

INFORMED CONSENT IN DOMESTIC CASES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires a court to inform a respondent of the legal consequence of a protective order.

Highlighted Provisions:

This bill:

► requires a court to inform a respondent of the legal consequences of an ex parte protective order; and

► requires a court to inform a respondent of the legal consequences of waiving a hearing and allowing a court to issue a protective order against the respondent.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-105, as last amended by Laws of Utah 2009, Chapter 232

78B-7-106, as last amended by Laws of Utah 2009, Chapter 146

78B-7-107, as last amended by Laws of Utah 2010, Chapter 34

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



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

29 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

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

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

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

39 (ii) a separate portion of the form for those provisions, the violation of which is a
40 criminal offense, and a separate portion for those provisions, the violation of which is a civil
41 violation, as provided in Subsection 78B-7-106[~~(5)~~](6);

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

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

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

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

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

58 (2) If the person seeking to proceed under this chapter is not represented by an

59 attorney, it is the responsibility of the court clerk's office to provide:

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

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

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

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

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

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

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

75 (a) filing a petition under this chapter;

76 (b) obtaining an ex parte protective order;

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

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

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

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

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

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

90 (c) Each protective order issued in accordance with this part, including protective
91 orders issued ex parte, shall include the following language:

92 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after
93 one year if it finds that the basis for the issuance of the protective order no longer exists and the
94 petitioner has repeatedly acted in contravention of the protective order provisions to
95 intentionally or knowingly induce the respondent to violate the protective order, demonstrating
96 to the court that the petitioner no longer has a reasonable fear of the respondent."

97 Section 2. Section **78B-7-106** is amended to read:

98 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
99 **orders -- Service of process -- Duties of the court.**

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

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

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

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

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

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

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

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

121 (e) order possession and use of an automobile and other essential personal effects, and
122 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
123 the parties to ensure that the petitioner is safely restored to possession of the residence,
124 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
125 removal of personal belongings;

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

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

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

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

136 (3) If a court issues an ex parte protective order, the court shall include, in the
137 documents to be served on the respondent, a description of the respondent's legal rights and an
138 explanation of the legal consequences that issuance of a protective order may have on the
139 respondent, including other penalties provided by statute.

140 [~~3~~] (4) A court may grant the following relief in an order for protection or a
141 modification of an order after notice and hearing, whether or not the respondent appears:

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

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

146 [~~4~~] (5) Following the protective order hearing, the court shall:

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

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

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

152 by the petitioner; and

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

155 [~~5~~] (6) (a) Each protective order shall include two separate portions, one for
156 provisions, the violation of which are criminal offenses, and one for provisions, the violation of
157 which are civil violations, as follows:

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

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

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

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

166 [~~6~~] (7) The protective order shall include:

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

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

174 (c) a statement advising the petitioner that:

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

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

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

180 [~~7~~] (8) Child support and spouse support orders issued as part of a protective order
181 are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
182 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non

183 IV-D Cases, except when the protective order is issued ex parte.

184 ~~[(8)]~~ (9) (a) The county sheriff that receives the order from the court, pursuant to
185 Subsection ~~[(5)]~~ (6)(a), shall provide expedited service for orders for protection issued in
186 accordance with this chapter, and shall transmit verification of service of process, when the
187 order has been served, to the statewide domestic violence network described in Section
188 78B-7-113.

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

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

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

195 ~~[(9)]~~ (10) (a) When an order is served on a respondent in a jail or other holding facility,
196 the law enforcement agency managing the facility shall make a reasonable effort to provide
197 notice to the petitioner at the time the respondent is released from incarceration.

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

201 ~~[(10)]~~ (11) A court may modify or vacate an order of protection or any provisions in
202 the order after notice and hearing, except that the criminal provisions of a protective order may
203 not be vacated within two years of issuance unless the petitioner:

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

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

209 ~~[(11)]~~ (12) A protective order may be modified without a showing of substantial and
210 material change in circumstances.

211 ~~[(12)]~~ (13) Insofar as the provisions of this chapter are more specific than the Utah
212 Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

213 Section 3. Section **78B-7-107** is amended to read:

214 **78B-7-107. Hearings on ex parte orders.**

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

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

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

221 (ii) the respondent has not been served;

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

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

224 (v) exigent circumstances exist.

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

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

229 (e) A protective order issued after notice and a hearing is effective until further order of
230 the court.

231 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or
232 respondent may file an objection within 10 days of the entry of the recommended order and the
233 assigned judge shall hold a hearing within 20 days of the filing of the objection.

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

236 (3) Before a court may accept a respondent's waiver of a protective order hearing on
237 the petition, the court shall explain to the respondent the respondent's legal rights and the legal
238 consequences the respondent may experience if a protective order is issued by the court.

239 [~~3~~] (4) When a court denies a petition for an ex parte protective order or a petition to
240 modify an order for protection ex parte, upon the request of the petitioner, the court shall set
241 the matter for hearing and notify the petitioner and serve the respondent.

242 [~~4~~] (5) A respondent who has been served with an ex parte protective order may seek
243 to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection
244 (1)(a) by filing a verified motion to vacate. The respondent's verified motion to vacate and a

245 notice of hearing on that motion shall be personally served on the petitioner at least two days
246 prior to the hearing on the motion to vacate.

Legislative Review Note
as of 2-24-12 10:07 AM

Office of Legislative Research and General Counsel