

HB0100S03 compared with HB0100S02

~~deleted text~~ shows text that was in HB0100S02 but was deleted in HB0100S03.

Inserted text shows text that was not in HB0100S02 but was inserted into HB0100S03.

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Representative V. Lowry Snow proposes the following substitute bill:

SEXUAL VIOLENCE PROTECTIVE ORDERS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill establishes the Sexual Violence Protection Act.

Highlighted Provisions:

This bill:

- ▶ defines terms and modifies definitions;
- ▶ creates a sexual violence protective order and an ex parte sexual violence protective order;
- ▶ establishes procedures for the application, modification, and enforcement of a sexual violence protective order and an ex parte sexual violence protective order; and
- ▶ requires that a sexual violence protective order and a dating violence protective order be placed on the statewide warrant system.

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Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53-10-208, as last amended by Laws of Utah 2009, Chapters 292 and 356

53-10-208.1, as last amended by Laws of Utah 2011, Chapter 366

78B-7-201, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

78B-7-501, Utah Code Annotated 1953

78B-7-502, Utah Code Annotated 1953

78B-7-503, Utah Code Annotated 1953

78B-7-504, Utah Code Annotated 1953

78B-7-505, Utah Code Annotated 1953

78B-7-506, Utah Code Annotated 1953

78B-7-507, Utah Code Annotated 1953

78B-7-508, Utah Code Annotated 1953

78B-7-509, Utah Code Annotated 1953

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

Section 1. Section **53-10-208** is amended to read:

53-10-208. Definition -- Offenses included on statewide warrant system --

Transportation fee to be included -- Statewide warrant system responsibility -- Quality control -- Training -- Technical support -- Transaction costs.

(1) "Statewide warrant system" means the portion of the state court computer system that is accessible by modem from the state mainframe computer and contains:

- (a) records of criminal warrant information; and
- (b) after notice and hearing, records of protective orders issued pursuant to:
 - (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; [or]
 - (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[.];

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(iii) Title 78B, Chapter 7, Part 4, Dating Violence Protection Act; or

(iv) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act.

(2) (a) The division shall include on the statewide warrant system all warrants issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

(b) The division shall include on the statewide warrant system all warrants issued for failure to appear on a traffic citation as ordered by a magistrate under Subsection 77-7-19(3).

(c) For each warrant, the division shall indicate whether the magistrate ordered under Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

(3) The division is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment and protective orders contained in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering the information on the system;

(b) upon the expiration of the protective orders and in the manner prescribed by the division, purge information regarding protective orders described in Subsection 53-10-208.1(4) within 30 days of the time after expiration;

(c) establish system procedures and provide training to all criminal justice agencies having access to information contained on the state warrant system;

(d) provide technical support, program development, and systems maintenance for the operation of the system; and

(e) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to information contained on the state warrant system.

(4) (a) Any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

(b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

Section 2. Section **53-10-208.1** is amended to read:

53-10-208.1. Magistrates and court clerks to supply information.

Every magistrate or clerk of a court responsible for court records in this state shall, within 30 days of the disposition and on forms and in the manner provided by the division, furnish the division with information pertaining to:

(1) all dispositions of criminal matters, including:

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- (a) guilty pleas;
- (b) convictions;
- (c) dismissals;
- (d) acquittals;
- (e) pleas held in abeyance;
- (f) judgments of not guilty by reason of insanity for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons;
- (g) judgments of guilty with a mental illness;
- (h) finding of mental incompetence to stand trial for a violation of:
 - (i) a felony offense;
 - (ii) Title 76, Chapter 5, Offenses Against the Person; or
 - (iii) Title 76, Chapter 10, Part 5, Weapons; or
- (i) probations granted; ~~and~~
- (2) orders of civil commitment under the terms of Section 62A-15-631;
- (3) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and
- (4) protective orders issued after notice and hearing, pursuant to:
 - (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; ~~or~~
 - (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[-];
 - (c) Title 78B, Chapter 7, Part 4, Dating Violence Protection Act; or
 - (d) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act.

Section 3. Section 78B-7-201 is amended to read:

78B-7-201. Definitions.

As used in this chapter:

- (1) "Abuse" means:
 - (a) physical abuse ~~or~~;
 - (b) sexual abuse;
 - (c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or

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(d) human trafficking of a child for sexual exploitation under Section 76-5-308.5.

(2) "Court" means the district court or juvenile court.

(3) All other terms have the same meaning as defined in Section 78A-6-105.

Section ~~{3}~~4. Section **78B-7-501** is enacted to read:

Part 5. Sexual Violence Protection Act

78B-7-501. Title.

This part is known as the "Sexual Violence Protection Act."

Section ~~{4}~~5. Section **78B-7-502** is enacted to read:

78B-7-502. Definitions.

As used in this part:

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

(2) "Dating partner" means the same as that term is defined in Section 78B-7-402.

(3) "Ex parte sexual violence protective order" means an order issued without notice to the respondent in accordance with the requirements of this part.

(4) "Protective order" means:

(a) a sexual violence protective order; or

(b) an ex parte sexual violence protective order.

(5) "Sexual violence" means the commission or the attempt to commit:

(~~{i}~~a) any sexual offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or Title 76, Chapter ~~{5}~~5b, Part ~~{4}~~2, Sexual Exploitation;

(~~{ii}~~b) human trafficking for forced sexual exploitation under Section 76-5-308; or

(~~{iii}~~c) aggravated human trafficking for forced sexual exploitation under Section ~~{76-5-308}~~76-5-310.~~{5; or}~~

~~{~~ (iv) aggravated human trafficking for forced exploitation under Section 76-5-310.

~~}~~ (6) "Sexual violence protective order" means an order issued after notice and a hearing in accordance with the requirements of this part.

Section ~~{5}~~6. Section **78B-7-503** is enacted to read:

78B-7-503. Sexual violence protective orders.

(1) (a) An individual may seek a protective order under this part if the individual has been subjected to sexual violence and is neither a cohabitant nor a dating partner of the respondent.

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~~(1) b~~ An individual may not seek a protective order ~~under this part if:~~

~~(a) the individual has been subjected to sexual violence and is neither a cohabitant nor a dating partner of the respondent; or~~

~~(b) (i) the individual is seeking a protective order } on behalf of a child {who has been subjected to sexual violence; and~~

~~(ii) Title 78B, Chapter 7, Part 2, Child Protective Orders, does not apply to the circumstances.~~

under this part.

~~(2) A petition seeking a sexual violence protective order may not be withdrawn without written order of the court.~~

Section ~~6~~7. Section **78B-7-504** is enacted to read:

78B-7-504. Sexual violence protective orders -- Ex parte protective orders --

Modification of orders.

~~(1) If it appears from a petition for a protective order or a petition to modify an existing protective order that sexual violence has occurred, the district court may:~~

~~(a) without notice, immediately issue an ex parte sexual violence protective order against the respondent or modify an existing sexual violence protective order ex parte, if necessary to protect the petitioner or any party named in the petition; or~~

~~(b) upon notice to the respondent, issue a sexual violence protective order or modify a sexual violence protective order after a hearing, regardless of whether the respondent appears.~~

~~(2) The district court may grant the following relief with or without notice in a protective order or in a modification to a protective order:~~

~~(a) prohibit the respondent from threatening to commit or committing sexual violence against the petitioner and a family or household member designated in the protective order;~~

~~(b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or a family or household member designated in the protective order, directly or indirectly;~~

~~(c) order that the respondent:~~

~~(i) is excluded and shall stay away from the petitioner's residence and its premises;~~

~~(ii) subject to Subsection (4), stay away from the petitioner's:~~

~~(A) school and its premises;~~

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(B) place of employment and its premises; or

(C) place of worship and its premises; or

(iii) stay away from any specified place frequented by the petitioner or a family or household member designated in the protective order;

(d) prohibit the respondent from being within a specified distance of the petitioner; or

(e) order any further relief that the district court considers necessary to provide for the safety and welfare of the petitioner and a family or household member designated in the protective order.

(3) The district court may grant the following relief in a sexual violence protective order or a modification of a sexual violence protective order, after notice and a hearing, regardless of whether the respondent appears:

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

(b) subject to Subsection (5), upon finding that the respondent's use or possession of a weapon poses a serious threat of harm to the petitioner or a family or household member designated in the protective order, prohibit the respondent from purchasing, using, or possessing a weapon specified by the district court.

(4) If the petitioner or a family or household member designated in the protective order 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 as the respondent, the court may enter an order:

(a) that excludes the respondent from the respondent's school, place of employment, or place of worship; or

(b) governing the respondent's conduct at the respondent's school, place of employment, or place of worship.

(5) The district court may not prohibit the respondent from possessing a firearm:

(a) if the respondent has not been given notice of the petition for a protective order and an opportunity to be heard; and

(b) unless the petition establishes:

(i) by a preponderance of the evidence that the respondent committed sexual violence against the petitioner; and

(ii) by clear and convincing evidence that the respondent's use or possession of a

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firearm poses a serious threat of harm to the petitioner or a family or household member designated in the protective order.

(6) After the day on which the district court issues a sexual violence protective order, the district court shall:

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

(b) make reasonable efforts at the hearing to ensure that the petitioner and the respondent, if present, understand the sexual violence protective order;

(c) transmit electronically, by the end of the business day after the day on which the court issues the order, a copy of the sexual violence protective order to a local law enforcement agency designated by the petitioner; and

(d) transmit a copy of the sexual violence protective order in the same manner as described in Section 78B-7-113.

(7) (a) A respondent may request the court modify or vacate a protective order in accordance with Subsection (7)(b).

(b) Upon a respondent's request, the district court may modify or vacate a protective order after notice and hearing, if the petitioner:

(~~f~~a) ~~i~~) is personally served with notice of the hearing, as provided in the Utah Rules of Civil Procedure, and appears before the district court to give specific consent to the modification or vacation of the provisions of the protective order; or

(~~f~~b) ~~ii~~) submits an affidavit agreeing to the modification or vacation of the provisions of the protective order.

(8) To the extent that the provisions of this part are more specific than the Utah Rules of Civil Procedure regarding a protective order, the provisions of this part govern.

Section ~~7~~8. Section **78B-7-505** is enacted to read:

78B-7-505. Hearings -- Expiration -- Extension.

(1) (a) Within 20 days after the day on which a district court issues an ex parte sexual violence protective order, the district court shall set a date for a hearing on the petition for a sexual violence protective order.

(b) If, at the hearing described in Subsection (1)(a), the district court does not issue a sexual violence protective order, the ex parte sexual protective order expires, unless extended by the district court.

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(c) The district court may extend the 20-day period described in Subsection (1)(a) only if:

(i) a party is unable to be present at the hearing for good cause, established by the party's sworn affidavit;

(ii) the respondent has not been served; or

(iii) exigent circumstances exist.

(d) If, at the hearing described in Subsection (1)(a), the district court issues a sexual violence protective order, the ex parte sexual violence protective order remains in effect until service of process of the sexual violence protective order is completed.

(e) A sexual violence protective order remains in effect for ~~two years~~ one year after the day on which the district court issues the order.

(f) If the hearing described in Subsection (1)(a) is held by a commissioner, the petitioner or respondent may file an objection within 10 calendar days after the day on which the commissioner enters the recommended order, and the assigned judge shall hold a hearing on the objection within 20 days after the day on which the objection is filed.

(2) If the district court denies a petition for an ex parte sexual violence protective order or a petition to modify a sexual violence protective order ex parte, the district court shall, upon the petitioner's request:

(a) set the matter for hearing; and

(b) notify and serve the respondent.

(3) (a) A sexual violence protective order automatically expires under Subsection (1)(e) unless:

(i) the petitioner files a motion before the day on which the sexual violence protective order expires requesting an extension of the sexual violence protective order; and

(ii) after notice and a hearing on the motion, the district court finds that an extension of the sexual violence protective order is necessary to protect the petitioner or any party named in the sexual violence protective order.

(b) (i) If the district court denies the motion described in Subsection (3)(a), the sexual violence protective order expires under Subsection (1)(e).

(ii) If the district court grants the motion described in Subsection (3)(a), the district court shall set a new date on which the sexual violence protective order expires.

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(iii) A sexual violence protective order that is extended under this Subsection (3), may not be extended for more than one year after the day on which the court issues the order for extension.

(iv) A sexual violence protective order may not be extended more than once.

(c) After the day on which the district court issues an extension of a sexual violence protective order, the district court shall take the action described in Subsection 78B-7-504(6).

(~~3~~4) Nothing in this part prohibits a petitioner from seeking another protective order after the day on which the petitioner's protective order expires.

Section ~~8~~9. Section **78B-7-506** is enacted to read:

78B-7-506. Service of process.

(1) (a) The county sheriff that receives an order from the court under Subsection 78B-7-504(6) or 78B-7-505(3) shall:

(i) provide expedited service for the sexual violence protective order; and

(ii) after the sexual violence protective order is served, transmit verification of service of process to the statewide network described in Section 78B-7-113.

(b) This section does not prohibit another law enforcement agency from providing service of process if the law enforcement agency:

(i) has contact with the respondent; or

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

(2) When a sexual violence protective order is served on a respondent in 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.

Section ~~9~~10. Section **78B-7-507** is enacted to read:

78B-7-507. Fees -- Forms.

(1) A fee may not be imposed by a court clerk, sheriff, constable, or law enforcement agency for:

(a) filing a petition for a protective order;

(b) obtaining a protective order; or

(c) service of a protective order.

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(2) (a) The office of the court clerk shall provide forms and nonlegal assistance to an individual seeking to proceed under this part.

(b) The Administrative Office of the Courts shall:

(i) develop and adopt uniform forms for a petition for a protective order and a protective order in accordance with this part; and

(ii) provide the forms to the clerk of each court authorized to issue a protective order.

(c) The forms described in this Subsection (2) shall include:

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

(ii) language stating violation of a protective order is a class A misdemeanor; and

(iii) a space for any information a petitioner is able to provide to facilitate identification of the respondent, including ~~{Social Security}~~social security number, driver license number, date of birth, address, telephone number, or physical description.

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

(a) the forms adopted in accordance with Subsection (2);

(b) all other forms required to petition for a protective order, including forms for service of process;

(c) except as provided in Subsection (4), clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (2);

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

(e) a list of legal service organizations that may represent an individual in an action brought under this part, with the phone numbers of the organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to a protective order hearing.

(4) A court clerk's office may designate another entity, agency, or individual to provide the service described in Subsection (3)(c), but the court clerk's office is responsible to see that the service of process is provided.

(5) A petition for a protective order shall be in writing and verified.

(6) (a) A protective order shall be issued in the form adopted by the Administrative

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Office of the Courts under Subsection (2).

(b) A sexual violence protective order or a modification to a protective order issued after notice and a hearing 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. 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."

Section ~~{H}~~11. Section **78B-7-508** is enacted to read:

78B-7-508. Enforcement -- Penalties.

(1) A law enforcement officer shall, without a warrant, arrest an individual if the officer has probable cause to believe that the individual has intentionally or knowingly violated a protective order issued under this part, regardless of whether the violation occurred in the presence of the officer.

(2) A violation of a protective order issued under this part is a class A misdemeanor.

(3) A petitioner may be subject to criminal prosecution under Title 76, Chapter 8, Part 5, Falsification in Official Matters, for knowingly falsifying any statement or information provided for the purpose of obtaining a protective order.

Section ~~{H}~~12. Section **78B-7-509** is enacted to read:

78B-7-509. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of sexual violence shall use all reasonable means to protect the victim and prevent further sexual 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 any weapon or weapons involved in the alleged sexual violence;

~~{~~ (~~f~~~~e~~~~t~~~~b~~) making arrangements for the victim and any child to obtain emergency housing or shelter;

(~~f~~~~d~~~~c~~) arranging, facilitating, or providing for the victim and any child to obtain medical treatment; and

(~~f~~~~e~~~~t~~~~d~~) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of the victim and of the remedies and services available to victims of sexual

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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 part.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain a protective order 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.

~~{(3) If a weapon is confiscated under this section, the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a sexual violence protective order is not issued or once the sexual violence protective order is terminated.~~

~~‡Section 13. Effective date.~~

~~This bill takes effect on July 1, 2019.~~