

**PROTECTIVE ORDER AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Kory M. Holdaway**

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**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



- 28           **78-3a-104**, as last amended by Chapters 68 and 195, Laws of Utah 2003
- 29           **78-3h-101**, as enacted by Chapter 68, Laws of Utah 2003
- 30           **78-3h-102**, as enacted by Chapter 68, Laws of Utah 2003
- 31           **78-3h-103**, as enacted by Chapter 68, Laws of Utah 2003
- 32           **78-3h-104**, as enacted by Chapter 68, Laws of Utah 2003
- 33           **78-3h-105**, as enacted by Chapter 68, Laws of Utah 2003



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

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

37           **62A-4a-116. Management Information System -- Requirements -- Contents --**  
 38 **Purpose -- Access.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 (5) Except as provided in Subsection (6) regarding contract providers and Section  
82 62A-4a-116.2 regarding limited access to the Licensing Information System, all information  
83 contained in the division's Management Information System is available to the department,  
84 upon the approval of the executive director, on a need-to-know basis.

85 (6) (a) The division may allow its contract providers and court clerks designated by the  
86 Administrative Office of the Courts to have limited access to the Management Information  
87 System. A division contract provider has access only to information about persons who are  
88 currently receiving services from that specific contract provider. Designated court clerks shall  
89 only have access to information necessary to comply with Subsection 78-3h-102(2).

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

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

94 (ii) train its employees regarding requirements for protecting the information contained  
95 in the Management Information System as required by this chapter and under Title 63, Chapter  
96 2, Government Records Access and Management Act, and the criminal penalties under  
97 Sections 62A-4a-412 and 63-2-801 for improper release of information; and

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

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

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

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

106 **78-3-4. Jurisdiction -- Appeals.**

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

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

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

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

115 (5) The district court has appellate jurisdiction to adjudicate trials de novo of the  
116 judgments of the justice court and of the small claims department of the district court.

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

119 (7) The district court has jurisdiction to review:

120 (a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b,

121 Administrative Procedures Act, and shall comply with the requirements of that chapter, in its  
122 review of agency adjudicative proceedings; and

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

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

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

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

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

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

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

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

135 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

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

138 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a  
139 person younger than 21 years of age who has violated any law or ordinance before becoming  
140 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating  
141 and ordinances;

142 (b) a person 21 years of age or older who has failed or refused to comply with an order  
143 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's  
144 21st birthday; however, the continuing jurisdiction is limited to causing compliance with  
145 existing orders;

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

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

151 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step

152 parent of the child who is the object of the petition;

153 (ii) the district court has a petition pending or an order related to custody or parent-time  
154 entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse Act, or Title  
155 78, Chapter 45a, Uniform Act on Paternity, in which the petitioner and the respondent are  
156 parties; and

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

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

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

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

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

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

168 (j) any parent or parents of a minor committed to a secure youth corrections facility, to  
169 order, at the discretion of the court and on the recommendation of a secure youth corrections  
170 facility, the parent or parents of a minor committed to a secure youth corrections facility for a  
171 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth  
172 corrections facility therapist, who has supervision of that parent's or parents' minor, or any  
173 other therapist the court may direct, for a period directed by the court as recommended by a  
174 secure youth corrections facility;

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

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

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

182 (n) de novo review of final agency actions resulting from an informal adjudicative

183 proceeding as provided in Section 63-46b-15; and

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

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

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

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

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

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

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

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

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

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

208 (b) has run away from home.

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

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

213 (7) The juvenile court has jurisdiction to make a finding of substantiated,

214 unsubstantiated, or without merit, in accordance with Section 78-3a-320.

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

216 **78-3h-101. Definitions.**

217 As used in this chapter:

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

219 [(1)] (2) "Court" means the district court or juvenile court.

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

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

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

223 **78-3h-102. Petition -- Ex parte determination -- Guardian ad litem -- Referral to**  
224 **division.**

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

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

230 (a) review the records of the juvenile court, the district court, and the ~~H~~ **MANAGEMENT**  
230a INFORMATION SYSTEM OF THE ~~h~~ **h** division to find

231 any petitions, orders, or investigations related to the child or the parties to the case;

232 (b) request the records of any law enforcement agency identified by the petitioner as  
233 having investigated ~~H~~ [~~domestic violence against the petitioner or~~ **h** abuse ~~H~~ [~~or neglect~~] **h** of the  
233a child;

234 and

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

237 [(2)] (3) Upon the filing of a petition, the court shall immediately determine, based on  
238 the evidence and information presented, whether the minor ~~[has been]~~ is being abused~~;~~  
239 ~~sexually abused, neglected, or abandoned]~~ or is in imminent danger of being abused~~[, sexually~~  
240 ~~abused, neglected, or abandoned]~~. If so, the court shall enter an ex parte child protective order.

241 [(3)] (4) The court may appoint an attorney guardian ad litem for the child who is the  
242 subject of the petition.

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

244 **78-3h-103. Hearing.**



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

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

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

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

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

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

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

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

257 (5) If the court determines, based on a preponderance of the evidence, that the minor  
258 ~~[has been]~~ is being abused~~[, sexually abused, neglected, or abandoned]~~ or is in imminent  
259 danger of being abused, ~~[sexually abused, neglected, or abandoned,]~~ the court shall enter a  
260 child protective order. With the exception of the provisions of Section 78-3a-320, a child  
261 protective order does not constitute an adjudication of abuse, neglect, or dependency under  
262 Title 78, Chapter 3a, Part 3, Abuse Neglect and Dependency Proceedings.

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

264 **78-3h-104. Content of order.**

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

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

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

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

274 (d) upon finding that the respondent's use or possession of a weapon may pose a  
275 serious threat of harm to the minor, prohibit the respondent from purchasing, using, or

276 possessing a firearm or other specified weapon; and

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

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

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

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

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

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

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

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

293 (b) information the petitioner is able to provide to facilitate identification of the  
294 respondent, such as Social Security number, driver license number, date of birth, address,  
295 telephone number, and physical description.

296 (4) A child protective order shall include:

297 (a) a statement that:

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

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

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

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

305 (c) the following statement: "Respondent was afforded notice and opportunity to be  
306 heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act

307 of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United  
308 States, the District of Columbia, tribal lands, and United States territories."

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

310 **78-3h-105. Service -- Income withholding -- Expiration.**

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

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

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

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

319 (2) The county sheriff shall serve the order and transmit verification of service to the  
320 statewide domestic violence network described in Section 30-6-8 in an expeditious manner.

321 Any law enforcement agency may serve the order and transmit verification of service to the  
322 statewide domestic violence network if the law enforcement agency has contact with the  
323 respondent or if service by that law enforcement agency is in the best interests of the child.

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

328 (4) Child support orders issued as part of a child protective order are subject to  
329 mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in  
330 IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

331 (5) After notice and hearing a court may modify or vacate a child protective order  
332 without a showing of substantial and material change in circumstances, except that the criminal  
333 provisions of the child protective order may not be vacated within two years of issuance unless  
334 the petitioner:

335 (a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of  
336 Civil Procedure, and the petitioner personally appears before the court and gives specific  
337 consent to the vacation of the criminal provisions of the protective order; or

338 (b) submits a verified affidavit, stating agreement to the vacation of the criminal  
339 provisions of the protective order.

340 (6) The civil provisions of the child protective order expire 150 days after the date of  
341 the ~~[pretrial hearing]~~ order unless a different date is set by the court. The court may not set a  
342 date more than 150 days after the date of the ~~[pretrial hearing]~~ order without a finding of good  
343 cause. The court may review and extend the expiration date, but may not extend it to more  
344 than 150 days after the date of the ~~[pretrial hearing]~~ order without a finding of good cause.

345 ~~[Any civil provision of the child protective order assimilated into the order remains effective~~  
346 ~~until the minor is 18 years of age unless otherwise ordered by the court.]~~

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**Legislative Review Note****as of 1-16-04 3:27 PM**

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

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that the Department of Human Services Division of Child and Family Services will require a one-time General Funds appropriation of \$10,500 in FY 2005 to reprogram its computer system to conform to provisions of the bill. The Division of Child and Family Services will receive Federal Funds contingent on state funding. It is estimated that the Administrative Office of the Courts can implement provisions of this bill with existing resources.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$10,500	\$0	\$0	\$0
Federal Funds	\$4,500	\$0	\$4,500	\$0
<b>TOTAL</b>	<b>\$15,000</b>	<b>\$0</b>	<b>\$4,500</b>	<b>\$0</b>

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**Individual and Business Impact**

No fiscal impact.

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