

PROTECTIVE ORDER AMENDMENTS

2008 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;
- ▶ prohibits extension of the 20-day hearing period without the respondent's consent if no hearing was held; and
- ▶ provides direction for the dismissal of protective orders in place longer than two years.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-106, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-107, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-115, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

31 Section 1. Section **78B-7-106** is amended to read:

32 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
33 **orders -- Service of process -- Duties of the court.**

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

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

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

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

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

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

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

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

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

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

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

61 (g) order the appointment of the office of the Guardian Ad Litem to represent the
62 interests of any minor children of the parties, if abuse or neglect of the minor children is alleged,
63 or appoint a private guardian ad litem, if appropriate, pursuant to Section 78A-2-228;

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

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

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

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

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

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

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

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

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

83 (d) transmit a copy of the order to the statewide domestic violence network described
84 in Section 78B-7-113.

85 (5) (a) Each protective order shall include two separate portions, one for provisions, the

86 violation of which are criminal offenses, and one for provisions, the violation of which are civil
87 violations, as follows:

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

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

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

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

96 (6) The protective order shall include:

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

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

104 (c) a statement advising the petitioner that:

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

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

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

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

114 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
115 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
116 chapter, and shall transmit verification of service of process, when the order has been served, to
117 the statewide domestic violence network described in Section 78B-7-113.

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

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

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

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

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

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

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

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

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

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

142 Section 2. Section **78B-7-107** is amended to read:

143 **78B-7-107. Hearings on ex parte orders.**

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

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

149 (i) the petitioner is unable to be present at the hearing;

150 (ii) the respondent has not been served;

151 (iii) the respondent has had the opportunity to present a defense at the hearing;

152 (iv) the respondent requests that the ex parte order be extended; or

153 (v) exigent circumstances exist.

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

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

158 [~~(d)~~] (e) A protective order issued after notice and a hearing is effective until further
159 order of the court.

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

163 (2) Upon a hearing under this section, the court may grant any of the relief described in
164 Section 78B-7-106.

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

168 (4) A respondent who has been served with an ex parte protective order may seek to
169 vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a)

170 by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice of
171 hearing on that motion shall be personally served on the petitioner at least two days prior to the
172 hearing on the motion to vacate.

173 Section 3. Section **78B-7-115** is amended to read:

174 **78B-7-115. Dismissal of protective order.**

175 [~~When a protective order exists and~~]

176 (1) A protective order that has been in effect for at least two years may be dismissed if
177 the court determines that the petitioner no longer has a reasonable fear of future abuse. In
178 determining whether the petitioner no longer has a reasonable fear of future abuse, the court
179 shall consider the following factors:

180 (a) whether the respondent has complied with treatment recommendations related to
181 domestic violence, entered at the time the protective order was entered;

182 (b) whether the protective order was violated during the time it was in force;

183 (c) claims of harassment, abuse, or violence by either party during the time the
184 protective order was in force;

185 (d) counseling or therapy undertaken by either party;

186 (e) impact on the well-being of any minor children of the parties, if relevant; and

187 (f) any other factors the court considers relevant to the case before it.

188 (2) Notice of a motion to dismiss a protective order shall be made by personal service
189 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil
190 Procedure.

191 (3) If a divorce proceeding is pending between the [~~same~~] parties [~~named in the~~] to a
192 protective order, the protective order shall be dismissed when the court issues a decree of
193 divorce for the parties if:

194 (a) the petitioner in the protective order action is present or has been given notice in
195 both the divorce and protective order action of the hearing[;]; and

196 (b) the court specifically finds that the order need not continue. [~~H~~]

197 (4) When the court dismisses [~~the~~] a protective order, the court shall immediately issue

198 an order of dismissal to be filed in the protective order action and transmit a copy of the order
199 of dismissal to the statewide domestic violence network as described in Section 78B-7-113.