,
267 Termination of Parental Rights Act, including termination of residual parental rights and duties;

268 (g) the treatment or commitment of a mentally retarded minor;

269 (h) a minor who, in defiance of earnest and persistent efforts on the part of his parents and
270 school authorities as required under Section 53A-11-103, is a habitual truant from school;

271 (i) the judicial consent to the marriage of a minor under age 16 upon a determination of
272 voluntariness or where otherwise required by law, employment, or enlistment of a minor when
273 consent is required by law;

274 (j) any parent or parents of a minor committed to a secure youth corrections facility, to
275 order, at the discretion of the court and on the recommendation of a secure youth corrections
276 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
277 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
278 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
279 therapist the court may direct, for a period directed by the court as recommended by a secure youth
280 corrections facility;

281 (k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

282 (l) the treatment or commitment of a mentally ill child. The court may commit a child to
283 the physical custody of a local mental health authority or to the legal custody of the Division of
284 Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part
285 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not
286 commit a child directly to the Utah State Hospital; and

287 (m) the commitment of a minor in accordance with Section 62A-8-501.

288 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
289 jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent
290 jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except
291 that the court shall have exclusive jurisdiction over the following traffic offenses committed by
292 a minor under 18 years of age:

293 (a) Section 76-5-207, automobile homicide;

294 (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

295 (c) Section 41-6-45, reckless driving;

296 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer
297 for an extended period of time; and

298 (e) Section 41-6-13.5, fleeing a peace officer.

299 (3) The court also has jurisdiction over traffic offenses that are part of a single criminal
300 episode filed in a petition that contains an offense over which the court has jurisdiction.

301 (4) The juvenile court has jurisdiction over questions of custody, support, and visitation
302 certified to it by the district court pursuant to Section 78-3a-105.

303 (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is
304 referred to it by the Division of Child and Family Services or by public or private agencies that

305 contract with the division to provide services to that minor where, despite earnest and persistent
306 efforts by the division or agency, the minor has demonstrated that he:

307 (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities
308 to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

309 (b) has run away from home.

310 (6) This section does not restrict the right of access to the juvenile court by private
311 agencies or other persons.

312 (7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising
313 under Section 78-3a-602.

314 Section 6. Section **78-3a-105** is amended to read:

315 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

316 (1) The district court or other court has concurrent jurisdiction with the juvenile court as
317 follows:

318 (a) when a person who is 18 years of age or older and who is under the continuing
319 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law
320 or municipal ordinance;

321 (b) in adoption proceedings, when the juvenile court has previously entered an order
322 terminating the rights of a parent, and finds that adoption is in the best interest of the minor;
323 adoption proceedings under this section shall be conducted in accordance with the procedures
324 described in Title 78, Chapter 30, Adoption;

325 (c) in establishing paternity and ordering testing for the purposes of establishing paternity,
326 in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings
327 initiated under Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, or Title
328 78, Chapter 3a, Part 4, Termination of Parental Rights Act; and

329 (d) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant
330 Abuse Act, ~~[unless]~~ except that the district court has exclusive jurisdiction if the petition is filed
331 by a natural parent of the minor against a natural parent of the minor or is otherwise filed during
332 the pendency of a divorce proceeding between the child's parents, one of whom is alleged to have
333 abused or neglected the child.

334 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate
335 if the court otherwise has jurisdiction over the minor.

336 (3) (a) This section does not deprive the district court of jurisdiction to appoint a guardian
337 for a minor, or to determine the support, custody, and visitation of a minor upon writ of habeas
338 corpus or when the question of support, custody, and visitation is incidental to the determination
339 of a cause in the district court.

340 (b) However, if a petition involving the same minor is pending in the juvenile court or the
341 juvenile court has previously acquired continuing jurisdiction over the same minor, the district
342 court shall certify the question of support, custody, and visitation to the juvenile court for
343 determination.

344 (4) When a question is certified to the juvenile court under Subsection (3), the findings and
345 order of the juvenile court judge are the order of the district court.

346 (5) (a) Where a support, custody, or visitation award has been made by a district court in
347 a divorce action or other proceeding, and the jurisdiction of the district court in the case is
348 continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the
349 minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile
350 court under Section 78-3a-104.

351 (b) The juvenile court may, by order, change the custody, support, and visitation rights
352 previously ordered in the district court as necessary to implement the order of the juvenile court
353 for the safety and welfare of the minor. The juvenile court order remains in effect so long as the
354 jurisdiction of the juvenile court continues.

355 (6) When a copy of the findings and order of the juvenile court has been filed with the
356 district court, the findings and order of the juvenile court are binding on the parties to the divorce
357 action as though entered in the district court.

358 Section 7. **Effective date.**

359 This act takes effect on July 1, § [1999] 2000 § .