

1 **FALSIFICATION OF INFORMATION IN A PROTECTIVE**
2 **ORDER PROCEEDING**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Alvin B. Jackson**

6 House Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions relating to protective orders and child protective orders
11 when a petitioner provides false information.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that a respondent may bring a motion to allege that the petitioner
15 knowingly falsified a statement or information for the purpose of obtaining a
16 protective order or a child protective order; and

17 ▶ requires a court to penalize a petitioner who knowingly falsified a statement or
18 information for the purpose of obtaining a protective order or a child protective
19 order.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **78B-7-105**, as last amended by Laws of Utah 2009, Chapter 232

27 **78B-7-115**, as last amended by Laws of Utah 2009, Chapter 232



28 78B-7-203, as last amended by Laws of Utah 2010, Chapter 34

29 78B-7-207, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 ENACTS:

31 78B-7-204.5, Utah Code Annotated 1953



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

34 Section 1. Section 78B-7-105 is amended to read:

35 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

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

38 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for
39 petitions and orders for protection in accordance with the provisions of this chapter. That
40 office shall provide the forms to the clerk of each court authorized to issue protective orders.

41 The forms shall include:

42 (i) (A) a statement notifying the petitioner for an ex parte protective order that knowing
43 falsification of any statement or information provided for the purpose of obtaining a protective
44 order may subject the petitioner to felony prosecution; and

45 (B) a statement notifying the petitioner of a motion for an ex parte protective order that
46 the respondent may file a motion to allege that the petitioner knowingly falsified a statement or
47 information for the purpose of obtaining a protective order;

48 (ii) a separate portion of the form for those provisions, the violation of which is a
49 criminal offense, and a separate portion for those provisions, the violation of which is a civil
50 violation, as provided in Subsection 78B-7-106(5);

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

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

57 (v) a space for the petitioner to request a specific period of time for the civil provisions
58 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for

59 the requested extension of the length of time beyond 150 days;

60 (vi) a statement advising the petitioner that when a [~~minor~~] child is included in an ex
61 parte protective order or a protective order, as part of either the criminal or the civil portion of
62 the order, the petitioner may provide a copy of the order to the principal of the school where the
63 child attends; and

64 (vii) a statement advising the petitioner that if the respondent fails to return custody of
65 a minor [~~child~~] to the petitioner as ordered in a protective order, the petitioner may obtain from
66 the court a writ of assistance.

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

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

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

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

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

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

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

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

84 (a) filing a petition under this chapter;

85 (b) obtaining an ex parte protective order;

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

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

89 (4) A petition for an order of protection shall be in writing and verified.

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

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

94 "Respondent was afforded both notice and opportunity to be heard in the hearing that
95 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
96 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
97 Columbia, tribal lands, and United States territories. This order complies with the Uniform
98 Interstate Enforcement of Domestic Violence Protection Orders Act."

99 (c) Each protective order issued in accordance with this part, including protective
100 orders issued ex parte, shall include the following language:

101 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after
102 one year if it finds that the basis for the issuance of the protective order no longer exists and the
103 petitioner has repeatedly acted in contravention of the protective order provisions to
104 intentionally or knowingly induce the respondent to violate the protective order, demonstrating
105 to the court that the petitioner no longer has a reasonable fear of the respondent."

106 Section 2. Section **78B-7-115** is amended to read:

107 **78B-7-115. Dismissal of protective order.**

108 (1) A protective order that has been in effect for at least two years may be dismissed if
109 the court determines that the petitioner no longer has a reasonable fear of future abuse. In
110 determining whether the petitioner no longer has a reasonable fear of future abuse, the court
111 shall consider the following factors:

112 (a) whether the respondent has complied with treatment recommendations related to
113 domestic violence, entered at the time the protective order was entered;

114 (b) whether the protective order was violated during the time it was in force;

115 (c) claims of harassment, abuse, or violence by either party during the time the
116 protective order was in force;

117 (d) counseling or therapy undertaken by either party;

118 (e) impact on the well-being of any minor children of the parties, if relevant; and

119 (f) any other factors the court considers relevant to the case before it.

120 (2) The court may amend or dismiss a protective order issued in accordance with this

121 part that has been in effect for at least one year if it finds that:

122 (a) the basis for the issuance of the protective order no longer exists;

123 (b) the petitioner has repeatedly acted in contravention of the protective order

124 provisions to intentionally or knowingly induce the respondent to violate the protective order;

125 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable
126 fear of the respondent; and

127 (d) the respondent has not been convicted of a protective order violation or any crime
128 of violence subsequent to the issuance of the protective order, and there are no unresolved
129 charges involving violent conduct still on file with the court.

130 (3) (a) A respondent may file a motion to allege that the petitioner knowingly falsified
131 a statement or information for the purpose of obtaining a protective order.

132 (b) If the court determines that the petitioner knowingly falsified a statement or
133 information for the purpose of obtaining a protective order, the court shall:

134 (i) penalize the petitioner in the amount of \$5,000 and award that amount to the
135 respondent; and

136 (ii) award reasonable attorney fees and costs to the respondent for defending the false
137 statement or information.

138 (c) The court shall enter sanctions against either party if the court determines that either
139 party acted:

140 ~~[(a)]~~ (i) in bad faith; or

141 ~~[(b)]~~ (ii) with intent to harass or intimidate either party.

142 (4) Notice of a motion to dismiss a protective order shall be made by personal service
143 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil
144 Procedure.

145 (5) If a divorce proceeding is pending between the parties to a protective order, the
146 protective order shall be dismissed when the court issues a decree of divorce for the parties if:

147 (a) the petitioner in the protective order action is present or has been given notice in
148 both the divorce and protective order action of the hearing; and

149 (b) the court specifically finds that the order need not continue.

150 (6) When the court dismisses a protective order, the court shall immediately issue an
151 order of dismissal to be filed in the protective order action and transmit a copy of the order of

152 dismissal to the statewide domestic violence network as described in Section [78B-7-113](#).

153 Section 3. Section **78B-7-203** is amended to read:

154 **78B-7-203. Hearing.**

155 (1) If an ex parte order is granted, the court shall schedule a hearing within 20 days after
156 the ex parte determination. If an ex parte order is denied, the court, upon the request of the
157 petitioner, shall schedule a hearing within 20 days after the ex parte determination.

158 (2) The petition, ex parte child protective order, and notice of hearing shall be served
159 on the respondent, the minor's parent or guardian, and, if appointed, the guardian ad litem. The
160 notice shall contain:

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

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

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

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

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

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

169 (5) If the court determines, based on a preponderance of the evidence, that the minor is
170 being abused or is in imminent danger of being abused, the court shall enter a child protective
171 order. With the exception of the provisions of Section [78A-6-323](#), a child protective order
172 does not constitute an adjudication of abuse, neglect, or dependency under Title 78A, Chapter
173 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

174 (6) Notwithstanding Subsection (5), if the court determines that the petitioner
175 knowingly falsified a statement or information for the purpose of obtaining a protective order
176 on behalf of a child, as described in Subsection [78B-7-204.5\(2\)](#), the court shall enter a child
177 protective order based on clear and convincing evidence that the minor is being abused or is in
178 imminent danger of being abused.

179 Section 4. Section **78B-7-204.5** is enacted to read:

180 **78B-7-204.5. Falsification of information.**

181 (1) A respondent may file a motion to allege that the petitioner knowingly falsified a
182 statement or information for the purpose of obtaining a protective order on behalf of a child.

183 (2) If the court determines that the petitioner knowingly falsified a statement or
184 information for the purpose of obtaining a protective order on behalf of a child, the court shall:

185 (a) penalize the petitioner in the amount of \$5,000 and award that amount to the
186 respondent; and

187 (b) award reasonable attorney fees and costs to the respondent for defending the false
188 statement or information.

189 (3) If the petitioner and the respondent are the child's parents, and the court determines
190 that the petitioner knowingly falsified a statement or information as described in Subsection
191 (2), the court shall order:

192 (a) counseling for the parties' child with a mental health therapist, as defined in Section
193 58-60-102, chosen by the respondent, up to 20 sessions, at the discretion of the mental health
194 therapist;

195 (b) the petitioner to pay associated costs for the mental health therapist described in
196 Subsection (3)(a); and

197 (c) the petitioner to allow the respondent additional parent-time with the child to make
198 up for any parent-time the respondent lost as a result of having an ex parte protective order or a
199 protective order entered against the respondent.

200 (4) If the respondent files a motion described in Subsection (1), a guardian ad litem, as
201 described in Sections 78A-2-703 and 78A-6-902, shall investigate whether the petitioner
202 knowingly falsified any statement or information provided for the purpose of obtaining a
203 protective order on behalf of a child.

204 (5) A respondent's motion described in Subsection (1), shall not be dismissed solely
205 due to a child protective order expiring or being vacated.

206 Section 5. Section **78B-7-207** is amended to read:

207 **78B-7-207. Forms and assistance -- No fees.**

208 (1) The Administrative Office of the Courts shall adopt and make available uniform
209 forms for petitions and orders conforming to this part. The forms shall notify the petitioner
210 that:

211 (a) a knowing falsehood in any statement under oath may subject the petitioner to
212 felony prosecution;

213 (b) a statement notifying the petitioner of a motion for an ex parte protective order on

214 behalf of a child that the respondent may file a motion to allege that the petitioner knowingly
215 falsified a statement or information for the purpose of obtaining a protective order on behalf of
216 a child;

217 ~~(b)~~ (c) the petitioner may provide a copy of the order to the principal of the minor's
218 school; and

219 ~~(c)~~ (d) the petitioner may enforce a court order through the court if the respondent
220 violates or fails to comply with a provision of the order.

221 (2) If the petitioner is not represented, the clerk of the court shall provide, directly or
222 through an agent:

- 223 (a) the forms adopted pursuant to Subsection (1);
- 224 (b) clerical assistance in completing the forms and filing the petition;
- 225 (c) information regarding means for service of process;
- 226 (d) a list of organizations with telephone numbers that may represent the petitioner;
- 227 and

228 (e) information regarding the procedure for transporting a jailed or imprisoned
229 respondent to hearings, including transportation order forms when necessary.

230 (3) No fee may be imposed by a court, constable, or law enforcement agency for:

- 231 (a) filing a petition under this chapter;
- 232 (b) obtaining copies necessary for service or delivery to law enforcement officials; or
- 233 (c) service of a petition, ex parte child protective order, or child protective order.