

PROTECTIVE ORDER AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill allows for the appointment of a Guardian Ad Litem when a protective order is issued and there are minor children in the home, and prohibits extension of the 20-day period for an ex parte protective order without the respondent's consent.

Highlighted Provisions:

This bill:

- ▶ gives the court authority to appoint a Guardian Ad Litem when an ex parte protective order is issued and there are minor children between the parties; and
- ▶ prohibits extension of the 20-day hearing period without the respondent's consent if no hearing was held.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-6-4.2, as last amended by Chapter 156, Laws of Utah 2005

30-6-4.3, as last amended by Chapter 247, Laws of Utah 2001

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 the appointment of a Guardian Ad Litem to represent the interests of any

59 minor children of the parties;

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

62 ~~[(h)]~~ (i) 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.

(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 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 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 **30-6-4.3** is amended to read:

30-6-4.3. Hearings on ex parte orders.

(1) (a) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.

(b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise extended by the court. Extensions beyond the 20-day period may not be granted unless:

(i) the respondent has had the opportunity to present a defense at the hearing; or

(ii) the respondent requests that the ex parte order be extended.

(c) Under no circumstances may an ex parte order be extended beyond 180 days from the date of initial issuance.

~~[(c)]~~ (d) If at that hearing the court issues a protective order, the ex parte protective order remains in effect until service of process of the protective order is completed.

~~[(d)]~~ (e) A protective order issued after notice and a hearing is effective until further

order of the court.

~~[(e)]~~ (f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within ten days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.

(2) Upon a hearing under this section, the court may grant any of the relief described in Section 30-6-4.2.

(3) When a court denies a petition for an ex parte protective order or a petition to modify an order for protection ex parte, the court shall set the matter for hearing upon notice to the respondent.

(4) A respondent who has been served with an ex parte protective order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a) by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice of hearing on that motion shall be personally served on the petitioner at least two days prior to the hearing on the motion to vacate.

Legislative Review Note

as of 1-13-06 6:41 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

Fiscal Note
Bill Number HB0290

Protective Order Amendments

25-Jan-06
2:56 PM

State Impact
No fiscal impact.

Individual and Business Impact
No fiscal impact.

Office of the Legislative Fiscal Analyst