

**PROTECTIVE ORDER AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Eric K. Hutchings**

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**LONG TITLE**

**General Description:**

This bill permits the court to issue mutual protective orders.

**Highlighted Provisions:**

This bill:

- ▶ repeals a statutory prohibition on mutual protective orders; and
- ▶ allows the court to prohibit the petitioner for a protective order from harassing, telephoning, contacting, or otherwise directly communicating with the respondent.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-6-4.2**, as last amended by Chapter 68, Laws of Utah 2003

REPEALS:

**30-6-4.5**, as last amended by Chapter 244, Laws of Utah 1996

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

Section 1. Section **30-6-4.2** is amended to read:

**30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**  
**-- Service of process -- Duties of the court.**



(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;

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

(c) prohibit the petitioner from harassing, telephoning, contacting, or otherwise directly communicating with the respondent;

~~[(e)]~~ (d) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;

~~[(d)]~~ (e) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

~~[(e)]~~ (f) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

~~[(f)]~~ (g) grant to the petitioner temporary custody of any minor children of the parties;

~~[(g)]~~ (h) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

59           ~~[(h)]~~ (i) if the petition requests child support or spousal support, at the hearing on the  
60 petition order both parties to provide verification of current income, including year-to-date pay  
61 stubs or employer statements of year-to-date or other period of earnings, as specified by the  
62 court, and complete copies of tax returns from at least the most recent year.

63           (3) A court may grant the following relief in an order for protection or a modification  
64 of an order after notice and hearing, whether or not the respondent appears:

65           (a) grant the relief described in Subsection (2); and

66           (b) specify arrangements for parent-time of any minor child by the respondent and  
67 require supervision of that parent-time by a third party or deny parent-time if necessary to  
68 protect the safety of the petitioner or child.

69           (4) Following the protective order hearing, the court shall:

70           (a) as soon as possible, deliver the order to the county sheriff for service of process;

71           (b) make reasonable efforts to ensure that the order for protection is understood by the  
72 petitioner, and the respondent, if present;

73           (c) transmit, by the end of the next business day after the order is issued, a copy of the  
74 order for protection to the local law enforcement agency or agencies designated by the  
75 petitioner; and

76           (d) transmit a copy of the order to the statewide domestic violence network described  
77 in Section 30-6-8.

78           (5) (a) Each protective order shall include two separate portions, one for provisions, the  
79 violation of which are criminal offenses, and one for provisions, the violation of which are civil  
80 violations, as follows:

81           (i) criminal offenses are those under Subsections (2)(a) through ~~[(e)]~~ (f), and under  
82 Subsection (3)(a) as it refers to Subsections (2)(a) through ~~[(e)]~~ (f); and

83           (ii) civil offenses are those under Subsections (2)~~[(f)]~~ (g) through ~~[(h)]~~ (i), and  
84 Subsection (3)(a) as it refers to Subsections (2)~~[(f)]~~ (g) through ~~[(h)]~~ (i).

85           (b) The criminal provision portion shall include a statement that violation of any  
86 criminal provision is a class A misdemeanor.

87           (c) The civil provision portion shall include a notice that violation of or failure to  
88 comply with a civil provision is subject to contempt proceedings.

89           (6) The protective order shall include:

90 (a) a designation of a specific date, determined by the court, when the civil portion of  
91 the protective order either expires or is scheduled for review by the court, which date may not  
92 exceed 150 days after the date the order is issued, unless the court indicates on the record the  
93 reason for setting a date beyond 150 days;

94 (b) information the petitioner is able to provide to facilitate identification of the  
95 respondent, such as Social Security number, driver license number, date of birth, address,  
96 telephone number, and physical description; and

97 (c) a statement advising the petitioner that:

98 (i) after three years from the date of issuance of the protective order, a hearing may be  
99 held to dismiss the criminal portion of the protective order;

100 (ii) the petitioner should, within the 30 days prior to the end of the three-year period,  
101 advise the court of the petitioner's current address for notice of any hearing; and

102 (iii) the address provided by the petitioner will not be made available to the respondent.

103 (7) Child support and spouse support orders issued as part of a protective order are  
104 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income  
105 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non  
106 IV-D Cases, except when the protective order is issued ex parte.

107 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection  
108 (5)(a), shall provide expedited service for orders for protection issued in accordance with this  
109 chapter, and shall transmit verification of service of process, when the order has been served, to  
110 the statewide domestic violence network described in Section 30-6-8.

111 (b) This section does not prohibit any law enforcement agency from providing service  
112 of process if that law enforcement agency:

113 (i) has contact with the respondent and service by that law enforcement agency is  
114 possible; or

115 (ii) determines that under the circumstances, providing service of process on the  
116 respondent is in the best interests of the petitioner.

117 (9) (a) When an order is served on a respondent in a jail or other holding facility, the  
118 law enforcement agency managing the facility shall make a reasonable effort to provide notice  
119 to the petitioner at the time the respondent is released from incarceration.

120 (b) Notification of the petitioner shall consist of a good faith reasonable effort to

121 provide notification, including mailing a copy of the notification to the last-known address of  
122 the victim.

123 (10) A court may modify or vacate an order of protection or any provisions in the order  
124 after notice and hearing, except that the criminal provisions of a protective order may not be  
125 vacated within two years of issuance unless the petitioner:

126 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah  
127 Rules of Civil Procedure, and the petitioner personally appears before the court and gives  
128 specific consent to the vacation of the criminal provisions of the protective order; or

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

131 (11) A protective order may be modified without a showing of substantial and material  
132 change in circumstances.

133 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of  
134 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

135 Section 2. **Repealer.**

136 This bill repeals:

137 Section **30-6-4.5, Mutual protective orders prohibited.**

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### Legislative Review Note

as of 2-8-05 10:56 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

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**Fiscal Note**  
**Bill Number HB0360****Protective Order Amendments***14-Feb-05**6:34 PM*

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**State Impact**

Passage of this bill could reduce federal funding to local government entities. The loss of federal revenue could be as much as \$492,000 per community, per year for some of the larger communities. This could total as much as \$1.8 million statewide.

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**Individual and Business Impact**

Individuals affected by this legislation could receive greater fines or penalties. The amount will depend on the circumstances of the case.

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**Office of the Legislative Fiscal Analyst**