

DOMESTIC VIOLENCE PROVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Luz Escamilla

LONG TITLE

General Description:

This bill amends provisions relating to a court order in cases of domestic violence.

Highlighted Provisions:

This bill:

- ▶ amends provisions of the Cohabitant Abuse Procedures Act to permit a court to order the transfer of a wireless telephone number to a petitioner when the current account holder is the respondent for an order for protection;
- ▶ amends provisions of the Judicial Code to permit a court to order the transfer of a wireless telephone number to a victim when the current account holder is the perpetrator;
- ▶ describes the contents of an order transferring a wireless telephone number;
- ▶ subject to certain exceptions, requires a wireless service provider to comply with an order transferring a wireless telephone number;
- ▶ describes the legal effect and other requirements relating to an order transferring a wireless telephone number; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **77-36-5.1**, as last amended by Laws of Utah 2017, Chapter 332

31 **78B-7-105**, as last amended by Laws of Utah 2017, Chapter 332

32 **78B-7-106**, as last amended by Laws of Utah 2014, Chapter 267

33 ENACTS:

34 **77-36-5.3**, Utah Code Annotated 1953

35

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

37 Section 1. Section **77-36-5.1** is amended to read:

38 **77-36-5.1. Conditions of probation for person convicted of domestic violence**
39 **offense -- Continuous protective orders.**

40 (1) Before any perpetrator who has been convicted of a domestic violence offense may
41 be placed on probation, the court shall consider the safety and protection of the victim and any
42 member of the victim's family or household.

43 (2) The court may condition probation or a plea in abeyance on the perpetrator's
44 compliance with one or more orders of the court, which may include a sentencing protective
45 order:

46 (a) enjoining the perpetrator from threatening to commit or committing acts of
47 domestic violence against the victim or other family or household member;

48 (b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise
49 communicating with the victim, directly or indirectly;

50 (c) requiring the perpetrator to stay away from the victim's residence, school, place of
51 employment, and the premises of any of these, or a specified place frequented regularly by the
52 victim or any designated family or household member;

53 (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled
54 substances;

55 (e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other
56 specified weapon;

57 (f) directing the perpetrator to surrender any weapons the perpetrator owns or
58 possesses;

59 (g) directing the perpetrator to participate in and complete, to the satisfaction of the
60 court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or
61 psychiatric or psychological treatment;

62 (h) directing the perpetrator to pay restitution to the victim, enforcement of which shall
63 be in accordance with Chapter 38a, Crime Victims Restitution Act; and

64 (i) imposing any other condition necessary to protect the victim and any other
65 designated family or household member or to rehabilitate the perpetrator.

66 (3) The perpetrator is responsible for the costs of any condition of probation, according
67 to the perpetrator's ability to pay.

68 (4) (a) Adult Probation and Parole, or other provider, shall immediately report to the
69 court and notify the victim of any offense involving domestic violence committed by the
70 perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and
71 any violation of any sentencing criminal protective order issued by the court.

72 (b) Notification of the victim under Subsection (4)(a) shall consist of a good faith
73 reasonable effort to provide prompt notification, including mailing a copy of the notification to
74 the last-known address of the victim.

75 (5) The court shall transmit all dismissals, terminations, and expirations of pretrial and
76 sentencing criminal protective orders issued by the court to the statewide domestic violence
77 network.

78 (6) (a) Because of the serious, unique, and highly traumatic nature of domestic violence
79 crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of
80 continued acts of violence subsequent to the release of a perpetrator who is convicted of
81 domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the
82 issuance of continuous protective orders under this Subsection (6) because of the need to
83 provide ongoing protection for the victim and to be consistent with the purposes of protecting
84 victims' rights under Chapter 37, Victims' Rights, and Chapter 38, Rights of Crime Victims
85 Act, and Article I, Section 28 of the Utah Constitution.

86 (b) If a perpetrator is convicted of a domestic violence offense resulting in a sentence
87 of imprisonment, including jail, that is to be served after conviction, the court shall issue a
88 continuous protective order at the time of the conviction or sentencing limiting the contact
89 between the perpetrator and the victim unless the court determines by clear and convincing

90 evidence that the victim does not a have a reasonable fear of future harm or abuse.

91 (c) (i) The court shall notify the perpetrator of the right to request a hearing.

92 (ii) If the perpetrator requests a hearing under this Subsection (6)(c), the court shall
93 hold the hearing at the time determined by the court. The continuous protective order shall be
94 in effect while the hearing is being scheduled and while the hearing is pending.

95 (d) A continuous protective order is permanent in accordance with this Subsection
96 (6)(d) and may grant the following relief:

97 (i) enjoining the perpetrator from threatening to commit or committing acts of
98 domestic violence against the victim or other family or household member;

99 (ii) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise
100 communicating with the victim, directly or indirectly;

101 (iii) prohibiting the perpetrator from going to the victim's residence, school, place of
102 employment, and the premises of any of these, or a specified place frequented regularly by the
103 victim or any designated family or other household member;

104 (iv) directing the perpetrator to pay restitution to the victim as may apply, and shall be
105 enforced in accordance with Chapter 38a, Crime Victims Restitution Act; and

106 (v) any other order the court considers necessary to fully protect the victim and
107 members of the victim's family or other household member.

108 (e) A continuous protective order may be modified or dismissed only if the court
109 determines by clear and convincing evidence that all requirements of this Subsection (6) have
110 been met and the victim does not have a reasonable fear of future harm or abuse.

111 (f) Notice of a continuous protective order issued pursuant to this section shall be sent
112 by the court to the statewide domestic violence network.

113 (g) Violation of a continuous protective order issued pursuant to this Subsection (6) is
114 a class A misdemeanor, is a domestic violence offense under Section 77-36-1, and is subject to
115 increased penalties in accordance with Section 77-36-1.1.

116 (h) In addition to the process of issuing a continuous protective order described in
117 Subsection (6)(a), a district court may issue a continuous protective order at any time if the
118 victim files a petition with the district court, and after notice and hearing the district court finds
119 that a continuous protective order is necessary to protect the victim.

120 (7) (a) Before release of a person who is subject to a continuous protective order issued

121 under Subsection (6), the victim shall receive notice of the imminent release by the law
122 enforcement agency that is releasing the person who is subject to the continuous protective
123 order:

124 (i) if the victim has provided the law enforcement agency contact information; and

125 (ii) in accordance with Section 64-13-14.7, if applicable.

126 (b) Before release, the law enforcement agency shall notify in writing the person being
127 released that a violation of the continuous protective order issued at the time of conviction or
128 sentencing continues to apply, and that a violation of the continuous protective order is a class
129 A misdemeanor, is a separate domestic violence offense under Section 77-36-1, and is subject
130 to increased penalties in accordance with Section 77-36-1.1.

131 (8) In addition to a protective order issued under this section, the court may issue a
132 separate order relating to the transfer of a wireless telephone number in accordance with
133 Section 77-36-5.3.

134 Section 2. Section 77-36-5.3 is enacted to read:

135 **77-36-5.3. Court order for transfer of wireless telephone number.**

136 (1) As used in this section, "wireless service provider" means a provider of commercial
137 mobile service under Section 332(d) of the Federal Telecommunications Act of 1996.

138 (2) At or after the time that a court issues a protective order under Section 77-36-5.1 or
139 an order of protection under Section 78B-7-106, the court may order the transfer of a wireless
140 telephone number as provided in this section, if:

141 (a) the perpetrator is the account holder for the wireless telephone number;

142 (b) the number is assigned to a telephone that is primarily used by the victim or an
143 individual who will reside with the victim during the time that the protective order or the order
144 of protection is in effect; and

145 (c) the victim requests transfer of the wireless telephone number.

146 (3) An order transferring a wireless telephone number under this section shall:

147 (a) direct a wireless service provider to transfer the rights to, and the billing
148 responsibility for, the wireless telephone number to the victim; and

149 (b) include the wireless telephone number to be transferred, the name of the transferee,
150 and the name of the account holder.

151 (4) A wireless service provider shall comply with an order issued under this section,

152 unless compliance is not reasonably possible due to:

153 (a) the account holder having already terminated the account;

154 (b) differences in network technology that prevent the victim's device from functioning
155 on the network to which the number is to be transferred;

156 (c) geographic or other service availability constraints; or

157 (d) other barriers outside the control of the wireless service provider.

158 (5) A wireless service provider that fails to comply with an order issued under this
159 section shall, within four business days after the day on which the wireless service provider
160 receives the order, provide notice to the victim stating:

161 (a) that the wireless service provider is not able to reasonably comply with the order;

162 and

163 (b) the reason that the wireless service provider is not able to reasonably comply with
164 the order.

165 (6) The victim has full financial responsibility for each wireless telephone number
166 transferred to the victim by an order under this section, beginning on the day on which the
167 wireless telephone number is transferred, including monthly service costs and costs for any
168 mobile device associated with the wireless telephone number.

169 (7) This section does not preclude a wireless service provider from applying standard
170 requirements for account establishment to the victim when transferring financial responsibility
171 under Subsection (6).

172 (8) A wireless service provider, and any officer, employee, or agent of the wireless
173 service provider, is not civilly liable for action taken in compliance with an order issued under
174 this section.

175 Section 3. Section **78B-7-105** is amended to read:

176 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

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

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

182 The forms shall include:

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

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

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

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

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

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

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

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

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

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

210 (c) clerical assistance in filling out the forms and filing the petition, in accordance with
211 Subsection (1)(a), except that a court clerk's office may designate any other entity, agency, or
212 person to provide that service, but the court clerk's office is responsible to see that the service is
213 provided;

- 214 (d) information regarding the means available for the service of process;
- 215 (e) a list of legal service organizations that may represent the petitioner in an action
- 216 brought under this chapter, together with the telephone numbers of those organizations; and
- 217 (f) written information regarding the procedure for transporting a jailed or imprisoned
- 218 respondent to the protective order hearing, including an explanation of the use of transportation
- 219 order forms when necessary.

220 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency

221 for:

- 222 (a) filing a petition under this chapter;
 - 223 (b) obtaining an ex parte protective order;
 - 224 (c) obtaining copies, either certified or not certified, necessary for service or delivery to
 - 225 law enforcement officials; or
 - 226 (d) fees for service of a petition, ex parte protective order, or protective order.
- 227 (4) A petition for an order of protection shall be in writing and verified.

228 (5) (a) An order for protection shall be issued in the form adopted by the Administrative

229 Office of the Courts pursuant to Subsection (1).

230 (b) A protective order issued, except orders issued ex parte, shall include the following

231 language:

232 "Respondent was afforded both notice and opportunity to be heard in the hearing that

233 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,

234 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of

235 Columbia, tribal lands, and United States territories. This order complies with the Uniform

236 Interstate Enforcement of Domestic Violence Protection Orders Act."

237 (c) A protective order issued in accordance with this part, including protective orders

238 issued ex parte and except for a continuous protective order issued under Subsection

239 [77-36-5.1\(6\)](#), shall include the following language:

240 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after

241 one year if it finds that the basis for the issuance of the protective order no longer exists and the

242 petitioner has repeatedly acted in contravention of the protective order provisions to

243 intentionally or knowingly induce the respondent to violate the protective order, demonstrating

244 to the court that the petitioner no longer has a reasonable fear of the respondent."

245 Section 4. Section **78B-7-106** is amended to read:

246 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
247 **orders -- Service of process -- Duties of the court.**

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

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

254 (b) upon notice, issue an order for protection or modify an order after a hearing,
255 ~~whether or not~~ regardless of whether the respondent appears.

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

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

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

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

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

269 (e) order possession and use of an automobile and other essential personal effects, and
270 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
271 the parties to ensure that the petitioner is safely restored to possession of the residence,
272 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
273 removal of personal belongings;

274 (f) order the respondent to maintain an existing wireless telephone contract or account;

275 ~~(f)~~ (g) grant to the petitioner temporary custody of any minor children of the parties;

276 ~~[(g)]~~ (h) order the appointment of an attorney guardian ad litem under Sections
277 [78A-2-703](#) and [78A-6-902](#);

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

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

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

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

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

291 (4) In addition to the relief granted under Subsection (3), the court may order the
292 transfer of a wireless telephone number in accordance with Section [77-36-5.3](#).

293 ~~[(4)]~~ (5) Following the protective order hearing, the court shall:

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

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

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

300 (d) transmit a copy of the order to the statewide domestic violence network described
301 in Section [78B-7-113](#).

302 ~~[(5)]~~ (6) (a) Each protective order shall include two separate portions, one for
303 provisions, the violation of which are criminal offenses, and one for provisions, the violation of
304 which are civil violations, as follows:

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

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

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

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

313 ~~[(6)]~~ (7) The protective order shall include:

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

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

321 (c) a statement advising the petitioner that:

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

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

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

327 ~~[(7)]~~ (8) Child support and spouse support orders issued as part of a protective order
328 are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
329 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
330 IV-D Cases, except when the protective order is issued ex parte.

331 ~~[(8)]~~ (9) (a) The county sheriff that receives the order from the court, pursuant to
332 Subsection ~~[(5)]~~ (6)(a), shall provide expedited service for orders for protection issued in
333 accordance with this chapter, and shall transmit verification of service of process, when the
334 order has been served, to the statewide domestic violence network described in Section
335 [78B-7-113](#).

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

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

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

342 [~~9~~] (10) (a) When an order is served on a respondent in a jail or other holding facility,
343 the law enforcement agency managing the facility shall make a reasonable effort to provide
344 notice to the petitioner at the time the respondent is released from incarceration.

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

348 [~~10~~] (11) A court may modify or vacate an order of protection or any provisions in
349 the order after notice and hearing, except that the criminal provisions of a protective order may
350 not be vacated within two years of issuance unless the petitioner:

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

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

356 [~~11~~] (12) A protective order may be modified without a showing of substantial and
357 material change in circumstances.

358 [~~12~~] (13) Insofar as the provisions of this chapter are more specific than the Utah
359 Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Legislative Review Note
Office of Legislative Research and General Counsel