

Senator Lyle W. Hillyard proposes the following substitute bill:

JUDICIARY AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill makes clarifying and technical changes to specific statutes.

Highlighted Provisions:

This bill:

- ▶ changes a three-year requirement to two to bring a provision concerning protective orders into line with another statute;
- ▶ clarifies credit for good behavior for minors in detention;
- ▶ clarifies the process for petitioning the court to confirm an award when the matter is not the subject of current litigation; and
- ▶ provides direction to the court for the disposition of property held by the court.

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

67-4a-210, as enacted by Chapter 198, Laws of Utah 1995

78-3a-109, as last amended by Chapter 180, Laws of Utah 2001



26 78-3a-504, as last amended by Chapter 171, Laws of Utah 2003

27 78-31a-123, as enacted by Chapter 326, Laws of Utah 2002

28

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

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

31 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**
32 **-- Service of process -- Duties of the court.**

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

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

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

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

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

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

47 (c) order that the respondent is excluded from the petitioner's residence and its
48 premises, and order the respondent to stay away from the residence, school, or place of
49 employment of the petitioner, and the premises of any of these, or any specified place
50 frequented by the petitioner and any designated family or household member;

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

54 (e) order possession and use of an automobile and other essential personal effects, and
55 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
56 the parties to ensure that the petitioner is safely restored to possession of the residence,

57 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
58 removal of personal belongings;

59 (f) grant to the petitioner temporary custody of any minor children of the parties;

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

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

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

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

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

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

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

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

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

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

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

84 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
85 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

86 (ii) civil offenses are those under Subsections (2)(f) through (h), and Subsection (3)(a)
87 as it refers to Subsections (2)(f) through (h).

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

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

92 (6) The protective order shall include:

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

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

100 (c) a statement advising the petitioner that:

101 (i) after [~~three~~] two years from the date of issuance of the protective order, a hearing
102 may be held to dismiss the criminal portion of the protective order;

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

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

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

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

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

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

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

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

124 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
125 provide notification, including mailing a copy of the notification to the last-known address of
126 the victim.

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

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

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

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

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

139 Section 2. Section **67-4a-210** is amended to read:

140 **67-4a-210. Property held by courts and public agencies.**

141 (1) Any intangible property held by the executive, legislative, or judicial branch of the
142 United States government, or a state or a county or municipal subdivision of a state, or any of
143 their authorities, agencies, instrumentalities, administrations, services, or other organizations
144 that remains unclaimed for more than one year after it became payable or distributable is
145 considered abandoned.

146 (2) Property held, issued, or owing by the court is payable or distributable if:

147 (a) the court has notified $\hat{S} \rightarrow$ [a person] all persons $\leftarrow \hat{S}$ whose $\hat{S} \rightarrow$ [name appears] names
147a appear $\leftarrow \hat{S}$ on the records of the court as
148 having an unadjudicated claim to the property that the property is being held subject to the
149 claim, and

150 (b) no claim is made, or property remains after all claims are resolved.

151 (3) A claim filed under Section 67-4a-501 for property reported by the court to the
152 administrator under this Section may be referred to the court for adjudication of the claim.

153 Section 3. Section **78-3a-109** is amended to read:

154 **78-3a-109. Title of petition and other court documents -- Form and contents of**
155 **petition -- Order for temporary custody -- Physical or psychological examination of**
156 **minor, parent, or guardian -- Dismissal of petition.**

157 (1) The petition and all subsequent court documents in the proceeding shall be entitled:
158 "State of Utah, in the interest of....., a person under 18 years of age (or a
159 person under 21 years of age)."

160 (2) The petition shall be verified and statements in the petition may be made upon
161 information and belief.

162 (3) The petition shall be written in simple and brief language and include the facts
163 which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

164 (4) The petition shall further state:

165 (a) the name, age, and residence of the minor;

166 (b) the names and residences of the minor's parents;

167 (c) the name and residence of the guardian, if there is one;

168 (d) the name and address of the nearest known relative, if no parent or guardian is
169 known; and

170 (e) the name and residence of the person having physical custody of the minor. If any
171 of the facts required are not known by the petitioner, the petition shall so state.

172 (5) At any time after a petition is filed, the court may make an order providing for
173 temporary custody of the minor.

174 (6) The court may order that a minor concerning whom a petition has been filed shall
175 be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a
176 hospital or other facility for examination. After notice and a hearing set for the specific
177 purpose, the court may order a similar examination of a parent or guardian whose ability to care
178 for a minor is at issue, if the court finds from the evidence presented at the hearing that the
179 parent's or guardian's physical, mental, or emotional condition may be a factor in causing the
180 neglect, dependency, or delinquency of the minor.

181 (7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted
182 pursuant to Subsection (6) are not privileged communications, but are exempt from the general
183 rule of privilege.

184 (8) The court may dismiss a petition at any stage of the proceedings.

185 (9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is
186 referred to the court under Subsection 78-3a-105[(3)(b)](5):

187 (a) the court may require the parties to participate in mediation in accordance with Title
188 78, Chapter 31b, Alternative Dispute Resolution; and

189 (b) the Division of Child and Family Services or a party to the petition may request and
190 the court may order the parties to participate in a family unity conference under the authority of
191 the Division of Child and Family Services in accordance with Subsection (10).

192 (10) (a) A family unity conference may be ordered by the court for any of the following
193 purposes:

194 (i) discussing and reviewing the case history;

195 (ii) designing a service plan for the child and family, including concurrent planning;

196 (iii) discussing a visitation schedule and rules for visitation;

197 (iv) identifying possible kinship placements under the requirements of Subsection
198 78-3a-307(5), and designing services to support the kinship placement;

199 (v) conflict resolution between the family and Division of Child and Family Services
200 staff;

201 (vi) discussing child custody issues; or

202 (vii) crisis clinical intervention to reduce trauma to the child and family.

203 (b) The family unity conference may be attended by individuals chosen by the family
204 and the Division of Child and Family Services, and may include extended family members,
205 friends, clergy, service providers, and others who may support the family in keeping the child
206 safe.

207 (c) A family unity conference may not be held in the following circumstances:

208 (i) when there is a criminal charge pending in the case;

209 (ii) to resolve petition disputes; and

210 (iii) when a family unity conference may pose a threat to the safety of a child or other
211 family member.

212 (d) With regard to a family unity conference ordered by a court under Subsection
213 (9)(b):

214 (i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the
215 proceeding:

216 (A) shall be given no less than five days notice of any recommendation made to the
217 court from the family unity conference; and

218 (B) shall be given an opportunity to be heard by the court; and

219 (ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions
220 by a party to the allegations on the petition are admissible at any proceeding.

221 Section 4. Section **78-3a-504** is amended to read:

222 **78-3a-504. Minor held in detention -- Credit for good behavior.**

223 (1) ~~[A] The judge may order whether a~~ minor held in detention under Subsection
224 78-3a-118(2)(f) or 78-3a-901(3) ~~[shall] is eligible to receive credit for good behavior against~~
225 ~~the period of detention [ordered by the court at the].~~ The rate of credit is one day for every
226 three days served [under guidelines established by the]. The Division of Juvenile Justice
227 Services shall, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
228 establish rules describing good behavior for which credit may be earned.

229 (2) Any disposition including detention under Subsection 78-3a-118(2)(f) or
230 78-3a-901(3) shall be concurrent with any other order of detention.

231 Section 5. Section **78-31a-123** is amended to read:

232 **78-31a-123. Confirmation of award.**

233 After a party to an arbitration proceeding receives notice of an award in a matter not
234 pending before a court, the party may ~~[make a motion to]~~ petition the court for an order
235 confirming the award [at which time the]. If the notice of award is in a matter pending before
236 the court, the party may file a motion for an order confirming the award. The court shall issue
237 a confirming order unless the award is modified or corrected pursuant to Section 78-31a-121 or
238 78-31a-125 or is vacated pursuant to Section 78-31a-124.

Fiscal Note
Bill Number SB0104S01

Judiciary Amendments

24-Jan-05

9:12 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst