

PROTECTIVE ORDER AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Kory M. Holdaway

LONG TITLE

General Description:

This bill makes changes in the process for filing for child protective orders.

Highlighted Provisions:

This bill:

- ▶ allows for the transfer of child protection actions from the juvenile court to the district court;
- ▶ requires the clerk of the court to check for any other actions regarding the child:
 - within the courts;
 - within the Division of Child and Family Services; and
 - obtain any reports referred to in the petition as having been made by law enforcement; and
- ▶ reduces the time a respondent can petition for dismissal of the criminal portion of the order from three to two years.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-116, as last amended by Chapter 283, Laws of Utah 2002

78-3-4, as last amended by Chapter 323, Laws of Utah 2000

78-3a-104, as last amended by Chapters 68 and 195, Laws of Utah 2003

78-3h-101, as enacted by Chapter 68, Laws of Utah 2003

78-3h-102, as enacted by Chapter 68, Laws of Utah 2003

78-3h-103, as enacted by Chapter 68, Laws of Utah 2003

78-3h-104, as enacted by Chapter 68, Laws of Utah 2003

78-3h-105, as enacted by Chapter 68, Laws of Utah 2003

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

Section 1. Section **62A-4a-116** is amended to read:

62A-4a-116. Management Information System -- Requirements -- Contents --

Purpose -- Access.

(1) The division shall develop and implement a Management Information System that meets the requirements of this section and the requirements of federal law and regulation. The information and records contained in the Management Information System are protected records under Title 63, Chapter 2, Government Records Access and Management Act, and except for the limited, specific, and narrow provisions relating to licensing, contained in Section 62A-4a-116.2, and those provisions relating to contract providers, described in Subsection (6), they are available only to those with statutory authorization to review under that law. They are also available to those who have a specific statutory authorization to access the record for the purpose of assisting the state with state and federal requirements to maintain information solely for the purpose of protecting minors and providing services to families in need.

(2) With regard to all child welfare cases, the Management Information System shall provide each caseworker with a complete history of each child in that worker's caseload, including the following information:

(a) a record of all past action taken by the division with regard to that child and the child's siblings;

(b) the complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings;

(c) the number of times the child has been in the custody of the division;

(d) the cumulative period of time the child has been in the custody of the division;

(e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including documentation of the latest status or the final outcome or determination regarding each report, including whether each report was found to be supported, unsupported, substantiated by a juvenile court, unsubstantiated by a juvenile court, or without merit;

(f) the number of times the child's parent or parents have failed any treatment plan; and

(g) the number of different caseworkers who have been assigned to that child in the past.

(3) The division's Management Information System shall also:

(a) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect; and

(b) alert caseworkers regarding deadlines for completion of and compliance with policy, including treatment plans.

(4) With regard to all child protective services cases, the Management Information System shall also:

(a) monitor the compliance of each case with division rule and policy, state law, and federal law and regulation; and

(b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.

(5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-116.2 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.

(6) (a) The division may allow its contract providers and court clerks designated by the Administrative Office of the Courts to have limited access to the Management Information System. A division contract provider has access only to information about persons who are

currently receiving services from that specific contract provider. Designated court clerks shall only have access to information necessary to comply with Subsection 78-3h-102(2).

(b) Each contract provider who requests access to information contained in the Management Information System shall:

(i) take all necessary precautions to safeguard the security of the information contained in the Management Information System;

(ii) train its employees regarding requirements for protecting the information contained in the Management Information System as required by this chapter and under Title 63, Chapter 2, Government Records Access and Management Act, and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they protect the information contained in the Management Information System as required by law.

(c) The division shall take reasonable precautions to ensure that its contract providers comply with the requirements of this Subsection (6).

(7) The division shall take all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to or release of information contained in the Management Information System.

Section 2. Section **78-3-4** is amended to read:

78-3-4. Jurisdiction -- Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction to adjudicate trials de novo of the

judgments of the justice court and of the small claims department of the district court.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the matter was properly filed in the circuit court prior to July 1, 1996;

(c) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed a justice court; or

(d) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

(9) The district court has jurisdiction of actions under Title 78, Chapter 3h, Child Protective Orders, if the juvenile court transfers the case to the district court.

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

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

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

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

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st

birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

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

(d) a protective order for a minor pursuant to the provisions of Title 78, Chapter 3h, Child Protective Orders[;], which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 45a, Uniform Act on Paternity, in which the petitioner and the respondent are parties;
and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

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

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

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

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

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other

therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

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

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-15-301;

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

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

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

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

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

(c) Section 41-6-45, reckless driving or Section 73-18-12, reckless operation;

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

(e) Section 41-6-13.5 or 73-18-20, fleeing a peace officer.

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

(4) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

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

(b) has run away from home.

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

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

(7) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78-3a-320.

Section 4. Section **78-3h-101** is amended to read:

78-3h-101. Definitions.

As used in this chapter:

(1) "Abuse" means physical abuse or sexual abuse.

~~[(1)]~~ (2) "Court" means the district court or juvenile court.

~~[(2) "Division" means the Division of Child and Family Services.]~~

(3) All other terms have the same meaning as defined in Section 78-3a-103.

Section 5. Section **78-3h-102** is amended to read:

78-3h-102. Petition -- Ex parte determination -- Guardian ad litem -- Referral to division.

(1) Any interested person may file a petition for a protective order on behalf of a child who ~~[has been]~~ is being abused~~[-sexually abused, neglected, or abandoned]~~ or is in imminent danger of being abused~~[-sexually abused, neglected, or abandoned]~~. The petitioner shall first make a referral to the division.

(2) Upon the filing of a petition, the clerk of the court shall:

(a) review the records of the juvenile court, the district court, and the management information system of the division to find any petitions, orders, or investigations related to the child or the parties to the case;

(b) request the records of any law enforcement agency identified by the petitioner as having investigated abuse of the child; and

(c) identify and obtain any other background information that may be of assistance to the court.

~~[(2)]~~ (3) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor ~~[has been]~~ is being abused~~[-sexually abused, neglected, or abandoned]~~ or is in imminent danger of being abused~~[-sexually abused, neglected, or abandoned]~~. If so, the court shall enter an ex parte child protective order.

~~[(3)]~~ (4) The court may appoint an attorney guardian ad litem for the child who is the subject of the petition.

Section 6. Section **78-3h-103** is amended to read:

78-3h-103. Hearing.

(1) The court shall schedule a hearing within 20 days after the ex parte determination.

(2) The ~~[petitioner shall serve a copy of the]~~ petition, ex parte child protective order, and notice of hearing shall be served on the respondent, the minor's parent or guardian, and, if appointed, the guardian ad litem. The notice shall contain:

(a) the name and address of the person to whom it is directed;

(b) the date, time, and place of the hearing;

(c) the name of the minor on whose behalf a petition is being brought; and

(d) a statement that a person is entitled to have an attorney present at the hearing.

(3) The court shall provide an opportunity for any person having relevant knowledge to present evidence or information. The court may hear statements by counsel.

(4) An agent of the division served with a subpoena in compliance with the Utah Rules of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

(5) If the court determines, based on a preponderance of the evidence, that the minor ~~[has~~

been] is being abused[, ~~sexually abused, neglected, or abandoned~~] or is in imminent danger of being abused, [~~sexually abused, neglected, or abandoned;~~] the court shall enter a child protective order. With the exception of the provisions of Section 78-3a-320, a child protective order does not constitute an adjudication of abuse, neglect, or dependency under Title 78, Chapter 3a, Part 3, Abuse Neglect and Dependency Proceedings.

Section 7. Section **78-3h-104** is amended to read:

78-3h-104. Content of order.

(1) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is a class A misdemeanor under Section 77-36-2.4:

(a) enjoin the respondent from threatening to commit or committing abuse [~~or neglect~~] of the minor;

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

(c) prohibit the respondent from entering or remaining upon the residence, school, or place of employment of the minor and the premises of any of these or any specified place frequented by the minor;

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

(e) determine ownership and possession of personal property and direct the appropriate law enforcement officer to attend and supervise the petitioner's or respondent's removal of personal property.

(2) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is contempt of court:

(a) determine temporary custody of a minor who is the subject of the petition;

(b) determine parent-time with a minor who is the subject of the petition, including denial of parent-time if necessary to protect the safety of the minor, and require supervision of parent-time by a third party;

(c) determine support in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act; and

(d) order any further relief the court considers necessary to provide for the safety and welfare of the minor.

(3) A child protective order and an ex parte child protective order shall include:

(a) a statement that violation of a criminal provision is a class A misdemeanor and violation of a civil provision is contempt of court; and

(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.

(4) A child protective order shall include:

(a) a statement that:

(i) [~~three~~] two years from entry of the order, the respondent may petition to dismiss the criminal portion of the order;

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

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

(b) the date when the civil portion of the order will expire or be reviewed; and

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

Section 8. Section **78-3h-105** is amended to read:

78-3h-105. Service -- Income withholding -- Expiration.

(1) If the court enters an ex parte child protective order or a child protective order, the court shall:

(a) make reasonable efforts to ensure that the order is understood by the petitioner and the respondent, if present;

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered transmit a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section 30-6-8.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section 30-6-8 in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child 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.

(5) After notice and hearing a court may modify or vacate a child protective order without a showing of substantial and material change in circumstances, except that the criminal provisions of the child 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 Rule 4, 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.

(6) The civil provisions of the child protective order expire 150 days after the date of the ~~[pretrial hearing]~~ order unless a different date is set by the court. The court may not set a date more than 150 days after the date of the ~~[pretrial hearing]~~ order without a finding of good cause.

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The court may review and extend the expiration date, but may not extend it to more than 150 days after the date of the ~~[pretrial hearing]~~ order without a finding of good cause. ~~[Any civil provision of the child protective order assimilated into the order remains effective until the minor is 18 years of age unless otherwise ordered by the court.]~~