

1                   **h REILLY h CIVIL STALKING AMENDMENTS**

2   2000 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Lawanna Shurtliff**

5 Chad E. Bennion

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6 AN ACT RELATING TO THE CODE OF CRIMINAL PROCEDURE; CREATING A  
7 PROCEDURE FOR THE ISSUANCE OF A CIVIL STALKING INJUNCTION; MAKING  
8 TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11           **21-1-5**, as last amended by Chapter 309, Laws of Utah 1999

12           **77-3-1**, as enacted by Chapter 15, Laws of Utah 1980

13 ENACTS:

14           **77-3a-101**, Utah Code Annotated 1953

15           **77-3a-102**, Utah Code Annotated 1953

16           **77-3a-103**, Utah Code Annotated 1953

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

18           Section 1. Section **21-1-5** is amended to read:

19           **21-1-5. Civil fees of the courts of record -- Courts complex design.**

20           (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court  
21 of record not governed by another subsection is \$120.

22           (b) The fee for filing a complaint or petition is:

23           (i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest,  
24 and attorney fees is \$2,000 or less;

25           (ii) \$80 if the claim for damages or amount in interpleader exclusive of court costs,  
26 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

27           (iii) \$120 if the claim for damages or amount in interpleader is \$10,000 or more; [~~and~~]

28 (iv) \$80 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4,  
29 Separate Maintenance[-]; and

30 (v) \$75 if the petition is for a civil stalking injunction under Title 77, Chapter 3a, Stalking  
31 Injunctions.

32 (c) The fee for filing a small claims affidavit is:

33 (i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest,  
34 and attorney fees is \$2,000 or less; and

35 (ii) \$60 if the claim for damages or amount in interpleader exclusive of court costs,  
36 interest, and attorney fees is greater than \$2,000.

37 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party  
38 complaint, or other claim for relief against an existing or joined party other than the original  
39 complaint or petition is:

40 (i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000  
41 or less;

42 (ii) \$60 if the claim for relief exclusive of court costs, interest, and attorney fees is greater  
43 than \$2,000 and less than \$10,000;

44 (iii) \$90 if the original petition is filed under Subsection (1)(a) or when the claim for relief  
45 is \$10,000 or more; and

46 (iv) \$60 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,  
47 Chapter 4, Separate Maintenance.

48 (e) The fee for filing a small claims counter affidavit is:

49 (i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000  
50 or less; and

51 (ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is greater  
52 than \$2,000.

53 (f) The fee for depositing funds under Section 57-1-29 when not associated with an action  
54 already before the court is determined under Subsection (1)(b) based on the amount deposited.

55 (g) The fee for filing a petition for trial de novo of an adjudication of the justice court or  
56 of the small claims department is \$70.

57 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or  
58 petition for writ of certiorari is \$190.

59 (i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a petition  
60 for expungement is \$50.

61 (ii) There is no fee for a petition filed under Subsection 77-18-10(2).

62 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be  
63 allocated to the Judges' Retirement Trust Fund, as provided in Title 49, Chapter 6, Judges'  
64 Retirement Act.

65 (ii) Two dollars of the fees established by Subsections (1)(a) through (i) shall be allocated  
66 by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account,  
67 as provided in Section 63-63a-8.

68 (iii) One dollar of the fees established under Subsections (1)(a) through (e), (1)(g), and  
69 (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in Section  
70 78-31b-9.

71 (k) The fee for filing a judgment, order, or decree of a court of another state or of the  
72 United States is \$25.

73 (l) The fee for filing probate or child custody documents from another state is \$25.

74 (m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah  
75 State Tax Commission is \$30.

76 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state  
77 or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing  
78 officer of this state or of its political subdivisions other than the Utah State Tax Commission, is  
79 \$40.

80 (n) The fee for filing a judgment by confession without action under Section 78-22-3 is  
81 \$25.

82 (o) The fee for filing an award of arbitration for confirmation, modification, or vacation  
83 under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before the court is  
84 \$25.

85 (p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$30.

86 (q) The fee for filing any accounting required by law is:

87 (i) \$10 for an estate valued at \$50,000 or less;

88 (ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;

89 (iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;

- 90 (iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and
- 91 (v) \$150 for an estate valued at more than \$168,000.
- 92 (r) The fee for filing a demand for a civil jury is \$50.
- 93 (s) The fee for filing a notice of deposition in this state concerning an action pending in
- 94 another state under Utah Rule of Civil Procedure 26 is \$25.
- 95 (t) The fee for filing documents that require judicial approval but are not part of an action
- 96 before the court is \$25.
- 97 (u) The fee for a petition to open a sealed record is \$25.
- 98 (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$20 in addition
- 99 to any fee for a complaint or petition.
- 100 (w) The fee for a petition for authorization for a minor to marry required by Section 30-1-9
- 101 is \$5.
- 102 (x) The fee for a certificate issued under Section 26-2-25 is \$2.
- 103 (y) The fee for a certified copy of a document is \$2 per document plus 50 cents per page.
- 104 (z) The fee for an exemplified copy of a document is \$4 per document plus 50 cents per
- 105 page.
- 106 (aa) The Judicial Council shall by rule establish a schedule of fees for copies of documents
- 107 and forms and for the search and retrieval of records under Title 63, Chapter 2, Government
- 108 Records Access and Management Act. Fees under this subsection shall be credited to the court
- 109 as a reimbursement of expenditures.
- 110 (bb) There is no fee for services or the filing of documents not listed in this section or
- 111 otherwise provided by law.
- 112 (cc) Except as provided in this section, all fees collected under this section are paid to the
- 113 General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts
- 114 the pleading for filing or performs the requested service.
- 115 (dd) The filing fees under this section may not be charged to the state, its agencies, or
- 116 political subdivisions filing or defending any action. In judgments awarded in favor of the state,
- 117 its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order
- 118 the filing fees and collection costs to be paid by the judgment debtor. The sums collected under
- 119 this subsection shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or
- 120 other penalty and costs permitted by law.

121 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall  
122 transfer all revenues representing the difference between the fees in effect after May 2, 1994, and  
123 the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities  
124 Construction and Management Capital Projects Fund.

125 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities  
126 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the Capital  
127 Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the  
128 development of a courts complex in Salt Lake City.

129 (B) If the Legislature approves funding for construction of a courts complex in Salt Lake  
130 City in the 1995 Annual General Session, the Division of Facilities Construction and Management  
131 shall use the revenue deposited in the Capital Projects Fund under Subsection (2)(a)(ii) to construct  
132 a courts complex in Salt Lake City.

133 (C) After the courts complex is completed and all bills connected with its construction  
134 have been paid, the Division of Facilities Construction and Management shall use any monies  
135 remaining in the Capital Projects Fund under Subsection (2)(a)(ii) to fund the Vernal District Court  
136 building.

137 (iii) The Division of Facilities Construction and Management may enter into agreements  
138 and make expenditures related to this project before the receipt of revenues provided for under this  
139 subsection.

140 (iv) The Division of Facilities Construction and Management shall:

141 (A) make those expenditures from unexpended and unencumbered building funds already  
142 appropriated to the Capital Projects Fund; and

143 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under  
144 this Subsection (2).

145 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues  
146 representing the difference between the fees in effect after May 2, 1994, and the fees in effect  
147 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted  
148 account.

149 (c) The Division of Finance shall deposit all revenues received from the court  
150 administrator into the restricted account created by this section.

151 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer

152 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a  
153 court of record to the Division of Facilities Construction and Management Capital Projects Fund.  
154 The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine  
155 or bail forfeiture paid.

156 (ii) After June 30, 1998, the administrator of the courts shall transfer \$7 of the amount of  
157 a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the  
158 Division of Finance for deposit in the restricted account created by this section. The division of  
159 money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture  
160 paid.

161 (3) (a) There is created within the General Fund a restricted account known as the State  
162 Courts Complex Account.

163 (b) The Legislature may appropriate monies from the restricted account to the  
164 administrator of the courts for the following purposes only:

165 (i) to repay costs associated with the construction of the court complex that were funded  
166 from sources other than revenues provided for under this subsection; and

167 (ii) to cover operations and maintenance costs on the court complex.

168 Section 2. Section **77-3-1** is amended to read:

169 **77-3-1. Threatened offense -- Complaint.**

170 A complaint that a person has threatened to commit an offense against the person or  
171 property of another, except in the case of stalking, may be made before any magistrate. Petitions  
172 alleging the commission of stalking shall be handled pursuant to Title 77, Chapter 3a, Stalking  
173 Injunctions.

174 Section 3. Section **77-3a-101** is enacted to read:

175 **CHAPTER 3a. STALKING INJUNCTIONS**

176 **77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.**

177 (1) As used in this chapter, "stalking" means the crime of stalking as defined in Section  
178 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers,  
179 governmental investigators, or licensed private investigators, acting in their official capacity.

180 (2) Any person who believes that he or she is the victim of stalking may file a verified  
181 written petition for a civil stalking injunction against the alleged stalker with the district court in  
182 the district in which the petitioner or respondent resides or in which any of the events occurred.

183 A minor <sup>h</sup> WITH HIS OR HER PARENT OR GUARDIAN <sup>h</sup> may file a petition on his or her own <sup>h</sup>  
183a BEHALF <sup>h</sup> , or a parent, guardian, or custodian may file a  
184 petition on the minor's behalf.

185 (3) The Administrative Office of the Courts shall develop and adopt uniform forms for  
186 petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other  
187 necessary forms in accordance with the provisions of this chapter on or before July 1, 2000. The  
188 office shall provide the forms to the clerk of each district court.

189 (a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be  
190 issued in the form adopted by the Administrative Office of the Courts.

191 (b) The offices of the court clerk shall provide the forms to persons seeking to proceed  
192 under this chapter.

193 (4) The petition for a civil stalking injunction shall include:

194 (a) the name of the petitioner; however, the petitioner's address shall be disclosed to the  
195 court for purposes of service, but, on request of the petitioner, the address may not be listed on the  
196 petition, and shall be protected and maintained in a separate document or automated database, not  
197 subject to release, disclosure, or any form of public access except as ordered by the court for good  
198 cause shown;

199 (b) the name and address, if known, of the respondent;

200 (c) specific events and dates of the actions constituting the alleged stalking;

201 (d) if there is a prior court order concerning the same conduct, the name of the court in  
202 which the order was rendered; and

203 (e) corroborating evidence of stalking, which may be in the form of a police report,  
204 affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation  
205 of stalking.

206 (5) If the court determines that there is reason to believe that an offense of stalking has  
207 occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the  
208 following:

209 (a) respondent may be enjoined from committing stalking;

210 (b) respondent may be restrained from coming near the residence, place of employment,  
211 or school of the other party or specifically designated locations or persons;

212 (c) respondent may be restrained from contacting, directly or indirectly, the other party,  
213 including personal, written or telephone contact with the other party, the other party's employers,

214 employees, fellow workers or others with whom communication would be likely to cause  
215 annoyance or alarm to the other party; or

216 (d) any other relief necessary or convenient for the protection of the petitioner and other  
217 specifically designated persons under the circumstances.

218 (6) Within ten days of service of the ex parte civil stalking injunction, the respondent is  
219 entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

220 (a) A hearing requested by the respondent shall be held within ten days from the date the  
221 request is filed with the court unless the court finds compelling reasons to continue the hearing.  
222 The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show  
223 by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

224 (b) An ex parte civil stalking injunction issued under this section shall state on its face:

225 (i) that the respondent is entitled to a hearing, upon written request within ten days of the  
226 service of the order;

227 (ii) the name and address of the district court where the request may be filed;

228 (iii) that if the respondent fails to request a hearing within ten days of service, the ex parte  
229 civil stalking injunction is automatically modified to a civil stalking injunction without further  
230 notice to the respondent and that the civil stalking injunction expires three years after service of  
231 the ex parte civil stalking injunction; and

232 (iv) that if the respondent requests, in writing, a hearing after the ten-day period after  
233 service, the court shall set a hearing within a reasonable time from the date requested.

234 (7) At the hearing, the court may modify, revoke, or continue the injunction. The burden  
235 is on the respondent to show good cause why the civil stalking injunction should be dissolved or  
236 modified.

237 (a) If the court finds that the respondent has shown good cause, then the burden is on the  
238 petitioner to show by a preponderance of the evidence that stalking of the petitioner by the  
239 respondent has occurred.

240 (b) If the court finds that the respondent has failed to show good cause why the civil  
241 stalking injunction should be dissolved or modified, then the civil stalking injunction shall  
242 continue in effect.

243 (8) The ex parte civil stalking injunction and civil stalking injunction shall include the  
244 following statement: "Attention. This is an official court order. If you disobey this order, the court



245 may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and  
246 any other crime you may have committed in disobeying this order."

247 (9) The ex parte civil stalking injunction shall be served on the respondent within 90 days  
248 from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no  
249 hearing is requested in writing by the respondent within ten days of service of the ex parte civil  
250 stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking  
251 injunction without further notice to the respondent and expires three years from the date of service  
252 of the ex parte civil stalking injunction.

253 (10) If the respondent requests a hearing after the ten-day period after service, the court  
254 shall set a hearing within a reasonable time from the date requested. At the hearing, the burden  
255 is on the respondent to show good cause why the civil stalking injunction should be dissolved or  
256 modified.

257 (11) Within 24 hours after the affidavit or acceptance of service has been returned,  
258 excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking  
259 injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of  
260 service or acceptance of service in the statewide network for warrants or a similar system.

261 (a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction  
262 shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified  
263 copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid  
264 existing order of the court for a period of three years from the date of service of the ex parte civil  
265 stalking injunction on the respondent.

266 (b) Any changes or modifications of the ex parte civil stalking injunction are effective  
267 upon service on the respondent. The original ex parte civil stalking injunction continues in effect  
268 until service of the changed or modified civil stalking injunction on the respondent.

269 (12) Within 24 hours after the affidavit or acceptance of service has been returned,  
270 excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or  
271 modified civil stalking injunction and proof of service or acceptance of service in the statewide  
272 network for warrants or a similar system.

273 (13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at  
274 any time upon application of the petitioner to the court which granted it.

275 (14) The court clerk shall provide, without charge, to the petitioner one certified copy of

276 the injunction issued by the court and one certified copy of the proof of service of the injunction  
277 on the respondent. Charges may be imposed by the clerk's office for any additional copies,  
278 certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

279 (15) The remedies provided in this chapter for enforcement of the orders of the court are  
280 in addition to any other civil and criminal remedies available. The district court shall hear and  
281 decide all matters arising pursuant to this section.

282 (16) After a hearing with notice to the affected party, the court may enter an order  
283 requiring any party to pay the costs of the action, including reasonable attorney's fees.

284 (17) This chapter does not apply to protective orders or ex parte protective orders issued  
285 pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, or to preliminary injunctions issued  
286 pursuant to an action for dissolution of marriage or legal separation.

287 Section 4. Section **77-3a-102** is enacted to read:

288 **77-3a-102. Fees -- Service of process.**

289 (1) The filing fees for all petitions under this chapter shall be as stated in Section 21-1-5.

290 (2) Ex parte civil stalking injunctions and civil stalking injunctions shall be served by a  
291 sheriff or constable.

292 (3) All service shall be in accordance with applicable law.

293 (4) Fees for service shall be in accordance with applicable law.

294 Section 5. Section **77-3a-103** is enacted to read:

295 **77-3a-103. Enforcement.**

296 (1) A peace or law enforcement officer shall, without a warrant, arrest a person if the peace  
297 or law enforcement officer has probable cause to believe that the person has violated an ex parte  
298 civil stalking injunction or civil stalking injunction issued pursuant to this chapter or has violated  
299 a permanent criminal stalking injunction issued pursuant to Section 76-5-106.5, whether or not the  
300 violation occurred in the presence of the officer.

301 (2) A violation of an ex parte civil stalking injunction or of a civil stalking injunction  
302 issued pursuant to this chapter constitutes the criminal offense of stalking as defined in Section  
303 76-5-106.5 and is also a violation of the civil stalking injunction. Violations may be enforced by  
304 a civil action initiated by the petitioner, a criminal action initiated by a prosecuting attorney, or  
305 both.

306 Section 6. **Effective date.**

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This act takes effect on July 1, 2000.

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**Legislative Review Note**  
**as of 12-29-99 1:28 PM**

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

**Office of Legislative Research and General Counsel**