

**COHABITANT ABUSE ACT AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Terry R. Spencer**

AN ACT RELATING TO THE COHABITANT ABUSE ACT; REQUIRING SHOWING OF PREPONDERANCE OF 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; PROVIDING FOR EVIDENTIARY HEARING ON QUESTION OF ISSUANCE OF PROTECTIVE ORDER; 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 99 and 164, Laws of Utah 1999

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

(2) (a) A petition for a protective order may be filed under this chapter regardless of

28 whether an action for divorce between the parties is pending.

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

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

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

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

42 (6) A petition seeking a protective order may not be withdrawn without approval of the  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

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

45 **30-6-4. Forms for petitions and protective orders -- Assistance.**

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

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

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

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

58 (iii) language in the criminal provision portion stating violation of any criminal provision

59 is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply  
60 with a civil provision is subject to contempt proceedings;

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

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

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

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

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

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

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

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

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

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

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

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

89 (a) filing a petition under this chapter;

90 (b) obtaining an ex parte protective order;

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

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

94 (4) A petition for an order of protection shall be in writing [and], verified and may include,  
95 but not be limited to, other evidence such as police reports, medical reports, or third party  
96 affidavits.

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

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

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

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

106 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders --**  
107 **Service of process -- Duties of the court.**

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

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

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

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

120 (a) enjoin the respondent from threatening to commit or committing domestic violence or

121 abuse against the petitioner and any designated family or household member;

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

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

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

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

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

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

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

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

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

146 (b) specify arrangements for visitation of any minor child by the respondent and require  
147 supervision of that visitation by a third party or deny visitation if necessary to protect the safety  
148 of the petitioner or child.

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

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

151 (b) make reasonable efforts to ensure that the order for protection is understood by the

152 petitioner, and the respondent, if present;

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

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

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

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

163 (ii) civil offenses are those under Subsections 30-6-4.2(2)(f) through (h), and Subsection  
164 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(f) through (h).

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

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

169 (6) The protective order shall include:

170 (a) a designation of a specific date, determined by the court, when the civil portion of the  
171 protective order either expires or is scheduled for review by the court, which date may not exceed  
172 150 days after the date the order is issued, unless the court indicates on the record the reason for  
173 setting a date beyond 150 days;

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

177 (c) a statement advising the petitioner that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

213 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil

214 Procedure, regarding protective orders, the provisions of this chapter govern.

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

216 **30-6-4.3. Hearings on ex parte orders.**

217 (1) (a) When a court issues an ex parte protective order the court shall set a date for a  
218 hearing on the petition within 20 days after the ex parte order is issued.

219 (b) Either party may request an evidentiary hearing after the issuance of an ex parte  
220 protective order. If an evidentiary hearing on the question of issuance of a protective order is  
221 requested, the burden is on the petitioner to show, by a preponderance of the evidence, that a  
222 protective order should be issued. No presumption of correctness may be attached to the ex parte  
223 protective order or its accompanying documentation at the time of that evidentiary hearing. The  
224 petitioner shall provide evidence in support of issuing a protective order. That evidence may  
225 include testimony and other relevant evidence.

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

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

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

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

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

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

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

244 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

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

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

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

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

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

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

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

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

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

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

268 (h) a minor who is a habitual truant from school;

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

272 (j) any parent or parents of a minor committed to a secure youth corrections facility, to  
273 order, at the discretion of the court and on the recommendation of a secure youth corrections  
274 facility, the parent or parents of a minor committed to a secure youth corrections facility for a  
275 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth

276 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other  
277 therapist the court may direct, for a period directed by the court as recommended by a secure youth  
278 corrections facility;

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

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

285 (m) the commitment of a minor in accordance with Section 62A-8-501; and

286 (n) de novo review of final agency actions resulting from an informal adjudicative  
287 proceeding as provided in Section 63-46b-15.

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, 2000.

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**Legislative Review Note**  
**as of 2-1-00 11:00 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**