

**Senator Alvin B. Jackson** proposes the following substitute bill:

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: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends provisions relating to protective orders and child protective orders  
11 when a petitioner knowingly 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 material statement or material information for the purpose of  
16 obtaining a protective order or a child protective order or for the purpose of  
17 maliciously creating prejudice against the respondent; and

18                   ▶ requires a court to penalize a petitioner who knowingly falsified a material  
19 statement or material information.

20                   **Money Appropriated in this Bill:**

21                   None

22                   **Other Special Clauses:**

23                   None

24                   **Utah Code Sections Affected:**

25                   AMENDS:



- 26 [78B-7-102](#), as last amended by Laws of Utah 2013, Chapter 348
- 27 [78B-7-105](#), as last amended by Laws of Utah 2009, Chapter 232
- 28 [78B-7-115](#), as last amended by Laws of Utah 2009, Chapter 232
- 29 [78B-7-201](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 30 [78B-7-203](#), as last amended by Laws of Utah 2010, Chapter 34
- 31 [78B-7-207](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

32 ENACTS:

33 [78B-7-204.5](#), Utah Code Annotated 1953



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

36 Section 1. Section [78B-7-102](#) is amended to read:

37 **[78B-7-102. Definitions.](#)**

38 As used in this chapter:

39 (1) "Abuse" means intentionally or knowingly causing or attempting to cause a  
40 cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear  
41 of imminent physical harm.

42 (2) "Cohabitant" means an emancipated person pursuant to Section [15-2-1](#) or a person  
43 who is 16 years of age or older who:

- 44 (a) is or was a spouse of the other party;
- 45 (b) is or was living as if a spouse of the other party;
- 46 (c) is related by blood or marriage to the other party;
- 47 (d) has or had one or more children in common with the other party;
- 48 (e) is the biological parent of the other party's unborn child; or
- 49 (f) resides or has resided in the same residence as the other party.

50 (3) Notwithstanding Subsection (2), "cohabitant" does not include:

- 51 (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
- 52 (b) the relationship between natural, adoptive, step, or foster siblings who are under 18  
53 years of age.

54 (4) "Court clerk" means a district court clerk.

55 (5) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

56 (6) "Ex parte protective order" means an order issued without notice to the defendant in

57 accordance with this chapter.

58 (7) "Foreign protection order" is as defined in Section 78B-7-302.

59 (8) "Law enforcement unit" or "law enforcement agency" means any public agency  
60 having general police power and charged with making arrests in connection with enforcement  
61 of the criminal statutes and ordinances of this state or any political subdivision.

62 (9) "Material statement" or "Material information" means a statement made or  
63 information given, by a petitioner, that contains an allegation of abuse or domestic violence.

64 [~~(9)~~] (10) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace  
65 Officer Classifications.

66 [~~(10)~~] (11) "Protective order" means an order issued pursuant to this chapter  
67 subsequent to a hearing on the petition, of which the petitioner and respondent have been given  
68 notice in accordance with this chapter.

69 Section 2. Section 78B-7-105 is amended to read:

70 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

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

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

77 (i) a statement notifying the petitioner for an ex parte protective order that knowing  
78 falsification of any material statement or material information provided for the purpose of  
79 obtaining a protective order may subject the petitioner to felony prosecution or civil remedies;  
80 and

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

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

87 (iv) a space for information the petitioner is able to provide to facilitate identification

88 of the respondent, such as social security number, driver license number, date of birth, address,  
89 telephone number, and physical description;

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

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

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

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

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

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

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

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

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

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

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

117 (a) filing a petition under this chapter;

118 (b) obtaining an ex parte protective order;

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

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

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

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

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

127 "Respondent was afforded both notice and opportunity to be heard in the hearing that  
128 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,  
129 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of  
130 Columbia, tribal lands, and United States territories. This order complies with the Uniform  
131 Interstate Enforcement of Domestic Violence Protection Orders Act."

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

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

139 Section 3. Section **78B-7-115** is amended to read:

140 **78B-7-115. Dismissal of protective order.**

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

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

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

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

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

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

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

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

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

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

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

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

158 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable

159 fear of the respondent; and

160 (d) the respondent has not been convicted of a protective order violation or any crime

161 of violence subsequent to the issuance of the protective order, and there are no unresolved

162 charges involving violent conduct still on file with the court.

163 (3) (a) A respondent may file a motion to allege that the petitioner knowingly falsified

164 a material statement or material information for the purpose of obtaining a protective order or

165 for the purpose of maliciously creating prejudice against the respondent.

166 (b) If the court determines that the petitioner knowingly falsified a material statement

167 or material information, as described in Subsection (3)(a), the court shall:

168 (i) penalize the petitioner in the amount of \$5,000 and award that amount to the

169 respondent;

170 (ii) award reasonable attorney fees and costs to the respondent for defending the false

171 statement or information; and

172 (iii) if the petitioner and respondent have a minor child, issue a finding that the

173 petitioner did not act in the best interest of the child, which may be grounds for denying

174 primary physical custody to the petitioner.

175 (c) The court shall enter sanctions against either party if the court determines that either

176 party acted:

177 ~~(a)~~ (i) in bad faith; or

178 ~~(b)~~ (ii) with intent to harass or intimidate either party.

179 (4) Notice of a motion to dismiss a protective order shall be made by personal service

180 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil

181 Procedure.

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

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

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

187 (6) When the court dismisses a protective order, the court shall immediately issue an  
188 order of dismissal to be filed in the protective order action and transmit a copy of the order of  
189 dismissal to the statewide domestic violence network as described in Section [78B-7-113](#).

190 Section 4. Section **78B-7-201** is amended to read:

191 **78B-7-201. Definitions.**

192 As used in this chapter:

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

194 (2) "Court" means the district court or juvenile court.

195 (3) "Material statement" or "Material information" means the same as those terms are  
196 defined in Section [78B-7-102](#).

197 [~~3~~] (4) All other terms have the same meaning as defined in Section [78A-6-105](#).

198 Section 5. Section **78B-7-203** is amended to read:

199 **78B-7-203. Hearing.**

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

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

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

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

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

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

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

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

214 (5) If the court determines, based on a preponderance of the evidence, that the minor is  
215 being abused or is in imminent danger of being abused, the court shall enter a child protective  
216 order. With the exception of the provisions of Section [78A-6-323](#), a child protective order  
217 does not constitute an adjudication of abuse, neglect, or dependency under Title 78A, Chapter  
218 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

219 (6) If the court determines that the petitioner knowingly falsified a material statement  
220 or material information for the purpose of obtaining a protective order on behalf of a child, as  
221 described in Subsection [78B-7-204.5](#)(1), the court shall enter a child protective order based on  
222 clear and convincing evidence that the minor is being abused or is in imminent danger of being  
223 abused.

224 Section 6. Section [78B-7-204.5](#) is enacted to read:

225 **[78B-7-204.5. Falsification of information.](#)**

226 (1) A respondent may file a motion to allege that the petitioner knowingly falsified a  
227 material statement or material information for the purpose of obtaining a protective order on  
228 behalf of a child or for the purpose of maliciously creating prejudice against the respondent.

229 (2) If the court determines that the petitioner knowingly falsified a material statement  
230 or material information, as described in Subsection (1), the court shall:

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

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

235 (3) If the petitioner and the respondent are the child's parents, and the court determines  
236 that the petitioner knowingly falsified a material statement or material information, as  
237 described in Subsection (2), the court:

238 (a) may order counseling for the parties' child, if appropriate for the child's age, with a  
239 mental health therapist, as defined in Section [58-60-102](#), chosen by the respondent, up to 20  
240 sessions, at the discretion of the mental health therapist;

241 (b) shall order the petitioner to pay associated costs for the mental health therapist  
242 described in Subsection (3)(a); and

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

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

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

249 **78B-7-207. Forms and assistance -- No fees.**

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

253 (a) a knowing falsehood in any material statement under oath may subject the  
254 petitioner to felony prosecution or civil remedies;

255 (b) the petitioner may provide a copy of the order to the principal of the minor's school;  
256 and

257 (c) the petitioner may enforce a court order through the court if the respondent violates  
258 or fails to comply with a provision of the order.

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

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

262 (b) clerical assistance in completing the forms and filing the petition;

263 (c) information regarding means for service of process;

264 (d) a list of organizations with telephone numbers that may represent the petitioner;

265 and

266 (e) information regarding the procedure for transporting a jailed or imprisoned

267 respondent to hearings, including transportation order forms when necessary.

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

269 (a) filing a petition under this chapter;

270 (b) obtaining copies necessary for service or delivery to law enforcement officials; or

271 (c) service of a petition, ex parte child protective order, or child protective order.