

## HB0332S01 compared with HB0332

~~{deleted text}~~ shows text that was in HB0332 but was deleted in HB0332S01.

Inserted text shows text that was not in HB0332 but was inserted into HB0332S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Susan Duckworth proposes the following substitute bill:

### PROHIBITED PERSONS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Susan Duckworth**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies the requirements for disposition of criminal domestic violence cases and provides notification requirements when a prohibited person attempts to purchase a firearm.

##### Highlighted Provisions:

This bill:

- ▶ requires a court to impose a protective order on a perpetrator of domestic violence as a condition of probation;
- ▶ prohibits the perpetrator from possessing a firearm under state and federal law;
- ▶ requires the Bureau of Criminal Identification to inform local law enforcement when a prohibited person attempts to purchase a weapon from a firearms dealer;

~~enhances the level of offense for domestic violence when the perpetrator is in~~

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~~possession of a dangerous weapon;~~ and

- ▶ makes technical corrections.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**76-10-526**, as last amended by Laws of Utah 2018, Chapter 417

**77-36-1**, as last amended by Laws of Utah 2018, Chapter 255

~~{ **77-36-1.1**, as last amended by Laws of Utah 2015, Chapter 426~~

{ **77-36-5**, as last amended by Laws of Utah 2017, Chapter 332

**77-36-5.1**, as last amended by Laws of Utah 2018, Chapter 124

**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-7-115**, as last amended by Laws of Utah 2018, Chapter 255

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

Section 1. Section **76-10-526** is amended to read:

**76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders and law enforcement officers.**

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

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(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the social security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the information required by Subsection (4) to the bureau immediately upon its receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background check, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall

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advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) [~~However~~] Notwithstanding Subsection (8)(a), the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall:

(a) within 30 minutes of determining the purchaser is prohibited from purchasing, possessing, or transferring a firearm, and before informing the dealer as described in Subsection (7)(b), notify the law enforcement agency with jurisdiction where the dealer is located; and

(b) inform the law enforcement agency in the jurisdiction where the individual resides.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) A dealer shall collect a criminal history background check fee for the sale of a firearm under this section. This fee remains in effect until changed by the bureau through the process in accordance with Section 63J-1-504.

(b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover

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the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the bureau that the individual's concealed firearm permit is valid.

(14) (a) A law enforcement officer, as defined in Section 53-13-103, is exempt from the background check fee required in this section for the purchase of a personal firearm to be carried while off-duty if the law enforcement officer verifies current employment by providing a letter of good standing from the officer's commanding officer and current law enforcement photo identification.~~[This section]~~

(b) Subsection (14)(a) may only be used by a law enforcement officer to purchase a personal firearm once in a 24-month period.

Section 2. 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;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

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- (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, 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), 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 federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
- (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;
- (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;

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- (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 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)](7).
- (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 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.
- (14) "Victim" means a cohabitant who has been subjected to domestic violence.
- Section 3. Section ~~{77-36-1.1}~~77-36-5 is amended to read:

~~{~~ **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence offenses.**

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- ~~—— (1) For purposes of this section, "qualifying domestic violence offense" means:~~
- ~~—— (a) a domestic violence offense in Utah; or~~
- ~~—— (b) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.~~
- ~~—— (2) A person who is convicted of a domestic violence offense is:~~
- ~~—— (a) guilty of a class B misdemeanor if:~~
- ~~—— (i) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and~~
- ~~—— (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or~~
- ~~—— (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;~~
- ~~—— (b) guilty of a class A misdemeanor if:~~
- ~~—— (i) the domestic violence offense described in this Subsection (2) is designated by law as a class B misdemeanor; and~~
- ~~—— (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; [or]~~
- ~~—— (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense; [or]~~
- ~~—— (C) the domestic violence was committed while the perpetrator was carrying a firearm or dangerous weapon as defined in Section 76-10-501; or~~
- ~~—— (D) a conviction for the domestic violence will subject the defendant to the prohibitions of 18 U.S.C. Sec. 922(g); or~~
- ~~—— (c) guilty of a felony of the third degree if:~~
- ~~—— (i) the domestic violence offense described in this Subsection (2) is designated by law as a class A misdemeanor; and~~
- ~~—— (ii) (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or~~
- ~~—— (B) the person is convicted of the domestic violence offense described in this~~



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~~Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense:~~

~~Section 4. Section 77-36-5 is amended to read:~~

‡ **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant -- Sentencing protective order -- Continuous protective order.**

(1) (a) When a defendant is found guilty of a crime involving domestic violence and a condition of the sentence restricts the defendant's contact with the victim, a sentencing protective order may be issued under Subsection 77-36-5.1~~[(2)]~~(3) for the length of the defendant's probation or a continuous protective order may be issued under Subsection 77-36-5.1~~[(6)]~~(7).

(b) (i) The sentencing protective order or continuous protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(ii) The court shall transmit the sentencing protective order or continuous protective order to the statewide domestic violence network.

(c) Violation of a sentencing protective order or continuous protective order issued pursuant to this Subsection (1) is a class A misdemeanor.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic or other type of monitoring program.

(3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim and any children affected by or exposed to the domestic violence offense, as well as the costs for the defendant's own counseling.

(4) The court shall:

(a) assess against the defendant, as restitution, any costs for services or treatment provided to the victim and affected children of the victim or the defendant by the Division of Child and Family Services under Section 62A-4a-106; and

(b) order those costs to be paid directly to the division or its contracted provider.

(5) The court may order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is licensed by the Department of Human Services.

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Section ~~5~~4. Section 77-36-5.1 is amended to read:

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

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

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

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

(b) requiring the perpetrator to:

(i) surrender or dispose of any firearm, specified weapon, or ammunition the perpetrator owns or possesses, so the perpetrator no longer has possession or control of a firearm, specified weapon, or ammunition; and

(ii) certify compliance with Subsection (2)(b)(i) by affidavit filed with the court within 72 hours of the imposition of the court's order; and

(c) if a conviction in the case will subject the defendant to the prohibitions of 18 U.S.C. Sec. 922(g), notifying the perpetrator that the perpetrator is subject to 18 U.S.C. Sec. 922(g) and may not:

(i) lawfully ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or

(ii) receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.

(3) In addition to the conditions described in Subsection (2), the court may also issue an order:

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

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

(c) requiring the perpetrator to stay away from the victim's residence, school, place of

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employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

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

~~[(e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;]~~

~~[(f) directing the perpetrator to surrender any weapons the perpetrator owns or possesses;]~~

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

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

~~[(i)]~~ (g) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

~~[(3)]~~ (4) The perpetrator is responsible for the costs of any condition of probation, according to the perpetrator's ability to pay.

~~[(4)]~~ (5) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any offense involving domestic violence committed by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any violation of any sentencing criminal protective order issued by the court.

(b) Notification of the victim under Subsection ~~[(4)]~~ (5)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

~~[(5)]~~ (6) The court shall transmit all dismissals, terminations, and expirations of pretrial and sentencing criminal protective orders issued by the court to the statewide domestic violence network.

~~[(6)]~~ (7) (a) Because of the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the

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issuance of continuous protective orders under this Subsection [~~(6)~~] (7) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Chapter 37, Victims' Rights, and Chapter 38, Rights of Crime Victims Act, and Article I, Section 28 of the Utah Constitution.

(b) If a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim unless the court determines by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse.

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

(ii) If the perpetrator requests a hearing under this Subsection [~~(6)~~] (7)(c), the court shall hold the hearing at the time determined by the court. The continuous protective order shall be in effect while the hearing is being scheduled and while the hearing is pending.

(d) A continuous protective order is permanent in accordance with this Subsection [~~(6)~~] (7)(d) and may grant the following relief:

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

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

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

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

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

(e) A continuous protective order may be modified or dismissed only if the court determines by clear and convincing evidence that all requirements of this Subsection [~~(6)~~] (7) have been met and the victim does not have a reasonable fear of future harm or abuse.

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

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(g) Violation of a continuous protective order issued pursuant to this Subsection ~~[(6)]~~ (7) is a class A misdemeanor, is a domestic violence offense under Section 77-36-1, and is subject to increased penalties in accordance with Section 77-36-1.1.

(h) In addition to the process of issuing a continuous protective order described in Subsection ~~[(6)]~~ (7)(a), a district court may issue a continuous protective order at any time if the victim files a petition with the district court, and after notice and hearing the district court finds that a continuous protective order is necessary to protect the victim.

~~[(7)]~~ (8) (a) Before release of a person who is subject to a continuous protective order issued under Subsection ~~[(6)]~~ (7), the victim shall receive notice of the imminent release by the law enforcement agency that is releasing the person who is subject to the continuous protective order:

- (i) if the victim has provided the law enforcement agency contact information; and
- (ii) in accordance with Section 64-13-14.7, if applicable.

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

~~[(8)]~~ (9) In addition to a protective order issued under this section, the court may issue a separate order relating to the transfer of a wireless telephone number in accordance with Section 77-36-5.3.

Section ~~[(6)]~~ 5. 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;

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(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;

(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 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) "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)~~](7).

Section ~~77~~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

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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(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.

(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) 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 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



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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)~~(7), 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 ~~78B-7-115~~7. 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 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

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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 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 protective order that has been entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to Subsection (6)(b), 10 years from the day on which the protective order is entered.

(b) The protective order shall automatically expire, as described in Subsection (6)(a), unless 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.

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(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)~~(7).