

SB0090S02 compared with SB0090S01

~~text~~ shows text that was in SB0090S01 but was deleted in SB0090S02.

text shows text that was not in SB0090S01 but was inserted into SB0090S02.

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Senator Alvin B. Jackson proposes the following substitute bill:

FALSIFICATION OF INFORMATION IN A PROTECTIVE ORDER PROCEEDING

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Alvin B. Jackson

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides that a respondent may bring a motion to allege that the petitioner knowingly falsified a material statement or material information for the purpose of obtaining a protective order or a child protective order or for the purpose of maliciously creating prejudice against the respondent; and
- ▶ requires a court to penalize a petitioner who knowingly falsified a material

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statement or material information ~~{ for the purpose of obtaining a protective order or a child protective order }~~.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-102, as last amended by Laws of Utah 2013, Chapter 348

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

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

78B-7-201, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

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

ENACTS:

78B-7-204.5, Utah Code Annotated 1953

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

Section 1. Section **78B-7-102** is amended to read:

78B-7-102. Definitions.

As used in this chapter:

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

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

- (a) is or was a spouse of the other party;
- (b) is or was living as if a spouse of the other party;
- (c) is related by blood or marriage to the other party;
- (d) has or had one or more children in common with the other party;
- (e) is the biological parent of the other party's unborn child; or

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(f) resides or has resided in the same residence as the other party.

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

(a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

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

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

(6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

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

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

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

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

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

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

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

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

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

(i) ~~(A)~~ a statement notifying the petitioner for an ex parte protective order that knowing falsification of any material statement or material information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution or civil

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remedies; and

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

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

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

(iv) a space for 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;

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

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

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

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

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

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

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

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provided;

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

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

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

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

(a) filing a petition under this chapter;

(b) obtaining an ex parte protective order;

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

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

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

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

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

"Respondent was afforded both 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. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

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

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

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

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

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

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

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

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

(d) counseling or therapy undertaken by either party;

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

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

(2) The court may amend or dismiss a protective order issued in accordance with this part that has been in effect for at least one year if it finds that:

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

(b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;

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

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

(3) (a) A respondent may file a motion to allege that the petitioner knowingly falsified a material statement or material information for the purpose of obtaining a protective order ~~or for the purpose of maliciously creating prejudice against the respondent.~~

(b) If the court determines that the petitioner knowingly falsified a material statement or material information ~~for the purpose of obtaining a protective order,~~ as described in Subsection (3)(a), the court shall:

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

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respondent; ~~f and~~

(ii) award reasonable attorney fees and costs to the respondent for defending the false statement or information ~~f~~; and

(iii) if the petitioner and respondent have a minor child, issue a finding that the petitioner did not act in the best interest of the child, which may be grounds for denying primary physical custody to the petitioner.

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

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

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

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

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

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

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

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

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

78B-7-201. Definitions.

As used in this chapter:

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

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

(3) "Material statement" or "Material information" means ~~f a statement made or information given, by a petitioner, that contains an allegation of abuse or domestic violence~~ the same as those terms are defined in Section 78B-7-102.

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

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

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78B-7-203. Hearing.

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

(2) 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 is being abused or is in imminent danger of being abused, the court shall enter a child protective order. With the exception of the provisions of Section 78A-6-323, a child protective order does not constitute an adjudication of abuse, neglect, or dependency under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(6) ~~Notwithstanding Subsection (5), if~~ If the court determines that the petitioner knowingly falsified a material statement or material information for the purpose of obtaining a protective order on behalf of a child, as described in Subsection 78B-7-204.5(~~2~~1), the court shall enter a child protective order based on clear and convincing evidence that the minor is being abused or is in imminent danger of being abused.

Section 6. Section **78B-7-204.5** is enacted to read:

78B-7-204.5. Falsification of information.

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

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

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or material information ~~{ for the purpose of obtaining a protective order on behalf of a child };~~
as described in Subsection (1), the court shall:

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

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

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

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

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

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

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

~~{~~ (~~5~~4) A respondent's motion, described in Subsection (1), shall not be dismissed solely due to a child protective order expiring or being vacated.

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

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

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

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

~~— (b) the respondent may file a motion to allege that the petitioner knowingly falsified a~~

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~~material statement or material information for the purpose of obtaining a protective order on behalf of a child;~~

~~— [(b)] (c) or civil remedies;~~

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

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

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

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

and

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

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

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