

HB0243S02 compared with HB0243

~~{deleted text}~~ shows text that was in HB0243 but was deleted in HB0243S02.

Inserted text shows text that was not in HB0243 but was inserted into HB0243S02.

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Representative Andrew Stoddard proposes the following substitute bill:

DOMESTIC VIOLENCE MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{modifies provisions related to a victim}~~ regards concealed firearm permits for victims of domestic violence or dating violence ~~{who carries a concealed firearm without a permit}~~.

Highlighted Provisions:

This bill:

- ▶ ~~{provides that certain criminal penalties for carrying a}~~ allows a court, under the Cohabitant Abuse Act and the Dating Violence Protection Act, to grant a temporary concealed firearm ~~{without a}~~ permit ~~{do not apply}~~ to ~~{a victim}~~ certain victims of domestic violence or dating violence ~~{, who}~~ that is ~~{not otherwise prohibited from possessing a firearm,}~~ valid for a limited period ~~{after the day on which the victim is issued}~~.

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- ▶ requires the Bureau of Criminal Identification to conduct a background check and issue a certification to a qualifying victim for a court's issuance of a temporary concealed firearm permit;
- ▶ allows an applicant to use a protective order in lieu of a written statement to apply for the Bureau of Criminal Identification's issuance of a temporary concealed firearm permit;
- ▶ waives certain application fees for a concealed firearm permit;
- ▶ clarifies that the Bureau of Criminal Identification may deny, suspend, or revoke a concealed firearm permit if the applicant or permit holder is not qualified to purchase and possess a firearm under state or federal law; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~76-10-523~~ 53-5-702, as last amended by Laws of Utah ~~2014~~ 2013, Chapter ~~248~~ 280

53-5-704, as last amended by Laws of Utah 2013, Chapter 280

53-5-705, as last amended by Laws of Utah 2010, Chapter 62

53-5-707, as last amended by Laws of Utah 2018, Chapter 417

78B-7-102, as last amended by Laws of Utah 2018, Chapter 255

78B-7-105, as last amended by Laws of Utah 2018, Chapters 124 and 255

78B-7-106, as last amended by Laws of Utah 2018, Chapters 124 and 255

78B-7-404, as enacted by Laws of Utah 2013, Chapter 179

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

Section 1. Section 53-5-702 is amended to read:

53-5-702. Definitions.

In addition to the definitions in Section 76-10-501, as used in this part:

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(1) "Active duty service member" means a person on active military duty with the United States military and includes full time military active duty, military reserve active duty, and national guard military active duty service members stationed in Utah.

(2) "Active duty service member spouse" means a person recognized by the military as the spouse of an active duty service member and who resides with the active duty service member in Utah.

(3) "Board" means the Concealed Firearm Review Board created in Section 53-5-703.

(4) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(5) "Commissioner" means the commissioner of the Department of Public Safety.

(6) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(7) "Preliminary record check certificate" means a document issued by the bureau indicating that:

(a) regarding an applicant, the bureau completed preliminary record checks with the bureau and the National Crime and Information Center; and

(b) the record checks did not reveal any information that would prevent the applicant from qualifying to be issued a permit to carry a concealed firearm under Subsection 53-5-704(2).

Section 2. Section 53-5-704 is amended to read:

53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for concealed firearms instructor -- Requirements for issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.

(1) (a) The bureau shall issue a permit to carry a concealed firearm for lawful self

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defense to an applicant who is 21 years of age or older within 60 days after receiving an application, unless the bureau finds proof that the applicant does not meet the qualifications set forth in Subsection (2).

(b) The permit is valid throughout the state for five years, without restriction, except as otherwise provided by Section 53-5-710.

(c) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to ~~[a person]~~ an individual issued a permit under Subsection (1)(a).

(d) Subsection (4)(a) does not apply to ~~[a nonresident]~~:

(i) a nonresident active duty service member, who ~~[present]~~ presents to the bureau orders requiring the active duty service member to report for duty in this state; or

(ii) an active duty service member's spouse, stationed with the active duty service member, who presents to the bureau the active duty service member's orders requiring the service member to report for duty in this state.

(2) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if the applicant or permit holder:

(i) has been or is convicted of a felony;

(ii) has been or is convicted of a crime of violence;

(iii) has been or is convicted of an offense involving the use of alcohol;

(iv) has been or is convicted of an offense involving the unlawful use of narcotics or other controlled substances;

(v) has been or is convicted of an offense involving moral turpitude;

(vi) has been or is convicted of an offense involving domestic violence;

(vii) has been or is adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and

(viii) is not qualified to purchase and possess a firearm ~~[pursuant to]~~ under Section 76-10-503 ~~[and]~~ or federal law.

(b) In determining whether an applicant or permit holder meets the qualifications set forth in Subsection (2)(a), the bureau shall consider mitigating circumstances.

(3) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if it has reasonable cause to believe that the applicant or permit holder has been or is a danger to self or others as demonstrated by evidence, including:

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(i) past pattern of behavior involving unlawful violence or threats of unlawful violence;
(ii) past participation in incidents involving unlawful violence or threats of unlawful violence; or

(iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.

(b) The bureau may not deny, suspend, or revoke a concealed firearm permit solely for a single conviction of an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

(c) In determining whether the applicant or permit holder has been or is a danger to self or others, the bureau may inspect:

(i) expunged records of arrests and convictions of adults as provided in Section 77-40-109; and

(ii) juvenile court records as provided in Section 78A-6-209.

(4) (a) In addition to meeting the other qualifications for the issuance of a concealed firearm permit under this section, a nonresident applicant who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law shall:

(i) hold a current concealed firearm or concealed weapon permit issued by the appropriate permitting authority of the nonresident applicant's state of residency; and

(ii) submit a photocopy or electronic copy of the nonresident applicant's current concealed firearm or concealed weapon permit referred to in Subsection (4)(a)(i).

(b) A nonresident applicant who knowingly and willfully provides false information to the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit for a period of 10 years.

(c) Subsection (4)(a) applies to all applications for the issuance of a concealed firearm permit ~~[that are received by the bureau after May 10, 2011]~~.

(d) ~~[Beginning January 1, 2012,]~~ Subsection (4)(a) also applies to an application for renewal of a concealed firearm permit by a nonresident.

(5) The bureau shall issue a concealed firearm permit to a former peace officer who departs full-time employment as a peace officer, in an honorable manner, within five years of that departure if the officer meets the requirements of this section.

(6) Except as provided in Subsection (7), the bureau shall also require the applicant to provide:

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(a) the address of the applicant's permanent residence;
(b) one recent dated photograph;
(c) one set of fingerprints; and
(d) evidence of general familiarity with the types of firearms to be concealed as defined in Subsection (8).

(7) An applicant who is a law enforcement officer under Section 53-13-103 may provide a letter of good standing from the officer's commanding officer in place of the evidence required by Subsection (6)(d).

(8) (a) General familiarity with the types of firearms to be concealed includes training in:

(i) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and

(ii) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of force by a private citizen, including use of deadly force, transportation, and concealment.

(b) An applicant may satisfy the general familiarity requirement of Subsection (8)(a) by one of the following:

(i) completion of a course of instruction conducted by a national, state, or local firearms training organization approved by the bureau;

(ii) certification of general familiarity by a person who has been certified by the bureau, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor; or

(iii) equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service.

(c) Instruction taken by a student under Subsection (8) shall be in person and not through electronic means.

(9) (a) An applicant for certification as a Utah concealed firearms instructor shall:

(i) be at least 21 years of age;

(ii) be currently eligible to possess a firearm under Section 76-10-503;

~~(iii) have:~~

(iii) (A) ~~(B)~~ completed complete a firearm instruction training course from the

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National Rifle Association or the Department of Public Safety, Division of Peace Officer Safety Standards and Training; or

(B) ~~[received]~~ receive training equivalent to one of the courses referred to in Subsection (9)(a)(iii)(A) as determined by the bureau;

(iv) ~~[have taken]~~ take a course of instruction and passed a certification test as described in Subsection (9)(c); and

(v) possess a Utah concealed firearm permit.

(b) An instructor's certification is valid for three years from the date of issuance, unless revoked by the bureau.

(c) (i) In order to obtain initial certification or renew a certification, an instructor shall attend an instructional course and pass a test under the direction of the bureau.

(ii) (A) The bureau shall provide or contract to provide the course referred to in Subsection (9)(c)(i) twice every year.

(B) The course shall include instruction on current Utah law related to firearms, including concealed carry statutes and rules, and the use of deadly force by private citizens.

(d) (i) Each applicant for certification under this Subsection (9) shall pay a fee of \$50.00 at the time of application for initial certification.

(ii) The renewal fee for the certificate is \$25.

(iii) The bureau may use a fee paid under Subsections (9)(d)(i) and (ii) as a dedicated credit to cover the cost incurred in maintaining and improving the instruction program required for concealed firearm instructors under this Subsection (9).

(10) A certified concealed firearms instructor shall provide each of the instructor's students with the required course of instruction outline approved by the bureau.

(11) (a) (i) A concealed firearms instructor shall provide a signed certificate to ~~[a person successfully completing]~~ an individual who successfully completes the offered course of instruction.

(ii) The instructor shall sign the certificate with the exact name indicated on the instructor's certification issued by the bureau under Subsection (9).

(iii) (A) The certificate shall also have affixed to ~~[it]~~ the certificate the instructor's official seal, which is the exclusive property of the instructor and may not be used by any other person.

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(B) The instructor shall destroy the seal upon revocation or expiration of the instructor's certification under Subsection (9).

(C) The bureau shall determine the design and content of the seal to include at least the following:

(I) the instructor's name as [it] the name appears on the instructor's certification;

(II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my certification expires on (the instructor's certification expiration date)"; and

(III) the instructor's business or residence address.

(D) The seal shall be affixed to each student certificate issued by the instructor in a manner that does not obscure or render illegible any information or signatures contained in the document.

(b) The applicant shall provide the certificate to the bureau in compliance with Subsection (6)(d).

(12) The bureau may deny, suspend, or revoke the certification of an applicant or a concealed firearms instructor if it has reason to believe the applicant or the instructor has:

(a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

(b) knowingly and willfully provided false information to the bureau.

(13) An applicant for certification or a concealed firearms instructor has the same appeal rights as set forth in Subsection (16).

(14) In providing instruction and issuing a permit under this part, the concealed firearms instructor and the bureau are not vicariously liable for damages caused by the permit holder.

(15) An individual who knowingly and willfully provides false information on an application filed under this part is guilty of a class B misdemeanor, and the application may be denied, or the permit may be suspended or revoked.

(16) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or permit holder may file a petition for review with the board within 60 days [from] after the date the denial, suspension, or revocation is received by the applicant or permit holder by certified mail, return receipt requested.

(b) The bureau's denial of a permit shall be in writing and shall include the general reasons for the action.

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(c) If an applicant or permit holder appeals the denial to the review board, the applicant or permit holder may have access to the evidence upon which the denial is based in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(d) On appeal to the board, the bureau has the burden of proof by a preponderance of the evidence.

(e) (i) Upon a ruling by the board on the appeal of a denial, the board shall issue a final order within 30 days stating the board's decision.

(ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

(iii) The final order is final bureau action for purposes of judicial review under Section 63G-4-402.

(17) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this chapter.

Section 3. Section 53-5-705 is amended to read:

53-5-705. Temporary permit to carry concealed firearm -- Denial, suspension, or revocation -- Appeal.

(1) The bureau or its designated agent may issue a temporary permit to carry a concealed firearm to ~~[a person]~~ an individual who:

- (a) has applied for a permit under Section 53-5-704;
- (b) has applied for a temporary permit under this section; and
- (c) meets the criteria required in Subsections (2) and (3).

(2) To receive a temporary permit under this section, the applicant shall:

(a) demonstrate in writing to the satisfaction of the bureau extenuating circumstances that would justify issuing a temporary permit ~~(b)~~ ; or

(b) provide a copy of a protective order issued under Subsection 78B-7-106(1)(b) or 78B-7-404(1)(b), which identifies the applicant as the protected individual.

(3) A temporary permit may not be issued under this section until preliminary record checks regarding the applicant have been made with the National Crime Information Center and the bureau to determine any criminal history.

(4) To facilitate a court's issuance of a temporary permit under Subsection 78B-7-106(3)(c) or 78B-7-404(3)(c), the bureau shall, upon request by a petitioner for a protective order:

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(a) expeditiously conduct preliminary record checks regarding the petitioner with the National Crime Information Center and the bureau to determine any criminal history; and

(b) (i) issue a preliminary record check certificate to a petitioner for whom the record checks did not reveal any information that would prevent the petitioner from qualifying to be issued a permit to carry a concealed firearm under Subsection 53-5-704(2); or

(ii) issue a denial for a preliminary record check certificate to a petitioner for whom a record check revealed information that would prevent the petitioner from qualifying to be issued a permit to carry a concealed firearm under Subsection 53-5-704(2).

~~[(4)]~~ (5) (a) A temporary permit is valid only for a maximum of 90 days or any lesser period specified by the bureau, or until a permit under Section 53-5-704 is issued to the holder of the temporary permit, whichever period is shorter.

(b) The provisions of Subsections 76-10-504(1) and (2) and Section 76-10-505 do not apply to ~~[a person]~~ an individual who is issued a temporary permit ~~[under this section]~~ during the time period for which the temporary permit is valid.

(5) The bureau may deny, suspend, or revoke a temporary permit prior to expiration if the commissioner determines:

(a) the circumstances justifying the temporary permit no longer exist; or

(b) the holder of the temporary permit does not meet the requirements for a permit under Section 53-5-704.

(6) (a) The denial, suspension, or revocation of a temporary permit shall be in writing and shall include the reasons for the action.

(b) The bureau's decision to deny, suspend, or revoke a temporary permit may not be appealed to the board.

(c) Denial, suspension, or revocation under this subsection is final action for purposes of judicial review under Section 63G-4-402.

Section 4. Section 53-5-707 is amended to read:

53-5-707. Concealed firearm permit -- Fees -- Concealed Weapons Account.

(1) (a) An applicant for a concealed firearm permit shall pay a fee of \$25 at the time of filing an application.

(b) A nonresident applicant shall pay an additional \$10 for the additional cost of processing a nonresident application.

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(c) The bureau shall waive the initial fee for an applicant who is:

(i) a law enforcement officer under Section 53-13-103~~[-]; or~~

(ii) an individual who is, at the time of application, protected by a protective order issued under Subsection 78B-7-106(1)(b) or 78B-7-404(1)(b).

(d) Concealed firearm permit renewal fees for active duty service members and the spouse of an active duty service member shall be waived.

(2) (a) The renewal fee for the permit is \$20.

(b) A nonresident shall pay an additional \$5 for the additional cost of processing a nonresidential renewal.

(3) The replacement fee for the permit is \$10.

(4) (a) The late fee for the renewal permit is \$7.50.

(b) As used in this section, "late fee" means the fee charged by the bureau for a renewal submitted on a permit that has been expired for more than 30 days but less than one year.

(5) (a) There is created a restricted account within the General Fund known as the "Concealed Weapons Account."

(b) The account shall be funded from fees collected under this section and Section 53-5-707.5.

(c) Funds in the account shall be used to cover costs relating to the issuance of concealed firearm permits under this part and may not be used for any other purpose.

(6) (a) The bureau may collect any fees charged by an outside agency for additional services required by statute as a prerequisite for issuance of a permit.

(b) The bureau shall promptly forward any fees collected under Subsection (6)(a) to the appropriate agency.

(7) The bureau shall make an annual report in writing to the Legislature's Law Enforcement and Criminal Justice Interim Committee on the amount and use of the fees collected under this section and Section 53-5-707.5.

Section ~~{1}~~5. Section ~~{76-10-523}~~78B-7-102 is amended to read:

~~{76-10-523}~~78B-7-102. ~~{Persons exempt from weapons laws:~~

~~———— (1) Except for Sections 76-10-506, 76-10-508, and 76-10-508.1, this part and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to any of the following:~~

~~———— (a) a United States marshal;~~

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- ~~_____ (b) a federal official required to carry a firearm;~~
- ~~_____ (c) a peace officer of this or any other jurisdiction;~~
- ~~_____ (d) a law enforcement official as defined and qualified under Section 53-5-711;~~
- ~~_____ (e) a judge as defined and qualified under Section 53-5-711; or~~
- ~~_____ (f) a common carrier while engaged in the regular and ordinary transport of firearms as merchandise.~~

~~_____ (2) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to [any]:~~

~~_____ (a) a person to whom a permit to carry a concealed firearm has been issued:~~

~~_____ [(a)] (i) } 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) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

[(2)] (3) (a) "Cohabitant" means an emancipated [person] individual pursuant to Section {53-5-704}15-2-1 or a person who is 16 years of age or older who:

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

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

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

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

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

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

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

[(3)] (b) [Notwithstanding Subsection (2), "cohabitant"] "Cohabitant" does not include:

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

[(b)] (ii) {by another state or county[.]; or

~~_____ (b) a person who is issued} the relationship between natural, adoptive, step, or foster~~

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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 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.

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

(10) "Preliminary record check certificate" means the same as that term is defined in Section 53-5-702.

~~[(10)]~~ (11) "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 6. 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 ~~under~~ 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

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violation, as provided in Subsection 78B-7-106(~~(1)(b)~~ or ~~78B-7-404(1)(b)~~), unless the person is a restricted person as described in Subsection 76-10-503(1), for a period of 120 days after the day on which the person is issued the protective order.

~~— (3) Except for Sections 76-10-503, 76-10-506, 76-10-508, and 76-10-508.1, this part and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to a nonresident traveling in or through the state, provided that any firearm is:~~

~~— (a) unloaded; and~~

~~— (b) securely encased as defined in Section 76-10-501.~~

†(6):

(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 the order, the petitioner may provide a copy of the order to the principal of the school where the child attends;

(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

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(D) the judge's name[-]; and

(ix) a space for the petitioner to indicate whether the petitioner would like to receive a temporary permit to carry a concealed firearm and instructions for the petitioner to obtain a preliminary record check certificate from the bureau before the protective order hearing.

(2) If [the person] an individual 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) 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;

(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

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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. 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 7. 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

(b) upon notice, issue an order for protection or modify an order after a hearing, regardless of whether 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 domestic violence or abuse, committing domestic violence or abuse, or harassing the petitioner or any designated family or household member;

(b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly, with

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the exception of any parent-time provisions in the ex parte order;

(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 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, place of employment, or place of worship;

(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;

(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;

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

(i) grant to the petitioner or someone other than the respondent temporary custody of a minor child of the parties;

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(j) order the appointment of an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902;

(k) 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

(l) 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, regardless of whether 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[-]; and

(c) grant the petitioner a temporary permit to carry a concealed firearm, in accordance with Section 53-5-705, if the petitioner, at or before the protective order hearing, files with the court a preliminary record check certificate.

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

(5) 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 by the petitioner; and

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

(6) (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:

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(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.

(7) 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.

(8) 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 IV-D Cases, except when the protective order is issued ex parte.

(9) (a) The county sheriff that receives the order from the court, pursuant to Subsection (6)(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

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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.

(10) (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.

(11) 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.

(12) A protective order may be modified without a showing of substantial and material change in circumstances.

(13) 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 8. Section 78B-7-404 is amended to read:

78B-7-404. Dating violence orders -- Ex parte dating violence protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for a protective order or a petition to modify an existing protective order that a dating partner of the petitioner has abused or committed dating violence against the petitioner, the district court may:

(a) without notice, immediately issue an ex parte dating violence protective order

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against the dating partner or modify an existing dating protective order ex parte if necessary to protect the petitioner and all parties named in the petition; or

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

(2) A district court may grant the following relief without notice in a dating violence protective order or a modification issued ex parte:

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

(b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly;

(c) order that the respondent:

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

(ii) except as provided in Subsection (4), stay away from the petitioner's:

(A) school and the school's premises; and

(B) place of employment and its premises; and

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

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

(e) 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.

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

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

(b) except as provided in Subsection (5), upon finding that the respondent's use or possession of a weapon poses a serious threat of harm to the petitioner or any designated family or household member, prohibit the respondent from purchasing, using, or possessing a weapon specified by the court[-]; and

(c) a temporary permit to carry a concealed firearm, in accordance with Section 53-5-705, if the petitioner, at or before the protective order hearing, files with the court a

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preliminary record check certificate.

(4) If the petitioner or designated family or household member attends the same school as the respondent, or is employed at the same place of employment as the respondent, the district court:

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

(b) may enter an order governing the respondent's conduct at the respondent's school or place of employment.

(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 has committed abuse or dating violence against the petitioner; and

(ii) by clear and convincing evidence that the respondent's use or possession of a firearm poses a serious threat of harm to petitioner or the designated family or household member.

(6) Any protective order issued under this part shall expire 180 days after the day on which the order is issued.

(7) After the district court issues a dating 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 dating violence protective order is understood by the petitioner and the respondent, if present;

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

(d) transmit a copy of the protective order issued under this part in the same manner as described in Section 78B-7-113.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (7)(a), shall:

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(i) provide expedited service for protective orders issued in accordance with this part;
and

(ii) after the order has been served, transmit verification of service of process to the statewide network described in Section 78B-7-110.

(b) This section does not prohibit another 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) When a 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.

(10) A district court may modify or vacate a protective order under this part after notice and hearing, if the petitioner:

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

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

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