

VIOLATION OF PROTECTIVE ORDER

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: Lorie D. Fowlke

LONG TITLE

General Description:

This bill creates a basis for dismissing a protective order if a petitioner acts in contravention of the protective order provisions.

Highlighted Provisions:

This bill:

- ▶ provides a respondent the basis for dismissing the protective order if a petitioner repeatedly acts in contravention of the protective order provisions; and
- ▶ requires the court approved forms for all protective orders to contain a notice to petitioner that acting in contravention of the protective order provisions may be grounds for amending or dismissing the protective order.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-105, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-115, as last amended by Laws of Utah 2008, Chapter 163 and renumbered and amended by Laws of Utah 2008, Chapter 3



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

29 Section 1. Section **78B-7-105** is amended to read:

30 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

31 (1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to
32 persons seeking to proceed under this chapter.

33 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for
34 petitions and orders for protection in accordance with the provisions of this chapter. That
35 office shall provide the forms to the clerk of each court authorized to issue protective orders.

36 The forms shall include:

37 (i) a statement notifying the petitioner for an ex parte protective order that knowing
38 falsification of any statement or information provided for the purpose of obtaining a protective
39 order may subject the petitioner to felony prosecution;

40 (ii) a separate portion of the form for those provisions, the violation of which is a
41 criminal offense, and a separate portion for those provisions, the violation of which is a civil
42 violation, as provided in Subsection 78B-7-106(5);

43 (iii) language in the criminal provision portion stating violation of any criminal
44 provision is a class A misdemeanor, and language in the civil portion stating violation of or
45 failure to comply with a civil provision is subject to contempt proceedings;

46 (iv) a space for information the petitioner is able to provide to facilitate identification
47 of the respondent, such as social security number, driver license number, date of birth, address,
48 telephone number, and physical description;

49 (v) a space for the petitioner to request a specific period of time for the civil provisions
50 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for
51 the requested extension of the length of time beyond 150 days;

52 (vi) a statement advising the petitioner that when a minor child is included in an ex
53 parte protective order or a protective order, as part of either the criminal or the civil portion of
54 the order, the petitioner may provide a copy of the order to the principal of the school where the
55 child attends; and

56 (vii) a statement advising the petitioner that if the respondent fails to return custody of
57 a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from
58 the court a writ of assistance.

59 (2) If the person seeking to proceed under this chapter is not represented by an
60 attorney, it is the responsibility of the court clerk's office to provide:

61 (a) the forms adopted pursuant to Subsection (1);

62 (b) all other forms required to petition for an order for protection including, but not
63 limited to, forms for service;

64 (c) clerical assistance in filling out the forms and filing the petition, in accordance with
65 Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to
66 provide that service, but the court clerk's office is responsible to see that the service is
67 provided;

68 (d) information regarding the means available for the service of process;

69 (e) a list of legal service organizations that may represent the petitioner in an action
70 brought under this chapter, together with the telephone numbers of those organizations; and

71 (f) written information regarding the procedure for transporting a jailed or imprisoned
72 respondent to the protective order hearing, including an explanation of the use of transportation
73 order forms when necessary.

74 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency
75 for:

76 (a) filing a petition under this chapter;

77 (b) obtaining an ex parte protective order;

78 (c) obtaining copies, either certified or not certified, necessary for service or delivery to
79 law enforcement officials; or

80 (d) fees for service of a petition, ex parte protective order, or protective order.

81 (4) A petition for an order of protection shall be in writing and verified.

82 (5) (a) All orders for protection shall be issued in the form adopted by the
83 Administrative Office of the Courts pursuant to Subsection (1).

84 (b) Each protective order issued, except orders issued ex parte, shall include the
85 following language:

86 "Respondent was afforded both notice and opportunity to be heard in the hearing that
87 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
88 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
89 Columbia, tribal lands, and United States territories. This order complies with the Uniform

90 Interstate Enforcement of Domestic Violence Protection Orders Act."

91 (c) Each protective order issued §→ in accordance with this part ←§ , including
 91a protective orders issued ex parte, shall
 92 include the following language:
 93 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after one
 94 year if it finds that the basis for the issuance of the protective order no longer exists and the
 95 petitioner has repeatedly acted in contravention of the protective order provisions to
 96 intentionally or knowingly induce the respondent to violate the protective order, demonstrating
 97 to the court that the petitioner no longer has a reasonable fear of the respondent."

98 Section 2. Section **78B-7-115** is amended to read:

99 **78B-7-115. Dismissal of protective order.**

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

- 104 (a) whether the respondent has complied with treatment recommendations related to
 105 domestic violence, entered at the time the protective order was entered;
 106 (b) whether the protective order was violated during the time it was in force;
 107 (c) claims of harassment, abuse, or violence by either party during the time the
 108 protective order was in force;
 109 (d) counseling or therapy undertaken by either party;
 110 (e) impact on the well-being of any minor children of the parties, if relevant; and
 111 (f) any other factors the court considers relevant to the case before it.

112 (2) The court may amend or dismiss a protective order **§→ issued in accordance with this**
 112a **part ←§** that has been in effect for at
 113 least one year if it finds that:

- 114 (a) the basis for the issuance of the protective order no longer exists;
 115 (b) the petitioner has repeatedly acted in contravention of the protective order
 116 provisions to intentionally or knowingly induce the respondent to violate the protective order;
 117 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable
 118 fear of the respondent; and
 119 (d) the respondent has not been convicted §→ [for] of ←§ a protective order violation or
 119a any crime
 120 of violence subsequent to the issuance of the protective order, and there are no unresolved

121 charges involving violent conduct still on file with the court.

122 (3) The court shall enter sanctions against either party if the court determines that
123 either party acted:

124 (a) in bad faith; or

125 (b) with intent to harass or intimidate either party.

126 [~~2~~] (4) Notice of a motion to dismiss a protective order shall be made by personal
127 service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules
128 of Civil Procedure.

129 [~~3~~] (5) If a divorce proceeding is pending between the parties to a protective order,
130 the protective order shall be dismissed when the court issues a decree of divorce for the parties
131 if:

132 (a) the petitioner in the protective order action is present or has been given notice in
133 both the divorce and protective order action of the hearing; and

134 (b) the court specifically finds that the order need not continue.

135 [~~4~~] (6) When the court dismisses a protective order, the court shall immediately issue
136 an order of dismissal to be filed in the protective order action and transmit a copy of the order
137 of dismissal to the statewide domestic violence network as described in Section 78B-7-113.

Legislative Review Note
as of 2-6-09 9:59 AM

Office of Legislative Research and General Counsel

S.B. 183 - Violation of Protective Order

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will require an ongoing General Fund appropriation of \$12,400 to the Courts to process requests for protective order dismissals.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$12,400	\$12,400	\$0	\$0	\$0
Total	\$0	\$12,400	\$12,400	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.