

**JUDICIARY AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

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**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

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

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

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

(g) 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The protective order shall include:

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

(b) 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; and

(c) a statement advising the petitioner that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Any intangible property held by the executive, legislative, or judicial branch of the United States government, or a state or a county or municipal subdivision of a state, or any of their authorities, agencies, instrumentalities, administrations, services, or other organizations that

remains unclaimed for more than one year after it became payable or distributable is considered abandoned.

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

(a) the court has notified all persons whose names appear on the records of the court as having an unadjudicated claim to the property that the property is being held subject to the claim; and

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

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

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

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

(1) The petition and all subsequent court documents in the proceeding shall be entitled:

"State of Utah, in the interest of....., a person under 18 years of age (or a person under 21 years of age)."

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

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

(4) The petition shall further state:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) discussing and reviewing the case history;
- (ii) designing a service plan for the child and family, including concurrent planning;
- (iii) discussing a visitation schedule and rules for visitation;
- (iv) identifying possible kinship placements under the requirements of Subsection 78-3a-307(5), and designing services to support the kinship placement;
- (v) conflict resolution between the family and Division of Child and Family Services

staff;

(vi) discussing child custody issues; or

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

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

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

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

(ii) to resolve petition disputes; and

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

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

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

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

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

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

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

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

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

(2) Any disposition including detention under Subsection 78-3a-118(2)(f) or



78-3a-901(3) shall be concurrent with any other order of detention.

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

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

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