

SB0027S01 compared with SB0027

~~{deleted text}~~ shows text that was in SB0027 but was deleted in SB0027S01.

Inserted text shows text that was not in SB0027 but was inserted into SB0027S01.

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Representative Angela Romero proposes the following substitute bill:

DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Angela Romero

LONG TITLE

~~{Committee Note:~~

~~— The Judiciary Interim Committee recommended this bill.~~

~~{General Description:~~

This bill modifies provisions related to domestic violence, dating violence, and stalking.

Highlighted Provisions:

This bill:

- ▶ modifies definition of "crime victim" as it relates to dating violence;
- ▶ addresses violation of specified protective orders;
- ▶ modifies ~~{definition of "cohabitant" and "ex parte protective order"}~~definitions;

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- ▶ amends provisions for forms of petitions and protective orders;
- ▶ addresses duties of law enforcement officers;
- ▶ addresses when and how a court may act ex parte;
- ▶ modifies provisions related to mutual protective orders or stalking injunctions;
- ▶ amends continuing duty to inform court of other proceedings;
- ▶ addresses dismissal or expiration of protective orders; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-22-5.1, as last amended by Laws of Utah 2011, Chapter 279

76-5-106.5, as last amended by Laws of Utah 2017, Chapter 380

76-5-108, as last amended by Laws of Utah 2013, Chapter 196

77-36-1, as last amended by **Laws of Utah 2017, Chapters 289 and 332**

78B-7-102, as last amended by Laws of Utah 2017, Chapter 332

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

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

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

78B-7-108, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-109, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-115, as last amended by Laws of Utah 2017, Chapter 332

ENACTS:

77-3a-101.1, Utah Code Annotated 1953

78B-7-115.5, Utah Code Annotated 1953

78B-7-408, Utah Code Annotated 1953

78B-7-409, Utah Code Annotated 1953

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

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Section 1. Section 57-22-5.1 is amended to read:

57-22-5.1. Crime victim's right to new locks -- Domestic violence victim's right to terminate rental agreement -- Limits an owner relating to assistance from public safety agency.

(1) As used in this section:

(a) "Crime victim" means a victim of:

(i) domestic violence, as defined in Section 77-36-1;

(ii) stalking, as defined in Section 76-5-106.5;

(iii) a crime under Title 76, Chapter 5, Part 4, Sexual Offenses;

(iv) burglary or aggravated burglary under Section 76-6-202 or 76-6-203; or

(v) dating violence, [~~consisting of verbal, emotional, psychological, physical, or sexual abuse of one person by another in a dating relationship~~] as defined in Section 78B-7-402.

(b) "Public safety agency" means a governmental entity that provides fire protection, law enforcement, ambulance, medical, or similar service.

(2) An acceptable form of documentation of an act listed in Subsection (1) is:

(a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, subsequent to a hearing of which the petitioner and respondent have been given notice under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; or

(b) a copy of a police report documenting an act listed in Subsection (1).

(3) (a) A renter who is a crime victim may require the renter's owner to install a new lock to the renter's residential rental unit if the renter:

(i) provides the owner with an acceptable form of documentation of an act listed in Subsection (1); and

(ii) pays for the cost of installing the new lock.

(b) An owner may comply with Subsection (3)(a) by:

(i) rekeying the lock if the lock is in good working condition; or

(ii) changing the entire locking mechanism with a locking mechanism of equal or greater quality than the lock being replaced.

(c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the key that opens the new lock.

(d) Notwithstanding any rental agreement, an owner who installs a new lock under

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Subsection (3)(a) shall refuse to provide a copy of the key that opens the new lock to the perpetrator of the act listed in Subsection (1).

(e) Notwithstanding Section 78B-6-814, if an owner refuses to provide a copy of the key under Subsection (3)(d) to a perpetrator who is not barred from the residential rental unit by a protective order but is a renter on the rental agreement, the perpetrator may file a petition with a court of competent jurisdiction within 30 days to:

(i) establish whether the perpetrator should be given a key and allowed access to the residential rental unit; or

(ii) whether the perpetrator should be relieved of further liability under the rental agreement because of the owner's exclusion of the perpetrator from the residential rental unit.

(f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further liability under the rental agreement if the perpetrator is found by the court to have committed the act upon which the landlord's exclusion of the perpetrator is based.

(4) A renter who is a victim of domestic violence, as defined in Section 77-36-1, may terminate a rental agreement if the renter:

(a) is in compliance with:

(i) all provisions of Section 57-22-5; and

(ii) all obligations under the rental agreement;

(b) provides the owner:

(i) written notice of termination; and

(ii) a protective order protecting the renter from a domestic violence perpetrator or a copy of a police report documenting that the renter is a victim of domestic violence and did not participate in the violence; and

(c) no later than the date that the renter provides a notice of termination under Subsection (4)(b)(i), pays the owner the equivalent of 45 days' rent for the period beginning on the date that the renter provides the notice of termination.

(5) An owner may not:

(a) impose a restriction on a renter's ability to request assistance from a public safety agency; or

(b) penalize or evict a renter because the renter makes reasonable requests for assistance from a public safety agency.

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Section 2. Section 76-5-106.5 is amended to read:

76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law enforcement officer.

(1) As used in this section:

(a) "Conviction" means:

- (i) a verdict or conviction;
- (ii) a plea of guilty or guilty and mentally ill;
- (iii) a plea of no contest; or
- (iv) the acceptance by the court of a plea in abeyance.

(b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

- (A) directly, indirectly, or through any third party; and
- (B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

- (A) approaches or confronts a person;
- (B) appears at the person's workplace or contacts the person's employer or coworkers;
- (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

(D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;

(E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or

(F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

~~(d)~~ (c) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

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~~(c)~~ (d) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person; or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions;

or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

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(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9);
or

(e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d) or (e).

(9) (a) The following serve as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim:

(i) a conviction for:

(A) stalking; or

(B) attempt to commit stalking; or

(ii) a plea to any of the offenses described in Subsection (9)(a)(i) accepted by the court and held in abeyance for a period of time.

(b) A permanent criminal stalking injunction shall be issued by the court at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the

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time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (11), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (11), likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

(c) any other orders the court considers necessary to protect the victim and members of the victim's immediate family or household.

(11) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children. If the court issues a permanent criminal stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and that court may modify the injunction to balance the parties' custody and parent-time rights.

(12) Except as provided in Subsection (11), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

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(13) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(14) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(15) (a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(16) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

(17) (a) A law enforcement officer who responds to an allegation of stalking shall use all reasonable means to protect the victim and prevent further violence, including:

(i) taking action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(ii) confiscating the weapon or weapons involved in the alleged stalking;

(iii) making arrangements for the victim and any child to obtain emergency housing or shelter;

(iv) providing protection while the victim removes essential personal effects;

(v) arranging, facilitating, or providing for the victim and any child to obtain medical treatment; and

(vi) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of stalking, in accordance with Subsection (17)(b).

(b) (i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title 77, Chapter 3a, Stalking Injunctions.

(ii) The written notice shall also include:

(A) a statement that the forms needed in order to obtain a stalking injunction are available from the court clerk's office in the judicial district where the victim resides or is

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temporarily domiciled; and

(B) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance.

Section 3. Section **76-5-108** is amended to read:

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under the following who intentionally or knowingly violates that order after having been properly served or having been present, in person or through court video conferencing, when the order was issued, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act:

(a) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(b) Title 78A, Chapter 6, Juvenile Court Act;

(c) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or

(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act~~[-who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act].~~

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

Section 4. Section **77-3a-101.1** is enacted to read:

77-3a-101.1. Mutual civil stalking injunctions.

(1) A court may not grant a mutual order or mutual civil stalking injunction to opposing parties, unless each party:

(a) files an independent petition against the other for a civil stalking injunction, and both petitions are served;

(b) makes a showing at an evidentiary hearing on the civil stalking injunction that stalking has occurred by the other party; and

(c) demonstrates the alleged act did not occur in self-defense.

(2) If the court issues mutual civil stalking injunctions, the court shall include specific

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findings of all elements of Subsection (1) in the court order justifying the entry of the court orders.

(3) A court may not grant a civil stalking injunction to a civil petitioner who is the respondent or defendant subject to a civil stalking injunction, protective order, child protective order, ex parte child protective order:

(a) issued under:

(i) Chapter 3a, Stalking Injunctions;

(ii) a foreign protection order enforceable under Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act;

(iii) Chapter 36, Cohabitant Abuse Procedures Act;

(iv) Title 78A, Chapter 6, Juvenile Court Act; or

(v) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; and

(b) unless the court determines that the requirements of Subsection (1) are met, and:

(i) the same court issued the order for protection against the respondent; or

(ii) if the matter is before a subsequent court, the subsequent court:

(A) determines it would be impractical for the original court to consider the matter; or

(B) confers with the court that issued the order for protection.

Section 5. Section 77-36-1 is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

(2) "Department" means the Department of Public Safety.

(3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

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- (b) assault, as described in Section 76-5-102;
- (c) criminal homicide, as described in Section 76-5-201;
- (d) harassment, as described in Section 76-5-106;
- (e) electronic communication harassment, as described in Section 76-9-201;
- (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
- (g) mayhem, as described in Section 76-5-105;
- (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- (i) stalking, as described in Section 76-5-106.5;
- (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
- (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
- (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
- (m) possession of a deadly weapon with criminal intent ~~[to assault]~~, as described in Section 76-10-507;
- (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;
- (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4) ~~[Conviction]~~, except that a conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from ~~[the provisions of]~~ the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or
- (p) child abuse, as described in Section 76-5-109.1 ~~[~~
- ~~[~~
- (q) threatening use of a dangerous weapon, as described in Section 76-10-506;

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(r) threatening violence, as described in Section 76-5-107;

(s) tampering with a witness, as described in Section 76-8-508;

(t) retaliation against a witness or victim, as described in Section 76-8-508.3;

(u) unlawful distribution of an intimate image, as described in Section 76-5b-203;

(v) sexual battery, as described in Section 76-9-702.1;

(w) voyeurism, as described in Section 76-9-702.7;

(x) damage to or interruption of a communication device, as described in Section 76-6-108; or

(y) an offense described in Section 77-20-3.5.

(5) "Jail release agreement" means the same as that term is defined in Section 77-20-3.5.

(6) "Jail release court order" means the same as that term is defined in Section 77-20-3.5.

(7) "Marital status" means married and living together, divorced, separated, or not married.

(8) "Married and living together" means a ~~[man and a woman]~~ couple whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

(9) "Not married" means any living arrangement other than married and living together, divorced, or separated.

(10) "Protective order" includes an order issued under Subsection 77-36-5.1(6).

(11) "Pretrial protective order" means a written order:

(a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release pursuant to Subsection 77-20-3.5(3), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

(12) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.

(13) "Separated" means a ~~[man and a woman]~~ couple who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

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(14) "Victim" means a cohabitant who has been subjected to domestic violence.

Section ~~{4}~~6. Section 78B-7-102 is amended to read:

78B-7-102. Definitions.

As used in this chapter:

(1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party as the person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree;

(d) has or had one or more children in common with the other party;

(e) is the biological parent of the other party's unborn child; [or]

(f) resides or has resided in the same residence as the other party[-]; or

(g) is or was in a consensual sexual relationship with the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

(a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

(4) "Court clerk" means a district court clerk.

(5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(6) "Ex parte protective order" means an order issued without notice to the [~~defendant~~] respondent in accordance with this chapter.

(7) "Foreign protection order" means the same as that term is defined in Section 78B-7-302.

(8) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

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(9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(10) "Protective order" means:

- (a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter; or
- (b) an order issued under Subsection 77-36-5.1(6).

Section ~~5~~7. Section **78B-7-105** is amended to read:

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

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

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

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

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

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

(iv) a space for 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;

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

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of

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the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; ~~[and]~~

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance~~[-]~~; and

(viii) a space for information the petitioner is able to provide related to a proceeding for an order for protection, civil litigation, a proceeding in juvenile court, and a criminal case involving either party, including:

(A) the case name;

(B) the file number;

(C) the county and state of the proceeding; and

(D) the judge's name.

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

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

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

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

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

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

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

(3) ~~[No charges may be imposed by a]~~ A court clerk, constable, or law enforcement agency may not impose a charge for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte protective order;

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

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

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

(5) (a) An order for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).

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

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

(c) A protective order issued in accordance with this part, including protective orders issued ex parte and except for a continuous protective order issued under Subsection 77-36-5.1(6), shall include the following language:

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

Section ~~6~~8. Section **78B-7-106** is amended to read:

78B-7-106. 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, that there is a substantial likelihood domestic violence or abuse will occur, or that 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

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(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]~~ domestic violence or abuse, committing domestic violence or abuse ~~[against the petitioner and]~~, or harassing the petitioner or any designated family or household member;

(b) prohibit the respondent from ~~[harassing,]~~ telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly, with the exception of any parent-time provisions in the ex parte order;

~~[(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]~~

(c) subject to Subsection (2)(e), prohibit the respondent from being within a specified distance of the petitioner;

(d) subject to Subsection (2)(e), order that the respondent is excluded from and is to stay away from the following places and their premises:

(i) the petitioner's residence or any designated family or household member's residence;

(ii) the petitioner's school or any designated family or household member's school;

(iii) the petitioner's or any designated family or household member's place of employment;

(iv) the petitioner's place of worship or any designated family or household member's place of worship; or

(v) any specified place frequented by the petitioner [and] or any designated family or household member;

(e) if the petitioner or designated family or household member attends the same school as the respondent, is employed at the same place of employment as the respondent, or attends the same place of worship, the court:

(i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent from the respondent's school, place of employment, or place of worship; and

(ii) may enter an order governing the respondent's conduct at the respondent's school,

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place of employment, or place of worship;

~~[(d)]~~ (f) 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)]~~ (g) 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)]~~ (h) grant to the petitioner or someone other than the respondent temporary custody of ~~[any minor children]~~ a minor child of the parties;

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

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

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

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

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

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

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

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

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

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

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by the petitioner; and

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

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

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

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

(b) The criminal provision portion shall include a statement that violation of any 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

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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 78B-7-113.

(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, in person or through court video conferencing, 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 ~~7~~9. Section **78B-7-107** is amended to read:

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78B-7-107. 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 to be held 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 petitioner is unable to be present at the hearing;
- (ii) the respondent has not been served;
- (iii) the respondent has had the opportunity to present a defense at the hearing;
- (iv) the respondent requests that the ex parte order be extended; or
- (v) exigent circumstances exist.

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

(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.

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

(f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 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 78B-7-106.

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

Section ~~78~~10. Section **78B-7-108** is amended to read:

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78B-7-108. Mutual protective orders.

(1) A court may not grant a mutual order or mutual orders for protection to opposing parties, unless each party:

(a) ~~[has filed]~~ files an independent petition against the other for a protective order, and both petitions ~~[have been]~~ are served;

(b) makes a showing at a due process protective order hearing of abuse or domestic violence committed by the other party; and

(c) demonstrates the abuse or domestic violence did not occur in self-defense.

(2) If the court issues mutual protective orders, ~~[the circumstances justifying those orders shall be documented in the case file.]~~ the court shall include specific findings of all elements of Subsection (1) in the court order justifying the entry of the court order.

(3) A court may not grant an order for protection to a civil petitioner who is the respondent or defendant subject to a protective order, child protective order, ex parte child protective order:

(a) issued under:

~~{~~ ~~(i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;~~

~~—~~ ~~(ii) Title 78A, Chapter 6, Juvenile Court Act;~~

~~—~~ ~~(iii) Chapter 7, Part 1, Cohabitant Abuse Act; or~~

~~‡~~ ~~(~~five~~)i) a foreign protection order enforceable under Chapter 7, Part 3, Uniform~~

Interstate Enforcement of Domestic Violence Protection Orders Act;

~~(ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;~~

~~(iii) Title 78A, Chapter 6, Juvenile Court Act; or~~

~~(iv) Chapter 7, Part 1, Cohabitant Abuse Act; and~~

(b) unless the court determines that the requirements of Subsection (1) are met, and:

(i) the same court issued the order for protection against the respondent; or

(ii) if the matter is before a subsequent court, the subsequent court:

(A) determines it would be impractical for the original court to consider the matter; or

(B) confers with the court that issued the order for protection.

Section ~~{9}~~ 11. Section **78B-7-109** is amended to read:

78B-7-109. Continuing duty to inform court of other proceedings -- Effect of other proceedings.

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(1) [~~At any hearing in a proceeding to obtain an order for protection, each~~] Each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in juvenile court, and each criminal case involving either party, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.

(2) (a) An order for protection issued pursuant to this chapter is in addition to and not in lieu of any other available civil or criminal proceeding.

(b) A petitioner is not barred from seeking a protective order because of other pending proceedings.

(c) A court may not delay granting relief under this chapter because of the existence of a pending civil action between the parties.

(3) A petitioner may omit [~~his or her~~] the petitioner's address from all documents filed with the court under this chapter, but shall separately provide the court with a mailing address that is not to be made part of the public record, but that may be provided to a peace officer or entity for service of process.

Section ~~10~~12. Section **78B-7-115** is amended to read:

78B-7-115. Dismissal of protective order -- Expiration.

(1) Except as provided in Subsections (6) and (8), a protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future harm or abuse. In determining whether the petitioner no longer has a reasonable fear of future harm or abuse, the court shall consider the following factors:

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

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

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

(d) counseling or therapy undertaken by either party;

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

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

(2) Except as provided in Subsections (6) and (8), the court may amend or dismiss a

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protective order issued in accordance with this part that has been in effect for at least one year if it finds that:

(a) the basis for the issuance of the protective order no longer exists;

(b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;

(c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable fear of the respondent; and

(d) the respondent has not been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order, and there are no unresolved charges involving violent conduct still on file with the court.

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

(a) in bad faith; or

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

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

(5) Except as provided in Subsection (8), if a divorce proceeding is pending between parties to a protective order action, the protective order shall be dismissed when the court issues a decree of divorce for the parties if:

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

~~[(b) the court specifically finds that the order need not continue, and, as provided in Subsection (1), the petitioner no longer has a reasonable fear of future harm or abuse.]~~

(a) the respondent files a motion to dismiss a protective order in both the divorce action and the protective order action and personally serves the petitioner; and

(b) (i) the parties stipulate in writing or on the record to dismiss the protective order; or
(ii) based on evidence at the divorce trial, the court determines that the petitioner no longer has a reasonable fear of future harm or abuse after considering the factors listed in Subsections (1)(a) through (f).

(6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a

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protective order that has been entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to ~~[Subsections (6)(b) and (c)]~~ Subsection (6)(b), 10 years from the day on which ~~[one of the following occurs:(i) the decree of divorce between the petitioner and respondent became absolute; or(ii)]~~ the protective order ~~[was]~~ is entered.

(b) The protective order shall automatically expire, as described in Subsection (6)(a), unless ~~[(i)]~~ the petitioner files a motion before expiration of the protective order and demonstrates that:

(i) the petitioner has a reasonable fear of future harm or abuse, as described in Subsection (1); or

(ii) the respondent has been convicted of a protective order violation or any crime of domestic violence subsequent to the issuance of the protective order.

~~[(c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the respondent is incarcerated.]~~

(c) If the court grants the motion under Subsection (6)(b), the court shall set a new date on which the protective order expires. The protective order will expire unless the petitioner files a motion described in Subsection (6)(b) to extend the protective order.

(7) When the court dismisses a protective order, the court shall immediately:

(a) issue an order of dismissal to be filed in the protective order action; and

(b) transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section 78B-7-113.

(8) Notwithstanding the other provisions of this section, a continuous protective order may not be modified or dismissed except as provided in Subsection 77-36-5.1(6).

Section ~~{11}~~13. Section **78B-7-115.5** is enacted to read:

78B-7-115.5. Expiration of protective order.

(1) Subject to the other provisions of this section, a civil protective order issued under this part automatically expires 10 years from the day on which the protective order is entered.

(2) The protective order automatically expires as described in Subsection (1), unless the petitioner files a motion before expiration of the protective order and demonstrates that:

(a) the petitioner has a current reasonable fear of future harm or abuse, as described in Subsection 78B-7-115(1); or

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(b) the respondent has been convicted of a protective order violation or any crime of domestic violence subsequent to the issuance of the protective order.

(3) If the court grants the motion under Subsection (2), the court shall set a new date on which the protective order expires. The protective order will expire unless the petitioner files a motion described in Subsection (2) to extend the protective order.

Section ~~{12}~~14. Section **78B-7-408** is enacted to read:

78B-7-408. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of dating violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged dating violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arranging, facilitating, or providing for the victim and any child to obtain medical treatment; and

(f) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of dating violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled; and

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance.

Section ~~{13}~~15. Section **78B-7-409** is enacted to read:

78B-7-409. Mutual protective orders.

(1) A court may not grant a mutual order or mutual orders for protection to opposing

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parties, unless each party:

(a) files an independent petition against the other for a protective order, and both petitions are served;

(b) makes a showing at a due process protective order hearing of abuse or dating violence committed by the other party; and

(c) demonstrates the abuse or dating violence did not occur in self-defense.

(2) If the court issues mutual protective orders, the court shall include specific findings of all elements of Subsection (1) in the court order justifying the entry of the court order.

(3) A court may not grant an order for protection to a civil petitioner who is the respondent or defendant subject to a protective order, child protective order, or ex parte child protective order:

(a) issued under:

(i) this chapter;

(ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

(iii) Title 78A, Chapter 6, Juvenile Court Act;

(iv) Chapter 7, Part 1, Cohabitant Abuse Act; or

(v) a foreign protection order enforceable under Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; and

(b) unless the court determines that the requirements of Subsection (1) are met, and:

(i) the same court issued the order for protection against the respondent; or

(ii) if the matter is before a subsequent court, the subsequent court:

(A) determines it would be impractical for the original court to consider the matter; or

(B) confers with the court that issued the order for protection.

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Legislative Review Note

Office of Legislative Research and General Counsel†