

## HB0403S01 compared with HB0403

{deleted text} shows text that was in HB0403 but was deleted in HB0403S01.

inserted text shows text that was not in HB0403 but was inserted into HB0403S01.

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Representative V. Lowry Snow proposes the following substitute bill:

### PROTECTIVE ORDER AND STALKING INJUNCTION

#### AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: { \_\_\_\_\_ } Don L. Ipson

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#### LONG TITLE

##### General Description:

This bill addresses protective orders and stalking injunctions.

##### Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ amends provisions relating to an individual's right to bail after violation of a jail release agreement or jail release court order;
- ▶ amends and enacts provisions relating to the Administrative Office of the Court's duty to provide forms to an individual seeking a civil or criminal protective order or civil or criminal stalking injunction;

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- ▶ extends the length of time the following are effective:
  - a child protective order issued against a respondent who is not the child's parent, guardian, or custodian;
  - a dating violence protective order;
  - a sexual violence protective order; and
  - a cohabitant abuse protective order;
- ▶ modifies the circumstances under which a child protective order may be sought, modified, or vacated;
- ▶ modifies the orders the court may include as part of a child protective order;
- ▶ modifies the time period within which a court ~~{shall}~~ is required to set a hearing date for a petition for ~~{a dating violence}~~ certain protective ~~{order and a cohabitant abuse protective order}~~ orders after denial of an ex parte protective order;
- ▶ clarifies the time period within which a court is required to set a hearing date for a petition for certain protective orders after issuance of an ex parte protective order;
- ▶ modifies and deletes provisions relating to expiration of a cohabitant abuse protective order;
- ▶ modifies the circumstances under which a sexual violence protective order may be extended;
- ▶ modifies the penalty for a violation of a sentencing protective order and a continuous protective order;
- ▶ under certain circumstances, allows the court to issue a continuous protective order ~~{for}~~ against a perpetrator of an offense that is not domestic violence;
- ▶ renumbers and amends provisions relating to criminal protective orders, civil protective orders, and stalking injunctions; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

### Utah Code Sections Affected:

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### AMENDS:

- 30-3-3**, as last amended by Laws of Utah 2008, Chapter 3
- 53-10-208**, as last amended by Laws of Utah 2019, Chapters 33 and 365
- 53-10-208.1**, as last amended by Laws of Utah 2019, Chapters 33 and 365
- 53-10-213**, as enacted by Laws of Utah 2019, Chapter 33
- 53-10-403**, as last amended by Laws of Utah 2017, Chapter 289
- 57-22-5.1**, as last amended by Laws of Utah 2018, Chapter 255
- 76-5-106.5**, as last amended by Laws of Utah 2018, Chapter 255
- 76-5-108**, as last amended by Laws of Utah 2018, Chapter 255
- 77-20-1**, as last amended by Laws of Utah 2019, Chapters 184 and 397
- 77-20-10**, as last amended by Laws of Utah 2016, Chapter 234
- 77-36-1**, as last amended by Laws of Utah 2019, Chapters 184 and 422
- 77-36-2.1**, as last amended by Laws of Utah 2018, Chapter 255
- 77-36-2.4**, as last amended by Laws of Utah 2017, Chapters 289 and 332
- 77-36-2.6**, as last amended by Laws of Utah 2017, Chapter 332
- 77-36-2.7**, as last amended by Laws of Utah 2019, Chapter 184
- 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
- 77-36-6**, as last amended by Laws of Utah 2017, Chapter 289
- 77-38-403**, as enacted by Laws of Utah 2019, Chapter 361
- 78A-6-103**, as last amended by Laws of Utah 2019, Chapter 300
- 78A-6-114**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-6-123**, as enacted by Laws of Utah 2017, Chapter 330
- 78B-7-101**, as enacted by Laws of Utah 2008, Chapter 3
- 78B-7-102**, as last amended by Laws of Utah 2018, Chapter 255
- 78B-7-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-7-105**, as last amended by Laws of Utah 2018, Chapters 124 and 255
- 78B-7-109**, as last amended by Laws of Utah 2018, Chapter 255
- 78B-7-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-7-113**, as last amended by Laws of Utah 2013, Chapter 196
- 78B-7-201**, as last amended by Laws of Utah 2019, Chapter 365

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**78B-7-202**, as last amended by Laws of Utah 2014, Chapter 267

**78B-7-203**, as last amended by Laws of Utah 2010, Chapter 34

**78B-7-204**, as last amended by Laws of Utah 2008, Chapter 115 and renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-7-205**, as last amended by Laws of Utah 2011, Chapter 208

**78B-7-402**, as enacted by Laws of Utah 2013, Chapter 179

**78B-7-403**, as enacted by Laws of Utah 2013, Chapter 179

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

**78B-7-405**, as last amended by Laws of Utah 2014, Chapter 263

**78B-7-407**, as enacted by Laws of Utah 2013, Chapter 179

**78B-7-409**, as enacted by Laws of Utah 2018, Chapter 255

**78B-7-502**, as enacted by Laws of Utah 2019, Chapter 365

**78B-7-504**, as enacted by Laws of Utah 2019, Chapter 365

**78B-7-505**, as enacted by Laws of Utah 2019, Chapter 365

**78B-7-508**, as enacted by Laws of Utah 2019, Chapter 365

**78B-19-107**, as enacted by Laws of Utah 2010, Chapter 382

ENACTS:

**78B-7-105.5**, Utah Code Annotated 1953

**78B-7-118**, Utah Code Annotated 1953

**78B-7-119**, Utah Code Annotated 1953

**78B-7-601**, Utah Code Annotated 1953

**78B-7-607**, Utah Code Annotated 1953

**78B-7-801**, Utah Code Annotated 1953

**78B-7-803**, Utah Code Annotated 1953

**78B-7-804**, Utah Code Annotated 1953

**78B-7-805**, Utah Code Annotated 1953

**78B-7-806**, Utah Code Annotated 1953

**78B-7-807**, Utah Code Annotated 1953

**78B-7-901**, Utah Code Annotated 1953

**78B-7-902**, Utah Code Annotated 1953

**78B-7-903**, Utah Code Annotated 1953

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**78B-7-904**, Utah Code Annotated 1953

### RENUMBERS AND AMENDS:

**78B-7-117**, (Renumbered from 77-36-5.3, as enacted by Laws of Utah 2018, Chapter 124)

**78B-7-602**, (Renumbered from 78B-7-103, as renumbered and amended by Laws of Utah 2008, Chapter 3)

**78B-7-603**, (Renumbered from 78B-7-106, as last amended by Laws of Utah 2019, Chapters 33 and 429)

**78B-7-604**, (Renumbered from 78B-7-107, as last amended by Laws of Utah 2019, Chapter 136)

**78B-7-605**, (Renumbered from 78B-7-115, as last amended by Laws of Utah 2019, Chapter 263)

**78B-7-606**, (Renumbered from 78B-7-115.5, as last amended by Laws of Utah 2019, Chapter 263)

**78B-7-608**, (Renumbered from 78B-7-110, as renumbered and amended by Laws of Utah 2008, Chapter 3)

**78B-7-609**, (Renumbered from 78B-7-111, as renumbered and amended by Laws of Utah 2008, Chapter 3)

**78B-7-701**, (Renumbered from 77-3a-101, as last amended by Laws of Utah 2012, Chapter 383)

**78B-7-702**, (Renumbered from 77-3a-101.1, as enacted by Laws of Utah 2018, Chapter 255)

**78B-7-703**, (Renumbered from 77-3a-103, as enacted by Laws of Utah 2001, Chapter 276)

**78B-7-802**, (Renumbered from 77-20-3.5, as last amended by Laws of Utah 2019, Chapter 184)

### REPEALS:

**77-3a-102**, as enacted by Laws of Utah 2001, Chapter 276

**78B-7-114**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-7-401**, as enacted by Laws of Utah 2013, Chapter 179

**78B-7-406**, as enacted by Laws of Utah 2013, Chapter 179

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78B-7-501, as enacted by Laws of Utah 2019, Chapter 365

78B-7-507, as enacted by Laws of Utah 2019, Chapter 365

### Utah Code Sections Affected by Coordination Clause:

77-20-1, as last amended by Laws of Utah 2019, Chapters 184 and 397

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

Section 1. Section **30-3-3** is amended to read:

**30-3-3. Award of costs, attorney and witness fees -- Temporary alimony.**

(1) In any action filed under Title 30, Chapter 3, Divorce, Chapter 4, Separate Maintenance, or Title 78B, Chapter 7, [~~Part 1, Cohabitant Abuse Act~~] Part 6, Cohabitant Abuse Protective Orders, and in any action to establish an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

Section 2. 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:

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(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;

~~[(ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;]~~

~~[(iii)]~~ (ii) Title 78B, Chapter 7, Part 4, Dating Violence [~~Protection Act; or~~] Protective Orders;

~~[(iv)]~~ (iii) Title 78B, Chapter 7, Part 5, Sexual Violence [~~Protection Act.~~] Protective Orders; or

(iv) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders.

(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(1)(d) 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.

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

Section 3. Section **53-10-208.1** is amended to read:

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

(1) 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:

(a) all dispositions of criminal matters, including:

(i) guilty pleas;

(ii) convictions;

(iii) dismissals;

(iv) acquittals;

(v) pleas held in abeyance;

(vi) judgments of not guilty by reason of insanity[?];

(vii) judgments of guilty with a mental illness;

(viii) finding of mental incompetence to stand trial; and

(ix) probations granted;

(b) orders of civil commitment under the terms of Section 62A-15-631;

(c) 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

(d) protective orders issued after notice and hearing, pursuant to:

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

~~[(ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;]~~

~~[(iii)]~~ (ii) Title 78B, Chapter 7, Part 4, Dating Violence [~~Protection Act;~~ or] Protective Orders;

~~[(iv)]~~ (iii) Title 78B, Chapter 7, Part 5, Sexual Violence [~~Protection Act.~~] Protective Orders; or

(iv) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders.

(2) The court in the county where a determination or finding was made shall transmit a record of the determination or finding to the bureau no later than 48 hours after the determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:



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(a) adjudicated as a mental defective; or  
(b) involuntarily committed to a mental institution in accordance with Subsection 62A-15-631(16).

(3) The record described in Subsection (2) shall include:

(a) an agency record identifier;  
(b) the individual's name, sex, race, and date of birth; and  
(c) the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

Section 4. Section **53-10-213** is amended to read:

### **53-10-213. Reporting requirements.**

(1) The bureau shall submit the record received from the court in accordance with Subsection [~~78B-7-106~~] 78B-7-603(5)(e) to the National Crime Information Center within 48 hours of receipt, excluding Saturdays, Sundays, and legal holidays.

(2) The bureau shall submit the record received from the court in accordance with Subsection 53-10-208.1(2) to the National Instant Criminal Background Check System within 48 hours of receipt, excluding Saturdays, Sundays, and legal holidays.

Section 5. Section **53-10-403** is amended to read:

### **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

(1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection (2)(a) or (b) on or after July 1, 2002;

(b) has pled guilty to or has been convicted by any other state or by the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

(c) has been booked on or after January 1, 2011, through December 31, 2014, for any offense under Subsection (2)(c);

(d) has been booked:

(i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

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- (ii) on or after January 1, 2015, for any felony offense; or
- (e) is a minor under Subsection (3).
- (2) Offenses referred to in Subsection (1) are:
  - (a) any felony or class A misdemeanor under the Utah Code;
  - (b) any offense under Subsection (2)(a):
    - (i) for which the court enters a judgment for conviction to a lower degree of offense under Section 76-3-402; or
    - (ii) regarding which the court allows the defendant to enter a plea in abeyance as defined in Section 77-2a-1; or
  - (c) (i) any violent felony as defined in Section 53-10-403.5;
  - (ii) sale or use of body parts, Section 26-28-116;
  - (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;
  - (iv) driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death, Subsection 58-37-8(2)(g);
  - (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;
  - (vi) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;
  - (vii) aggravated human trafficking and aggravated human smuggling, Section 76-5-310;
  - (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
  - (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
  - (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
  - (xi) sale of a child, Section 76-7-203;
  - (xii) aggravated escape, Subsection 76-8-309(2);
  - (xiii) a felony violation of assault on an elected official, Section 76-8-315;
  - (xiv) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, Section 76-8-316;
  - (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
  - (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
  - (xvii) a felony violation of sexual battery, Section 76-9-702.1;

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(xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;

(xix) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;

(xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;

(xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;

(xxii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);

(xxiii) assault with the intent to commit bus hijacking with a dangerous weapon, Subsection 76-10-1504(3);

(xxiv) commercial obstruction, Subsection 76-10-2402(2);

(xxv) a felony violation of failure to register as a sex or kidnap offender, Section 77-41-107;

(xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or

(xxvii) violation of condition for release after arrest under Section ~~[77-20-3.5]~~ 78B-7-802.

(3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah court has adjudicated to be within the jurisdiction of the juvenile court due to the commission of any offense described in Subsection (2), and who is:

(a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense under Subsection (2); or

(b) in the legal custody of the Division of Juvenile Justice Services on or after July 1, 2002 for an offense under Subsection (2).

Section 6. Section **57-22-5.1** is amended to read:

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

(1) As used in this section:

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

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

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- (ii) stalking, as defined in Section 76-5-106.5;
- (iii) a crime under Title 76, Chapter 5, Part 4, Sexual Offenses;
- (iv) burglary or aggravated burglary under Section 76-6-202 or 76-6-203; or
- (v) dating violence, as defined in Section ~~[78B-7-402]~~ 78B-7-102.

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

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

(a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, ~~[Part 1, Cohabitant Abuse Act]~~ Part 6, Cohabitant Abuse Protective Orders, subsequent to a hearing of which the petitioner and respondent have been given notice under Title 78B, Chapter 7, ~~[Part 1, Cohabitant Abuse Act]~~ Part 6, Cohabitant Abuse Protective Orders; or

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

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

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

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

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

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

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

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

(d) Notwithstanding any rental agreement, an owner who installs a new lock under Subsection (3)(a) shall refuse to provide a copy of the key that opens the new lock to the perpetrator of the act listed in Subsection (1).

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

(i) establish whether the perpetrator should be given a key and allowed access to the

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residential rental unit; or

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

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

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

(a) is in compliance with:

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

(ii) all obligations under the rental agreement;

(b) provides the owner:

(i) written notice of termination; and

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

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

(5) An owner may not:

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

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

Section 7. Section **76-5-106.5** is amended to read:

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

(1) As used in this section:

~~[(a) "Conviction" means:]~~

~~[(i) a verdict or conviction;]~~

~~[(ii) a plea of guilty or guilty and mentally ill;]~~

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~~[(iii) a plea of no contest, or]~~

~~[(iv) the acceptance by the court of a plea in abeyance.]~~

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

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

(A) directly, indirectly, or through any third party; and

(B) by any action, method, device, or means; or

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

(A) approaches or confronts a person;

(B) appears at the person's workplace or contacts the person's employer or coworkers;

(C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

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

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

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

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

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

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

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

~~[(g)]~~ (f) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's

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telephone or computer by addressing the communication to the recipient's telephone number.

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

- (a) to fear for the person's own safety or the safety of a third person; or
- (b) to suffer other emotional distress.

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

(a) a stalking injunction issued [~~pursuant to Title 77, Chapter 3a, Stalking Injunctions~~] under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued [~~pursuant to this section~~] under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

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

- (a) was not given actual notice that the course of conduct was unwanted; or
- (b) did not intend to cause the victim fear or other emotional distress.

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

(6) Stalking is a class A misdemeanor:

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

(b) if the offender violated a stalking injunction issued [~~pursuant to Title 77, Chapter 3a, Stalking Injunctions~~] under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions.

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

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

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

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

(d) violated a permanent criminal stalking injunction issued [~~pursuant to Subsection (9)~~] under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions; or

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

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

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

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

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

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

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

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

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

~~[(i) a conviction for:]~~

~~[(A) stalking; or]~~

~~[(B) attempt to commit stalking; or]~~

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

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

~~[(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.]~~

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

~~[(10) A permanent criminal stalking injunction shall be issued by the district court~~



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granting the following relief where appropriate:]

~~[(a) an order:]~~

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

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

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

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

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

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

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

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

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

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

(9) (a) A permanent criminal stalking injunction limiting the contact between the defendant and victim may be filed in accordance with Section 78B-7-902.

~~[(16)]~~ (b) This section does not preclude the filing of ~~[a]~~ criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued ~~[pursuant to Title 77, Chapter 3a,]~~ under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

~~[(17)]~~ (10) (a) A law enforcement officer who responds to an allegation of stalking shall use all reasonable means to protect the victim and prevent further violence, including:

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

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

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

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

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

(vi) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of stalking, in accordance with Subsection ~~[(17)]~~ (10)(b).

(b) (i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title ~~[77, Chapter 3a,]~~ 78B, Chapter 7, Part 7, Civil Stalking Injunctions.

(ii) The written notice shall also include:

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

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

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(c) If a weapon is confiscated under this Subsection [~~(17)~~] (10), the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a stalking injunction is not issued or once the stalking injunction is terminated.

Section 8. Section **76-5-108** is amended to read:

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

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

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

~~[(a)] (b) Title 78B, Chapter 7, [Part 1, Cohabitant Abuse Act]~~ Part 6, Cohabitant Abuse Protective Orders;

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

(c) Title ~~[77, Chapter 36, Cohabitant Abuse Procedures Act]~~ 78B, Chapter 7, Part 8, Criminal Protective Orders; or

(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

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

Section 9. Section **77-20-1** is amended to read:

### **77-20-1. Right to bail -- Denial of bail -- Hearing.**

(1) As used in this chapter:

(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

(c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(2) An individual charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

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(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;

(d) felony when the court finds there is substantial evidence to support the charge and [it] the court finds by clear and convincing evidence that the individual violated a material condition of release while previously on bail; or

(e) domestic violence offense if the court finds:

(i) that there is substantial evidence to support the charge; and

(ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

(3) Any individual who may be admitted to bail may be released by posting bail in the form and manner provided in Section 77-20-4, or on the individual's own recognizance, on condition that the individual appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(4) (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

(b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.

(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.

(d) An individual arrested for a violation of a jail release agreement or jail release court order issued in accordance with Section [~~77-20-3.5~~] 78B-7-802:

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~~[(i) may not be released before the accused's first judicial appearance; and]~~

~~[(ii)] (i) may be denied bail by the court under Subsection (2)[-]; and~~

(ii) if denied bail, may not be released before the individual's initial appearance before the court.

(5) The magistrate or court may rely upon information contained in:

- (a) the indictment or information;
- (b) any sworn probable cause statement;
- (c) information provided by any pretrial services agency; or
- (d) any other reliable record or source.

(6) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(7) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(8) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (2).

(9) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

- (a) the prosecutor files a notice of intent to not seek the death penalty; or
- (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

Section 10. Section **77-20-10** is amended to read:

**77-20-10. Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.**

(1) The court shall order that a defendant who has been found guilty of an offense in a court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an

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appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- (a) the appeal raises a substantial question of law or fact likely to result in:
  - (i) reversal;
  - (ii) an order for a new trial; or
  - (iii) a sentence that does not include a term of imprisonment in jail or prison;
- (b) the appeal is not for the purpose of delay; and

(c) by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to conditions that result in the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of any other person and the community. The conditions may include that the defendant:

- (a) post appropriate bail;
- (b) execute a bail bond with a surety under Title 31A, Chapter 35, Bail Bond Act, in an amount necessary to assure the appearance of the defendant as required;
- (c) (i) execute a written agreement to forfeit, upon failing to appear as required, designated property, including money, as is reasonably necessary to assure the appearance of the defendant; and
  - (ii) post with the court indicia of ownership of the property or a percentage of the money as the court may specify;
- (d) not commit a federal, state, or local crime during the period of release;
- (e) remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;
- (f) maintain employment, or if unemployed, actively seek employment;
- (g) maintain or commence an educational program;
- (h) abide by specified restrictions on personal associations, place of abode, or travel;

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(i) avoid all contact with the victims of the offense and with any witnesses who testified against the defendant or potential witnesses who may testify concerning the offense if the appeal results in a reversal or an order for a new trial;

(j) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other designated agency;

(k) comply with a specified curfew;

(l) not possess a firearm, destructive device, or other dangerous weapon;

(m) not use alcohol, or any narcotic drug or other controlled substances except as prescribed by a licensed medical practitioner;

(n) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain under the supervision of or in a specified institution if required for that purpose;

(o) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(p) satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of any other person and the community; and

(q) if convicted of committing a sexual offense or an assault or other offense involving violence against a child 17 years of age or younger, is limited or denied access to any location or occupation where children are, including but not limited to:

(i) any residence where children are on the premises;

(ii) activities, including organized activities, in which children are involved; and

(iii) locations where children congregate, or where a reasonable person should know that children congregate.

(3) The court may, in its discretion, amend an order granting release to impose additional or different conditions of release.

(4) If defendant has been found guilty of an offense in a court not of record and files a timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance of the evidence that the defendant poses a danger to another person or the community.

(5) If a stay is ordered, the court may order post-conviction restrictions on the defendant's conduct as appropriate, including:

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- (a) continuation of any pre-trial restrictions or orders;
- (b) sentencing protective orders under Section [~~77-36-5.1~~] 78B-7-804;
- (c) drug and alcohol use;
- (d) use of an ignition interlock; and
- (e) posting appropriate bail.

(6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by the district court.

Section 11. 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" includes 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) aggravated cruelty to an animal, as described in Subsection 76-9-301(4), with the intent to harass or threaten the other cohabitant;
- (c) assault, as described in Section 76-5-102;
- (d) criminal homicide, as described in Section 76-5-201;
- (e) harassment, as described in Section 76-5-106;
- (f) electronic communication harassment, as described in Section 76-9-201;
- (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;



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- (h) mayhem, as described in Section 76-5-105;
- (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- (j) stalking, as described in Section 76-5-106.5;
- (k) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
- (l) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
- (m) 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;
- (n) possession of a deadly weapon with criminal intent, as described in Section 76-10-507;
- (o) 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;
- (p) 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)(p), 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.;
- (q) child abuse, as described in Section 76-5-109.1;
- (r) threatening use of a dangerous weapon, as described in Section 76-10-506;
- (s) threatening violence, as described in Section 76-5-107;
- (t) tampering with a witness, as described in Section 76-8-508;
- (u) retaliation against a witness or victim, as described in Section 76-8-508.3;
- (v) unlawful distribution of an intimate image, as described in Section 76-5b-203;
- (w) sexual battery, as described in Section 76-9-702.1;
- (x) voyeurism, as described in Section 76-9-702.7;
- (y) damage to or interruption of a communication device, as described in Section 76-6-108; or

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(z) an offense described in [~~Section 77-20-3.5~~] Subsection 78B-7-806(2).

(5) "Jail release agreement" means the same as that term is defined in Section [~~77-20-3.5~~] 78B-7-801.

(6) "Jail release court order" means the same as that term is defined in Section [~~77-20-3.5~~] 78B-7-801.

(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)~~] Subsection 78B-7-804(3).

(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 Section 77-20-3.5, Subsection 77-36-2.6(3), or Section 77-36-2.7~~] under Sections 78B-7-802 or 78B-7-803, 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~~] under Section 78B-7-804.

(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 12. Section **77-36-2.1** is amended to read:

### **77-36-2.1. Duties of law enforcement officers -- Notice to victims.**

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

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide

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for the safety of the victim and any family or household member;

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

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

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

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, ~~[Part 1, Cohabitant Abuse Act]~~ Part 7, Cohabitant Abuse Protective Orders, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall also include:

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

(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; and

(iii) the information required to be provided to both parties in accordance with Subsections ~~[77-20-3.5(10) and (11)]~~ 78B-7-802(8) and (9).

(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 domestic violence protective order is not issued or once the domestic violence protective order is terminated.

Section 13. Section ~~77-36-2.4~~ is amended to read:

### **77-36-2.4. Violation of a protective order -- Mandatory arrest -- Penalties.**

(1) A law enforcement officer shall ~~[, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated]~~ arrest an alleged perpetrator for a violation of any of the provisions of an ex parte protective order or

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protective order in accordance with Section 78B-7-119.

(2) A violation of a protective order is punishable in accordance with Section 76-5-108.

~~[(2) (a) Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section 77-36-1.]~~

~~[(b) Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with Section 77-36-1.1.]~~

~~[(3) As used in this section, "ex parte protective order" or "protective order" includes:]~~

~~[(a) a protective order or ex parte protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;]~~

~~[(b) a pretrial protective order, sentencing protective order, or continuous protective order issued under this chapter;]~~

~~[(c) any child protective order or ex parte child protective order issued under Title 78B, Chapter 7, Part 2, Child Protective Orders; or]~~

~~[(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.]~~

Section 14. Section **77-36-2.6** is amended to read:

### **77-36-2.6. Appearance of defendant required -- Considerations by court.**

(1) A defendant who has been arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the day on which the arrest is made.

(2) A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

(3) At the time of an appearance under Subsection (1) or (2), the court shall~~[:]~~ consider imposing a pretrial protective order in accordance with Section 78B-7-803.

~~[(a) determine the necessity of imposing a pretrial protective order or other condition~~

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of pretrial release, including participating in an electronic or other type of monitoring program;]

~~[(b) identify the individual designated by the victim to communicate between the defendant and the victim if and to the extent necessary for family related matters; and]~~

~~[(c) state its findings and determination in writing.]~~

(4) Appearances required by this section are mandatory and may not be waived.

Section 15. Section ~~77-36-2.7~~ is amended to read:

### **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial protective order pending trial.**

(1) Because of the serious nature of domestic violence, the court, in domestic violence actions:

(a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;

(b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;

(c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney and order the defendant's attorney not to disclose the victim's location to the client;

(d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence; and

(e) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of that status.

(2) When the court holds a plea in abeyance in accordance with Subsection (1)(e), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully completes all conditions imposed by the court. If the defendant fails to complete any condition imposed by the court under Subsection (1)(e), the court may accept the defendant's plea.

~~[(3)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past and the vulnerability of victims of other qualifying offenses, as defined in Section 77-20-3.5, when any defendant is charged with a crime~~

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~~involving a qualifying offense, the court may, during any court hearing where the defendant is present, issue a pretrial protective order, pending trial:]~~

~~[(i) enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;]~~

~~[(ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;]~~

~~[(iii) removing and excluding the defendant from the victim's residence and the premises of the residence;]~~

~~[(iv) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim and any designated family member; and]~~

~~[(v) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member.]~~

~~[(b) Violation of an order issued pursuant to this section is punishable as follows:]~~

~~[(i) if the original arrest or subsequent charge filed is a felony, an offense under this section is a third degree felony; and]~~

~~[(ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.]~~

~~[(c) (i) The court shall provide the victim with a certified copy of any pretrial protective order that has been issued if the victim can be located with reasonable effort.]~~

~~[(ii) If the court is unable to locate the victim, the court shall provide the victim's certified copy to the prosecutor.]~~

~~[(iii) The court shall transmit the pretrial protective order to the statewide domestic violence network.]~~

~~[(d) Issuance of a pretrial or sentencing protective order supersedes a jail release agreement or jail release court order.]~~

~~[(e) If the alleged victim and the defendant share custody of one or more minor children, the court may include in a pretrial protective order provisions for indirect or limited contact to temporarily facilitate parent visitation with a minor child.]~~

~~[(f) In a pretrial protective order the court shall determine whether to allow provisions for transfer of personal property to decrease the need for contact between the parties.]~~

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(3) When a defendant is charged with a crime involving a qualifying offense, as defined in Section 78B-7-801, the court may, during any court hearing where the defendant is present, issue a pretrial protective order in accordance with Section 78B-7-803.

(4) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of any related order or agreement on the statewide domestic violence network described in Section 78B-7-113.

(b) The court shall transmit the dismissal to the statewide domestic violence network.

(c) Any pretrial protective orders, including jail release court orders and jail release agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.

(5) The court may not approve diversion for a perpetrator of domestic violence.

Section 16. 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)]~~ Section 78B-7-804 for the length of the defendant's probation or a continuous protective order may be issued under ~~[Subsection 77-36-5.1(6)]~~ Section 78B-7-804.

~~[(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]~~ the court's 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

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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.

Section 17. Section **77-36-5.1** is amended to read:

**77-36-5.1. Conditions of probation for individual convicted of domestic violence offense.**

(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 condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court, which may include:

(a) a sentencing protective order[-] issued in accordance with Section 78B-7-804;

~~[(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 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)]~~ (b) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

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

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



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

(4) (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]~~ a sentencing ~~[criminal]~~ protective order issued by the court under Section 78B-7-804.

(b) Notification of the victim under Subsection (4)(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) 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) (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 issuance of continuous protective orders under this Subsection (6) 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~~

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~~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)(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)(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) 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.]~~

~~[(g) Violation of a continuous protective order issued pursuant to this Subsection (6) 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)(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.]~~

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~~[(7)(a) Before release of a person who is subject to a continuous protective order issued under Subsection (6), 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) (5) 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]~~ 78B-7-117.~~

Section 18. Section **77-36-6** is amended to read:

### **77-36-6. Enforcement of orders.**

(1) Each law enforcement agency in this state shall enforce all orders of the court issued ~~[pursuant to]~~ under the requirements and procedures described in this chapter, and shall enforce:

(a) all protective orders and ex parte protective orders issued ~~[pursuant to]~~ under Title 78B, Chapter 7, ~~[Part 1, Cohabitant Abuse Act]~~ Part 6, Cohabitant Abuse Protective Orders;

(b) pretrial protective orders issued under Section 78B-7-803 and sentencing protective orders issued under Section 78B-7-804; and

(c) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

Section 19. Section **77-38-403** is amended to read:

### **77-38-403. Definitions.**

As used in this part:

(1) "Advocacy services" means assistance provided that supports, supplements,

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intervenes, or links a victim or a victim's family with appropriate resources and services to address the wide range of potential impacts of being victimized.

(2) "Advocacy services provider" means an entity that has the primary focus of providing advocacy services in general or with specialization to a specific crime type or specific type of victimization.

(3) "Confidential communication" means a communication that is intended to be confidential between a victim and a victim advocate for the purpose of obtaining advocacy services.

(4) "Criminal justice system victim advocate" means an individual who:

(a) is employed or authorized to volunteer by a government agency that possesses a role or responsibility within the criminal justice system;

(b) has as a primary responsibility addressing the mental, physical, or emotional recovery of victims;

(c) completes a minimum 40 hours of trauma-informed training:

(i) in crisis response, the effects of crime and trauma on victims, victim advocacy services and ethics, informed consent, and this part regarding privileged confidential communication; and

(ii) that have been approved or provided by the Utah Office for Victims of Crime; and

(d) is under the supervision of the director or director's designee of the government agency.

(5) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(6) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(7) "Nongovernment organization victim advocate" means an individual who:

(a) is employed or authorized to volunteer by a nongovernment organization advocacy services provider;

(b) has as a primary responsibility addressing the mental, physical, or emotional recovery of victims;

(c) has a minimum 40 hours of trauma-informed training:

(i) in assisting victims specific to the specialization or focus of the nongovernment

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organization advocacy services provider and includes this part regarding privileged confidential communication; and

(ii) (A) that have been approved or provided by the Utah Office for Victims of Crime;

or

(B) that meets other minimally equivalent standards set forth by the nongovernment organization advocacy services provider; and

(d) is under the supervision of the director or the director's designee of the nongovernment organization advocacy services provider.

(8) "Record" means a book, letter, document, paper, map, plan, photograph, file, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.

(9) "Victim" means:

(a) a [~~"victim of a crime"~~] victim of a crime as defined in Section 77-38-2;

(b) an individual who is a victim of domestic violence as defined in Section 77-36-1;

or

(c) an individual who is a victim of dating violence as defined in Section [~~78B-7-402~~] 78B-7-102.

(10) (a) "Victim advocate" means:

~~[(a)]~~ (i) a criminal justice system victim advocate;

~~[(b)]~~ (ii) a nongovernment organization victim advocate; or

~~[(c)]~~ (iii) an individual who is employed or authorized to volunteer by a public or private entity and is designated by the Utah Office for Victims of Crime as having the specific purpose of providing advocacy services to or for the clients of the public or private entity.

~~[(d)]~~ (b) "Victim advocate" does not include an employee of the Utah Office for Victims of Crime.

Section 20. Section **78A-6-103** is amended to read:

### **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming

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18 years of age, regardless of where the violation occurred, excluding offenses:

(i) in Section 53G-8-211 until such time that the child is referred to the courts under Section 53G-8-211; and

(ii) in Subsection 78A-7-106(2);

(b) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(c) a protective order for a child pursuant to Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, [~~Part 1, Cohabitant Abuse Act~~] Part 6, Cohabitant Abuse Protective Orders, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(d) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(e) the emancipation of a minor in accordance with Part 8, Emancipation;

(f) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a minor who has an intellectual disability;

(h) the judicial consent to the marriage of a minor 16 or 17 years old upon a determination of voluntariness or where otherwise required by law;

(i) any parent or parents of a child committed to a secure youth facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

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(j) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(k) subject to Subsection (8), the treatment or commitment of a child with a mental illness;

(l) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

(m) a minor found not competent to proceed pursuant to Section 78A-6-1301;

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

(o) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) (a) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Section 73-18-12, reckless operation; and

(iii) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(b) A juvenile court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child when, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, or lawful custodian to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

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(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(5) and subject to Section 53G-8-211.

(8) The court may commit a child to the physical custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital.

Section 21. Section **78A-6-114** is amended to read:

**78A-6-114. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.**

(1) Hearings in [~~minor's~~] minors' cases shall be held before the court without a jury and may be conducted in an informal manner.

(a) (i) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Section 78A-6-322, unless the court makes a finding upon the record that the person's presence at the hearing would:

- (A) be detrimental to the best interest of a child who is a party to the proceeding;
- (B) impair the fact-finding process; or
- (C) be otherwise contrary to the interests of justice.

(ii) The court may exclude a person from a hearing under Subsection (1)(a)(i) on its own motion or by motion of a party to the proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:



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(i) the minor has been charged with an offense which would be a felony if committed by an adult; or

(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, [~~and~~] Title 77, Chapter 38, Rights of Crime Victims Act, and Title 78B, Chapter 7, Part 8, Criminal Protective Orders. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

- (i) the scheduling of any court hearings on the petition;
- (ii) any findings made by the court; and
- (iii) any sentence or decree imposed by the court.

(2) [~~Minor's~~] Minors' cases shall be heard separately from adult cases. The minor or the parents or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Section 22. Section **78A-6-123** is amended to read:

### **78A-6-123. Case planning and appropriate responses.**

(1) For a minor adjudicated and placed on probation or into the custody of the Division of Juvenile Justice Services under Section 78A-6-117, a case plan shall be created and shall be:

- (a) developed in collaboration with the minor and the minor's family;
- (b) individualized to the minor;
- (c) informed by the results of a validated risk and needs assessment; and

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(d) tailored to the minor's offense and history.

(2) (a) The Administrative Office of the Courts and the Division of Juvenile Justice Services shall develop a statewide system of appropriate responses to guide responses to the behaviors of minors:

- (i) undergoing nonjudicial adjustments;
- (ii) under the jurisdiction of the juvenile court; and
- (iii) in the custody of the Division of Juvenile Justice Services.

(b) The system of responses shall include both sanctions and incentives that:

- (i) are swift and certain;
- (ii) include a continuum of community based responses for minors living at home;
- (iii) target a minor's criminogenic risks and needs, as determined by the results of a validated risk and needs assessment, and the severity of the violation; and
- (iv) authorize earned discharge credits as one incentive for compliance.

(c) After considering the guidelines established by the Sentencing Commission, pursuant to Section 63M-7-404, the system of appropriate responses under Subsections (2)(a) and (b) shall be developed.

(3) A response to a compliant or noncompliant behavior under Subsection (2) shall be documented in the minor's case plan. Documentation shall include:

- (a) positive behaviors and incentives offered;
- (b) violations and corresponding sanctions; and
- (c) whether the minor has a subsequent violation after a sanction.

(4) Before referring a minor to court for judicial review or to the Youth Parole Authority if the minor is under the jurisdiction of the Youth Parole Authority in response to a violation, either through a contempt filing under Section 78A-6-1101 or an order to show cause, pursuant to Subsections (2)(a) and (b), a pattern of appropriate responses shall be documented in the minor's case plan.

(5) Notwithstanding Subsection (4), violations of protective orders or ex parte [~~protection orders~~] protective orders listed in [~~Subsection 77-36-2.7(3)~~] Section 78B-7-803 with victims and violations that constitute new delinquency offenses may be filed directly with the court.

Section 23. Section **78B-7-101** is amended to read:

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## CHAPTER 7. PROTECTIVE ORDERS AND STALKING INJUNCTIONS

### Part 1. General Provisions

#### 78B-7-101. Title.

This ~~[part]~~ chapter is known and may be cited as ~~[the "Cohabitant Abuse Act."]~~ "Protective Orders and Stalking Injunctions."

Section 24. Section **78B-7-102** is amended to read:

#### 78B-7-102. Definitions.

As used in this chapter:

(1) "Abuse" means, ~~except as provided in Section 78B-7-201,~~ intentionally or knowingly causing or attempting to cause ~~[a cohabitant physical harm or intentionally or knowingly placing a cohabitant]~~ another individual physical harm or intentionally or knowingly placing another individual in reasonable fear of imminent physical harm.

(2) "Civil protective order" means an order issued, subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice, under:

(a) Part 2, Child Protective Orders;

(b) Part 4, Dating Violence Protective Orders;

(c) Part 5, Sexual Violence Protective Orders; or

(d) Part 6, Cohabitant Abuse Protective Orders.

(3) "Civil stalking injunction" means a stalking injunction issued, ~~subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice,~~ under Part 7, Civil Stalking Injunctions.

~~[(2)]~~ (4) (a) "Cohabitant" means an emancipated ~~[person pursuant to]~~ individual under Section 15-2-1 or [a person] an individual 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

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

~~[(3)]~~ (b) Notwithstanding Subsection ~~[(2)]~~ (4)(a), "cohabitant" does not include:

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

~~[(b)]~~ (ii) the relationship between natural, adoptive, step, or foster siblings who are

under 18 years of age.

(5) "Criminal protective order" means an order issued under Part 8, Criminal Protective Orders.

(6) "Criminal stalking injunction" means a stalking injunction issued under Part 9, Criminal Stalking Injunctions.

~~[(4)]~~ (~~6~~7) "Court clerk" means a district court clerk.

(~~7~~8) (a) "Dating partner" means an individual who:

(i) (A) is an emancipated individual under Section 15-2-1 or Title 78A, Chapter 6, Part 8, Emancipation; or

(B) is 18 years of age or older; and

(ii) is, or has been, in a dating relationship with the other party.

(b) "Dating partner" does not include an intimate partner.

(~~8~~9) (a) "Dating relationship" means a social relationship of a romantic or intimate nature, or a relationship which has romance or intimacy as a goal by one or both parties, regardless of whether the relationship involves sexual intimacy.

(b) "Dating relationship" does not include casual fraternization in a business, educational, or social context.

(c) In determining, based on a totality of the circumstances, whether a dating relationship exists:

(i) all relevant factors shall be considered, including:

(A) whether the parties developed interpersonal bonding above a mere casual fraternization;

(B) the length of the parties' relationship;

(C) the nature and the frequency of the parties' interactions, including communications indicating that the parties intended to begin a dating relationship;

(D) the ongoing expectations of the parties, individual or jointly, with respect to the relationship;

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(E) whether, by statement or conduct, the parties demonstrated an affirmation of their relationship to others; and

(F) whether other reasons exist that support or detract from a finding that a dating relationship exists; and

(ii) it is not necessary that all, or a particular number, of the factors described in Subsection ~~(8;9)~~(c)(i) are found to support the existence of a dating relationship.

~~(5)~~ (9;10) "Domestic violence" means the same as that term is defined in Section 77-36-1.

~~(6)~~ (10;11) "Ex parte civil protective order" means an order issued without notice to the respondent [~~in accordance with this chapter;~~] under:

(a) Part 2, Child Protective Orders;

(b) Part 4, Dating Violence Protective Orders;

(c) Part 5, Sexual Violence Protective Orders; or

(d) Part 6, Cohabitant Abuse Protective Orders.

(11;12) "Ex parte civil stalking injunction" means a stalking injunction issued without notice to the respondent under Part 8, Civil Stalking Injunctions.

~~(7)~~ (12;13) "Foreign protection order" means the same as that term is defined in Section 78B-7-302.

(13;14) "Intimate partner" means the same as that term is defined in 18 U.S.C. Sec. 921.

~~(8)~~ (14;15) "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)~~ (15;16) "Peace officer" means those [~~persons~~] individuals 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);]~~

(16;17) "Qualifying domestic violence offense" means the same as that term is defined in Section 77-36-1.1.

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~~(17)~~18 "Respondent" means the individual against whom enforcement of a protective order is sought.

~~(18)~~19 "Stalking" means the same as that term is defined in Section 76-5-106.5.

Section 25. Section **78B-7-104** is amended to read:

**78B-7-104. Venue of action for ex parte civil protective orders and civil protective orders.**

(1) ~~[The]~~ Except as provided in Part 2, Child Protective Orders, the district court has jurisdiction of any action for an ex parte civil protective order or civil protective order brought under this chapter.

(2) An action for an ex parte civil protective order or civil protective order brought ~~[pursuant to]~~ under this chapter shall be filed in the county where either party resides or in which the action complained of took place.

Section 26. Section **78B-7-105** is amended to read:

**78B-7-105. Forms for petitions, civil protective orders, and civil stalking injunctions -- Assistance -- Fees.**

(1) (a) The offices of the court clerk shall provide forms ~~[and nonlegal assistance to persons seeking to proceed]~~ to an individual seeking any of the following under this chapter~~[-]~~:

(i) an ex parte civil protective order;

(ii) a civil protective order;

(iii) an ex parte stalking injunction; or

(iv) a civil stalking injunction.

(b) The Administrative Office of the Courts shall:

(i) develop and adopt uniform forms for petitions and ~~[orders for protection]~~ the protective orders and stalking injunctions described in Subsection (1)(a) in accordance with the provisions of this chapter~~[-That office shall]~~; and

(ii) provide the forms to the clerk of each court authorized to issue ~~[protective orders]~~ the protective orders and stalking injunctions described in Subsection (1)(a). ~~[The]~~

(2) ~~{For an ex parte civil protective order and a civil protective order, the}~~The forms described in Subsection (1)(b) shall include:

~~{(i)}~~(a) for a petition for an ex parte civil protective order or a civil protective order:

(i) a statement notifying the petitioner for an ex parte civil protective order that

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knowing falsification of any statement or information provided for the purpose of obtaining a civil protective order may subject the petitioner to felony prosecution;

~~(fb)ii~~ language indicating the criminal penalty for a violation of an ex parte civil protective order or a civil protective order under this chapter and language stating a violation of or failure to comply with a civil provision is subject to contempt proceedings;

~~(fc)iii~~ a space for information the petitioner is able to provide to facilitate identification of the respondent, including the respondent's social security number, driver license number, date of birth, address, telephone number, and physical description;

~~(fd)iv~~ a space for information the petitioner is able to provide related to a proceeding for a civil protective order or a criminal protective order, civil litigation, a proceeding in juvenile court, or a criminal case involving either party, including the case name, file number, the county and state of the proceeding, and the judge's name; and

~~(fe)v~~ a space to indicate whether the party to be protected is an intimate partner to the respondent or a child of an intimate partner to the respondent; and

~~(ff)b~~ for a petition under Part 6, Cohabitant Abuse Protective Orders:

~~(ii)~~ (i) 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;]

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

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

~~[(A) the case name;]~~

~~[(B) the file number;]~~

~~[(C) the county and state of the proceeding; and]~~

~~[(D) the judge's name.]~~

(ii) a statement advising the petitioner that when a 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 that the child attends; and

(iii) 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.

~~[(2)] (3) If the [person] individual seeking to proceed as a petitioner under this chapter is not represented by an attorney, [it is the responsibility of] the court clerk's office [to] shall provide nonlegal assistance, including:~~

~~(a) the forms adopted [pursuant to] under Subsection ~~ff(1)ff~~(~~12~~b);~~

~~(b) all other forms required to petition for [an order for protection including, but not limited to,] a protective order or stalking injunction described in Subsection (1)(a), including forms for service;~~

~~(c) clerical assistance in filling out the forms and filing the petition, [in accordance with Subsection (1)(a), except that a] or if the court clerk's office [may designate any other] designates another entity, agency, or person to provide that service, [but the court clerk's office is responsible] oversight over the entity, agency, or person 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~~



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(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)]~~ (4) 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 civil protective order or ex parte civil stalking injunction;

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

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

(i) a petition under this chapter;

(ii) an ex parte civil protective order;

(iii) a civil protective order;

(iv) an ex parte civil stalking injunction; or

(v) a civil stalking injunction.

~~[(4)]~~ (5) A petition for ~~[an order of protection]~~ an ex parte civil protective order and a civil protective order shall be in writing and verified.

~~[(5)]~~ (6) (a) ~~[An order for protection]~~ An ex parte civil protective order and a civil protective order shall be issued in the form adopted by the Administrative Office of the Courts ~~[pursuant to]~~ under Subsection ~~77(1)-77(2)b~~.

(b) ~~[A protective order issued, except orders issued ex parte,]~~ A civil protective order that is issued shall, if applicable, 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 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),]~~ An ex parte civil protective order and a civil protective order issued under Part 6, Cohabitant Abuse Protective Orders, shall include the following language:

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"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."

(d) A child protective order issued under Part 2, Child Protective Orders shall include:

(i) the date the order expires; and

(ii) a statement that the address provided by the petitioner will not be made available to the respondent;

(7) (a) (i) The court clerk shall provide, without charge, to the petitioner, one certified copy of a civil stalking injunction issued by the court and one certified copy of the proof of service of the civil stalking injunction on the respondent.

(ii) A charge may be imposed by the court clerk's office for any copies in addition to the copy described in Subsection (7)(a)(i), certified or uncertified.

(b) An ex parte civil stalking injunction and civil stalking injunction shall include the following statement:

"Attention: This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."

Section 27. Section ~~{78B-7-109}~~ 78B-7-105.5 is ~~{amended to read:~~  
~~†enacted to read:~~

**78B-7-105.5. Forms for motions, criminal protective orders, and criminal stalking injunction.**

(1) (a) The offices of the court clerk shall provide forms to an individual seeking any of the following under this chapter:

(i) a criminal protective order; or

(ii) a criminal stalking injunction.

(b) The Administrative Office of the Courts shall:

(i) develop and adopt uniform forms for motions and protective orders and stalking injunction described in Subsection (1)(a) in accordance with the provisions of this chapter; and

(ii) provide the forms to the clerk of each court authorized to issue the protective orders

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and stalking injunction described in Subsection (1)(a).

(2) The forms described in Subsection (1)(b) shall include:

(a) language indicating the criminal penalty for a violation of a criminal protective order or criminal stalking injunction under this chapter;

(b) language indicating that a criminal protective order that is a continuous protective order may be modified or dismissed under this chapter; and

(c) a space to indicate whether the party to be protected is an intimate partner to the defendant or a child of an intimate partner to the defendant.

(3) A criminal protective order and criminal stalking injunction shall be issued in the form adopted by the Administrative Office of the Courts under Subsection (1)(b).

(4) Except for a jail release agreement and jail release court order, a criminal protective order that is issued shall, if applicable, 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 Interstate Enforcement of Domestic Violence Protection Orders Act."

Section 28. Section 78B-7-109 is amended to read:

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

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

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

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

(c) A court may not delay granting [~~relief~~] a civil protective order under this chapter

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because of the existence of a pending civil action between the parties.

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

Section ~~{28}~~29. Section **78B-7-112** is amended to read:

### **78B-7-112. Division of Child and Family Services -- Development and assistance of volunteer network.**

(1) The Division of Child and Family Services within the Department of Human Services shall, either directly or by contract:

(a) develop a statewide network of volunteers and community resources to support, assist, and advocate on behalf of victims of domestic violence;

(b) train volunteers to provide clerical assistance to [~~persons seeking orders for protection~~] individuals seeking a civil protective order under this chapter;

(c) coordinate the provision of volunteer services with Utah Legal Services and the Legal Aid Society; and

(d) assist local government officials in establishing community based support systems for victims of domestic violence.

(2) Volunteers shall provide additional nonlegal assistance to victims of domestic violence, including providing information on the location and availability of shelters and other community resources.

Section ~~{29}~~30. Section **78B-7-113** is amended to read:

### **78B-7-113. Statewide domestic violence network -- Peace officers' duties -- Prevention of abuse in absence of order -- Limitation of liability.**

(1) (a) (i) Law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure that [~~peace officers~~] a peace officer at the scene of an alleged violation of a civil protective order [~~or pretrial criminal no contact order have~~] or criminal protective order has immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network [~~by the provisions of~~] under this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or Section 77-38-3. [~~Those~~]

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(ii) The peace officers described in Subsection (1)(a)(i) shall use every reasonable means to enforce the court's order, in accordance with the requirements and procedures of this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.

(b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section 53-10-103, shall provide for a single, statewide network containing:

(i) all [~~orders for protection~~] civil protective orders and criminal protective orders issued by a court of this state; and

(ii) all other court orders or reports of court action that are required to be available on the network under this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and Section 77-38-3.

(c) The entities described in Subsection (1)(b) may utilize the same mechanism as the statewide warrant system, described in Section 53-10-208.

(d) [~~AH~~] (i) Except as provided in Subsection (1)(d)(ii), the Administrative Office of the Courts shall make all orders and reports required to be available on the network [~~shall be~~] available within 24 hours after court action.

(ii) If the court that issued [~~the order~~] an order that is required to be available under Subsection (1)(d)(i) is not part of the state court computer system, the [~~orders and reports shall be~~] Administrative Office of the Courts shall make the order and report available on the network within 72 hours after court action.

(e) The Administrative Office of the Courts and the Department of Public Safety shall make the information contained in the network [~~shall be~~] available to a court, law enforcement officer, or agency upon request.

(2) When any peace officer has reason to believe a cohabitant or child of a cohabitant is being abused, or that there is a substantial likelihood of immediate danger of abuse, although no civil or criminal protective order has been issued, that officer shall use all reasonable means to prevent the abuse, including:

(a) remaining on the scene as long as it reasonably appears there would otherwise be danger of abuse;

(b) making arrangements for the victim to obtain emergency medical treatment;

(c) making arrangements for the victim to obtain emergency housing or shelter care;

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(d) explaining to the victim [~~his or her~~] the victim's rights in these matters;  
(e) asking the victim to sign a written statement describing the incident of abuse; or  
(f) arresting and taking into physical custody the abuser in accordance with the provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(3) No person or institution may be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this chapter, so long as that person acted in good faith and without malice.

Section ~~30~~31. Section **78B-7-117**, which is renumbered from Section 77-36-5.3 is renumbered and amended to read:

~~[77-36-5.3].~~ **78B-7-117. Court order for transfer of wireless telephone number.**

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

(2) At or after the time that a court issues a sentencing protective order or continuous protective order under Section [~~77-36-5.1 or an order of protection~~] 78B-7-804 or a cohabitant abuse protective order under Section [~~78B-7-106~~] 78B-7-603, the court may order the transfer of a wireless telephone number as provided in this section, if:

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

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

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

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

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

(4) A wireless service provider shall comply with an order issued under this section, unless compliance is not reasonably possible due to:

(a) the account holder having already terminated the account;  
(b) differences in network technology that prevent the victim's device from functioning on the network to which the number is to be transferred;

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- (c) geographic or other service availability constraints; or
- (d) other barriers outside the control of the wireless service provider.

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

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

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

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

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

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

Section ~~{31}~~32. Section **78B-7-118** is enacted to read:

**78B-7-118. Construction with Utah Rules of Civil Procedure.**

To the extent the provisions of this part are more specific than the Utah Rules of Civil Procedure regarding a civil protective order the provisions of this chapter govern.

Section ~~{32}~~33. Section **78B-7-119** is enacted to read:

**78B-7-119. Duties of law enforcement -- Enforcement.**

A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of any of the following that has been served on the alleged perpetrator:

- (1) an ex parte civil protective order;
- (2) a civil protective order;
- (3) an ex parte civil stalking injunction;

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- (4) a civil stalking injunction;
- (5) a criminal protective order;
- (6) a permanent criminal stalking injunction; or
- (7) a foreign protective order enforceable under Part 3, Uniform Interstate Enforcement of Domestic Violence Protective Orders.

Section ~~{33}~~34. Section **78B-7-201** is amended to read:

### **78B-7-201. Definitions.**

As used in this chapter:

- (1) "Abuse" means:
  - (a) physical abuse;
  - (b) sexual abuse;
  - (c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or
  - (d) human trafficking of a child for sexual exploitation under Section 76-5-308.5.
- (2) "Child ~~abuse~~ protective order" means an order issued under this part ~~subsequent to~~after a hearing on the petition, of which the petitioner and respondent have been given notice.

~~{2}~~ (3) "Court" means the district court or juvenile court.

(4) "Ex parte child ~~abuse~~ protective order" means an order issued without notice to the respondent, ~~in accordance with~~ under this part.

(5) "Protective order" means:

- (a) a child ~~abuse~~ protective order; or
- (b) an ex parte child ~~abuse~~ protective order.

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

Section ~~{34}~~35. Section **78B-7-202** is amended to read:

**78B-7-202. Abuse or danger of abuse -- Child ~~abuse~~ protective orders -- Ex parte child~~abuse~~ protective orders -- Guardian ad litem -- Referral to division.**

- (1) (a) Any interested person may file a petition for a protective order:
  - (i) on behalf of a child who ~~is~~ is being abused ~~has been or is the subject of abuse~~ or is in imminent danger of being ~~is~~ abused ~~[-The petitioner shall first] { the subject of abuse}; or~~
  - (ii) if the respondent is not a parent, guardian, or custodian of the child, on behalf of a child who has been abused.



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(b) Before filing a petition under Subsection (1)(a), the interested person shall make a referral to the division.

(2) Upon the filing of a petition described in Subsection (1), the clerk of the court shall:

(a) review the records of the juvenile court, the district court, and the management information system of the division to find any petitions, orders, or investigations related to the child or the parties to the case;

(b) request the records of any law enforcement agency identified by the petitioner as having investigated abuse of the child; and

(c) identify and obtain any other background information that may be of assistance to the court.

~~[(3) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor is being abused or is in imminent danger of being abused. If so, the court shall enter an ex parte child protective order.]~~

(3) If it appears from a petition for a protective order filed under Subsection (1)(a)(i) that the child ~~{has been or is the subject of abuse,}~~ is being abused or ~~{that the child}~~ is in imminent danger of being ~~{the subject of abuse}~~ abused, or it appears from a petition for a protective order filed under Subsection (1)(a)(ii) that the child has been abused, the court may:

(a) without notice, immediately issue an ex parte child protective order against the respondent if necessary to protect the child; or

(b) upon notice to the respondent, issue a child ~~{abuse}~~ protective order after a hearing.

(4) The court may appoint an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902.

(5) This section does not prohibit a protective order from being issued against a respondent who is a child.

Section ~~{35}~~36. Section **78B-7-203** is amended to read:

### **78B-7-203. Hearings.**

(1) If an ex parte child protective order is granted, the court shall schedule a hearing to be held within 20 days after the day on which the ex parte determination is made. If an ex parte child protective order is denied, the court, upon the request of the petitioner, shall schedule a hearing to be held within 20 days after the day on which the ex parte determination is made.

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(2) The petition, ex parte child protective order, and notice of hearing shall be served on the respondent, the [minor's] child's parent or guardian, and, if appointed, the guardian ad litem. The notice shall contain:

- (a) the name and address of the [person] individual to whom [it] the notice is directed;
- (b) the date, time, and place of the hearing;
- (c) the name of the [minor] child on whose behalf a petition is being brought; and
- (d) a statement that [a person] an individual is entitled to have an attorney present at the hearing.

(3) The court shall provide an opportunity for any person having relevant knowledge to present evidence or information[~~:- The court~~] and may hear statements by counsel.

(4) An agent of the division served with a subpoena in compliance with the Utah Rules of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

(5) [If] The court shall issue a protective order if the court determines, based on a preponderance of the evidence, that [the {} minor is being abused or is in imminent danger of being abused, {} circumstances described in Subsection 78B-7-202(3) exist,] the court shall [{} enter {} issue] a child protective order.]:

(a) for a petition for a protective order filed under Subsection 78B-7-202(1)(a)(i), the child is being abused or is in imminent danger of being abused; or

(b) for a petition for a protective order filed under Subsection 78B-7-202(1)(a)(ii), the child has been abused.

(6) With the exception of the provisions of Section 78A-6-323, a child protective order [~~does not constitute~~] is not an adjudication of abuse, neglect, or dependency under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

Section ~~{36}~~37. Section **78B-7-204** is amended to read:

**78B-7-204.**~~{ Child abuse protective orders -- Ex parte child abuse protective orders -- Content}~~ **Content of {order}orders -- Modification of orders -- Penalties.**

(1) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is a class A misdemeanor under Section [~~77-36-2.4~~] 76-5-108:

- (a) enjoin the respondent from threatening to commit or committing abuse of the [minor] child;

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(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the [minor] child, directly or indirectly;

(c) prohibit the respondent from entering or remaining upon the residence, school, or place of employment of the [minor] child and the premises of any of these or any specified place frequented by the [minor] child;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the [minor] child, prohibit the respondent from purchasing, using, or possessing a firearm or other specified weapon; and

(e) determine ownership and possession of personal property and direct the appropriate law enforcement officer to attend and supervise the petitioner's or respondent's removal of personal property.

(2) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is contempt of court:

(a) determine temporary custody of [a minor] the child who is the subject of the petition;

(b) determine parent-time with [a minor] the child who is the subject of the petition, including denial of parent-time if necessary to protect the safety of the [minor] child, and require supervision of parent-time by a third party;

(c) determine support in accordance with Title 78B, Chapter 12, Utah Child Support Act; and

(d) order any further relief the court considers necessary to provide for the safety and welfare of the [minor] child.

~~[(3) A child protective order and an ex parte child protective order shall include:]~~

~~[(a) a statement that violation of a criminal provision is a class A misdemeanor and violation of a civil provision is contempt of court; and]~~

~~[(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.]~~

~~[(4) ~~{(3)}~~ A child protective order shall include:]~~

~~[(a) the date the order expires; ~~{ and }~~]~~

~~[(b) a statement that the address provided by the petitioner will not be made available]~~

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to the respondent ~~{}~~; and] ~~{}~~

~~[(c) the following statement: "Respondent was afforded 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."]~~

(3) (a) If the child who is the subject of the child protective order attends the same school as the respondent, or is employed at the same place of employment as the respondent, the court:

(i) may not enter an order under Subsection (1)(c) that excludes the respondent from the respondent's school or place of employment; and

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

(b) A violation of an order under Subsection (3)(a) is contempt of court.

(4) (a) A respondent may petition the court to modify or vacate ~~the~~ a child protective order after notice and a hearing.

(b) At the hearing described in Subsection (4)(a):

(i) the respondent shall have the burden of proving by clear and convincing evidence that modification or vacation of the child protective order is in the best interest of the child; and

(ii) the court shall consider:

(A) the nature and duration of the abuse;

(B) the pain and trauma inflicted on the child as a result of the abuse;

(C) if the respondent is a ~~natural~~ parent of the child, any reunification services provided in accordance with Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings; and

(D) any other evidence the court finds relevant to the determination of the child's best interests, including recommendations by the other parent or a guardian of the child, or a mental health professional.

(c) The child is not required to attend the hearing described in Subsection (4)(a).

Section ~~{37}~~38. Section **78B-7-205** is amended to read:

**78B-7-205. Service -- Income withholding -- Expiration.**

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(1) If the court enters an ex parte child protective order or a child protective order, the court shall:

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

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered, transmit electronically a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section 78B-7-113.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section 78B-7-113 in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child 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.

~~[(5) After notice, as provided in Rule 4 of the Utah Rules of Civil Procedure, and hearing, a court may modify or vacate a child protective order with a showing of substantial and material change in circumstances.]~~

~~[(6) The]~~ (5) (a) A child protective order issued against a respondent who is a parent, guardian, or custodian of the child who is the subject of the order expires 150 days after the [date of the order] day on which the order is issued unless a different date is set by the court.

(b) The court may not set a date on which a child protective order described in Subsection (5)(a) expires that is more than 150 days after the [date of the order] day on which the order is issued without a finding of good cause.

(c) The court may review and extend the expiration date of a child protective order described in Subsection (5)(a), but may not extend [it to] the expiration date more than 150

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days after the ~~[date of the order]~~ day on which the order is issued without a finding of good cause. ~~{}~~

~~[(7) (5)d] {}~~ Notwithstanding ~~[Subsections (5) and (6), unless the]~~  
~~{Unless} Subsections (5)(a) through (c), unless~~ a judge ~~{}~~ orders otherwise ~~[att] {} {modifies or~~  
~~vacates the order in accordance with Section 78B-7-204},~~ a child protective ~~[orders expire]~~  
~~order expires~~ when the child who is the subject of the order is 18 years ~~[of age {}], unless the~~  
~~judge vacates the order earlier] {or graduates from high school, whichever is later.~~  
~~Section 38}old.~~

(6) A child protective order issued against a respondent who is not a parent, guardian, or custodian of the child who is the subject of the order expires when the child is 18 years old.

Section 39. Section 78B-7-402 is amended to read:

### Part 4. Dating Violence Protective Orders

#### 78B-7-402. Definitions.

As used in this part:

~~[(1) "Abuse" means intentionally or knowingly:]~~

~~[(a) causing or attempting to cause physical harm to a dating partner; or]~~

~~[(b) placing a dating partner in reasonable fear of imminent physical harm.]~~

~~[(2)(a) "Dating partner" means a person who:]~~

~~[(i) (A) is an emancipated person under Section 15-2-1 or Title 78A, Chapter 6, Part 8, Emancipation; or]~~

~~[(B) is 18 years of age or older; and]~~

~~[(ii) is, or has been, in a dating relationship with the other party.]~~

~~[(b) "Dating partner" does not include an intimate partner, as defined in federal law in Title 18 U.S.C. Section 921.]~~

~~[(3)(a) "Dating relationship" means a social relationship of a romantic or intimate nature, or a relationship which has romance or intimacy as a goal by one or both parties; regardless of whether the relationship involves sexual intimacy.]~~

~~[(b) "Dating relationship" does not mean casual fraternization in a business, educational, or social context.]~~

~~[(c) In determining, based on a totality of the circumstances, whether a dating relationship exists:]~~

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~~[(i) all relevant factors shall be considered, including:]~~

~~[(A) whether the parties developed interpersonal bonding above a mere casual fraternization;]~~

~~[(B) the length of the parties' relationship;]~~

~~[(C) the nature and the frequency of the parties' interactions, including communications indicating that the parties intended to begin a dating relationship;]~~

~~[(D) the ongoing expectations of the parties, individual or jointly, with respect to the relationship;]~~

~~[(E) whether, by statement or conduct, the parties demonstrated an affirmation of their relationship to others; and]~~

~~[(F) whether other reasons exist that support or detract from a finding that a dating relationship exists; and]~~

~~[(ii) it is not necessary that all, or a particular number, of the factors described in Subsection (3)(c)(i) are found to support the existence of a dating relationship.]~~

~~[(4) "Dating violence" means:]~~

~~[(a) any criminal offense involving violence or physical harm, or threat of violence or physical harm, when committed by a person against a dating partner of the person; or]~~

~~[(b) any attempt, conspiracy, or solicitation by a person to commit a criminal offense involving violence or physical harm against a dating partner of the person.]~~

~~[(5)] (1) "Dating violence protective order" means an order issued [pursuant to] under this part [subsequent to] after a hearing on the petition, [{, }] as described in Section 78B-7-403 {in accordance with} of which the {requirements of this part} petitioner and respondent have been given notice.~~

~~[(6)] (2) "Ex parte dating violence protective order" means an order issued without notice to the respondent [, in accordance with the requirements of] under this part.~~

~~[(7)] (3) "Protective order" means:~~

~~(a) a dating violence protective order; or~~

~~(b) an ex parte dating violence protective order.~~

Section ~~{39}40~~. Section **78B-7-403** is amended to read:

**78B-7-403. Abuse or danger of abuse -- Dating violence protective orders.**

(1) ~~[A person]~~ An individual may seek a protective order if the ~~[person]~~ individual is

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subjected to, or there is a substantial likelihood the [person] individual will be subjected to:

- (a) abuse by a dating partner of the [person] individual; or
- (b) dating violence by a dating partner of the [person] individual.

(2) ~~[A person]~~ An individual may seek an order described in Subsection (1) whether or not the [person] individual has taken other action to end the relationship.

(3) ~~[A person]~~ An individual seeking a protective order may include another party in the petition for a protective order if:

- (a) the [person] individual seeking the order meets the requirements of Subsection (1);

and

- (b) the other party:

- (i) is a family or household member of the [person] individual seeking the protective order; and

- (ii) there is a substantial likelihood the other party will be subjected to abuse by the dating partner of the [person] individual.

(4) ~~[A person]~~ An individual seeking a protective order under this part shall, to the extent possible, provide information to facilitate identification of the respondent, including a name, social security number, driver license number, date of birth, address, telephone number, and physical description.

(5) A petition seeking a protective order under this part may not be withdrawn without written order of the court.

(6) (a) ~~[A person]~~ An individual may not seek a protective order against an intimate partner~~[, as defined by federal law in Title 18 U.S.C. Section 921,]~~ of the [person] individual under this part.

(b) ~~[A person]~~ An individual may seek a protective order against a cohabitant~~[, as defined by section 78B-7-102, or an intimate partner, as defined by federal law, of the person under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act]~~ or an intimate partner of the individual under Part 6, Cohabitant Abuse Protective Orders.

Section ~~{40}~~41. Section **78B-7-404** is amended to read:

**78B-7-404. Dating violence protective 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



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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 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

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specified by the court.

(4) If the petitioner or ~~[designated]~~ a family or household member designated in the protective order 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) (6)~~ 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) (7)~~ (a) The county sheriff that receives the order from the court, ~~[pursuant to]~~ under Subsection ~~[(7) (6)~~(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]~~ 78B-7-113.

(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)]~~ (8) 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)]~~ (9) 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.]~~

Section ~~{41}~~42. Section **78B-7-405** is amended to read:

### **78B-7-405. Hearings -- Expiration -- Extension.**

(1) (a) ~~[Within 20 days after the day on which the court issues an ex parte protective order, the {[] district]~~ The court shall set a date for a hearing on the petition to be held within 20 days after the day on which the court issues an ex parte protective order.

(b) If, at the hearing described in Subsection (1)(a), the ~~[district]~~ court does not issue a dating violence protective order, the ex parte dating protective order shall expire, unless ~~[it]~~ the dating violence protective order is extended by the ~~[district]~~ court. Extensions beyond the 20-day period may not be granted unless:

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- (i) the petitioner is unable to be present at the hearing;
- (ii) the respondent has not been served; or
- (iii) exigent circumstances exist.

(c) Under no circumstances may an ex parte dating violence protective order be extended beyond 180 days from the day on which the court issues the initial ex parte dating violence protective order.

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

(e) A dating violence protective order issued after notice and a hearing shall remain in effect [~~from 180 days~~] for three years after the day on which the order is issued.

(f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 calendar days after the day on which the recommended order is entered, and the assigned judge shall hold a hearing on the objection within 20 days after the day on which the objection is filed.

(2) Upon a hearing under this section, the [district] court may grant any of the relief permitted under Section 78B-7-404, except the [district] court shall not grant the relief described in Subsection 78B-7-404(3)(b) without providing the respondent notice and an opportunity to be heard.

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

(a) [~~set the matter for hearing~~] set a hearing to be held within 20 days after the day on which the court denies the petition; and

(b) notify and serve the respondent.

(4) A dating violence protective order automatically expires as described in Subsection (1)(e), unless the petitioner files a motion before the day on which the dating violence protective order expires and demonstrates that:

(a) there is a substantial likelihood the petitioner will be subjected to dating violence;

or

(b) the respondent committed or was convicted of a violation of the dating violence

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protective order that the petitioner requests be extended or dating violence after the day on which the dating violence protective order is issued.

(5) (a) If the court grants the motion under Subsection (4), the court shall set a new date on which the dating violence protective order expires.

(b) The dating violence protective order shall expire on the date set by the court unless the petitioner files a motion described in Subsection (4) to extend the dating violence protective order.

Section ~~{42}~~43. Section **78B-7-407** is amended to read:

### **78B-7-407. Penalties.**

~~[(1) A law enforcement officer shall, without a warrant, arrest a person if the officer has probable cause to believe that the person 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 [~~constitutes~~] is a class [B] A misdemeanor.

Section ~~{43}~~44. Section **78B-7-409** is amended to read:

### **78B-7-409. Mutual dating violence protective orders.**

(1) A court may not grant a mutual order or mutual [~~orders for protection~~] dating violence protective orders to opposing parties, unless each party:

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

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

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

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

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

~~[(a) issued under:]~~

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~~[(i) this chapter;]~~

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

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

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

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

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

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

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

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

~~or]~~

~~[(B) confers with the court that issued the order for protection:]~~

(3) (a) Except as provided in Subsection (3)(b), a court may not grant a protective order to a civil petitioner who is the respondent or defendant subject to:

(i) a civil protective order that is issued under:

(A) this part;

(B) Part 2, Child Protective Orders;

(C) Part 6, Cohabitant Abuse Protective Orders;

(D) Part 8, Criminal Protective Orders; or

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

(ii) an ex parte civil protective order issued under Part 2, Child Protective Orders; or

(iii) a foreign protection order enforceable under Part 3, Uniform Interstate

Enforcement of Domestic Violence Protection Orders Act.

(b) The court may issue a protective order to a civil petitioner described in Subsection (3)(a) if:

(i) the court determines that the requirements of Subsection (1) are met; and

(ii) (A) the same court issued the protective order against the respondent; or

(B) the subsequent court determines it would be impractical for the original court to consider the matter or confers with the court that issued the protective order described in Subsection (3)(a)(i) or (ii).

Section ~~{44}~~45. Section **78B-7-502** is amended to read:

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## Part 5. Sexual Violence Protective Orders

### 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)]~~ (1) "Ex parte sexual violence protective order" means an order issued without notice to the respondent ~~[in accordance with the requirements of]~~ under this part.

~~[(4)]~~ (2) "Protective order" means:

(a) a sexual violence protective order; or

(b) an ex parte sexual violence protective order.

~~[(5)]~~ (3) "Sexual violence" means the commission or the attempt to commit:

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

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

(c) aggravated human trafficking for forced sexual exploitation under Section 76-5-310.

~~[(6)]~~ (4) "Sexual violence protective order" means an order issued ~~[after notice and a hearing in accordance with the requirements of this part]~~ under this part after a hearing on the petition, of which the petitioner and respondent have been given notice.

Section 46. Section 78B-7-504 is amended 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:

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(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;

(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



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(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 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 a hearing, if the petitioner:

(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

(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~~

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of Civil Procedure regarding a protective order, the provisions of this part govern.]

Section ~~{45}~~47. Section 78B-7-505 is amended 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]~~ The court shall set a date for a hearing on the petition for a sexual violence protective order to be held within 20 days after the day on which the court issues an ex parte 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.

(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 [~~one year~~] three years 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 to be held within 20 days after the day on which the court denies the petition; and

(b) notify and serve the respondent.

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(3) (a) A sexual violence protective order automatically expires under Subsection (1)(e) unless~~[(1)]~~ 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 demonstrates that:

(i) there is a substantial likelihood the petitioner will be subjected to sexual violence;

or

(ii) the respondent committed or was convicted of a violation of the sexual violence protective order that the petitioner requests be extended or a sexual violence offense after the day on which the sexual violence protective order is issued.

~~[(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.

(iii) A sexual violence protective order that is extended under this Subsection (3), may not be extended for more than ~~[one year]~~ three years 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).

(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 ~~{46}~~48. Section **78B-7-508** is amended to read:

### **78B-7-508. 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)]~~ (1) A violation of a protective order issued under this part is a class A

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misdemeanor.

~~[(3)]~~ (2) 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 ~~{47}~~49. Section **78B-7-601** is enacted to read:

### **Part 6. Cohabitant Abuse Protective Orders**

#### **78B-7-601. Definitions.**

As used in this part:

(1) "Cohabitant abuse protective order" means an order issued under this part after ~~{~~notice and} a hearing ~~{in accordance with this part}~~on the petition, of which the petitioner and respondent have been given notice.

(2) "Ex parte cohabitant abuse protective order" means an order issued without notice to the respondent ~~{in accordance with the requirements of}~~under this part.

(3) "Protective order" means:

(a) a cohabitant abuse protective order; or

(b) an ex parte cohabitant abuse protective order.

Section ~~{48}~~50. Section **78B-7-602**, which is renumbered from Section 78B-7-103 is renumbered and amended to read:

~~[78B-7-103].~~            **78B-7-602. Abuse or danger of abuse -- Cohabitant use protective orders.**

(1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek ~~[an ex parte protective order or]~~ a protective order in accordance with this ~~[chapter]~~ part, whether or not ~~[that person]~~ the cohabitant has left the residence or the premises in an effort to avoid further abuse.

(2) A petition for a protective order may be filed under this ~~[chapter]~~ part regardless of whether an action for divorce between the parties is pending.

(3) A petition seeking a protective order may not be withdrawn without approval of the court.

Section ~~{49}~~51. Section **78B-7-603**, which is renumbered from Section 78B-7-106 is renumbered and amended to read:

~~[78B-7-106].~~            **78B-7-603. Cohabitant abuse protective orders -- Ex parte**

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### cohabitant use protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for [~~an order for protection~~] a protective order or a petition to modify [~~an order for protection~~] a protective order 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~~] a protective order is required, a court may:

(a) without notice, immediately issue [~~an order for protection~~] an ex parte cohabitant abuse protective order or modify [~~an order for protection~~] a protective order ex parte as [~~it~~] the court 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~~] a protective order 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~~] a protective order 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 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

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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;

(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~~] a protective order 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

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

(4) 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~~] 78B-7-117.

(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~~] protective order 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~~] protective order to the local law enforcement agency or agencies designated by the petitioner;

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

(e) if the individual is a respondent or defendant subject to a court order that meets the qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal Identification that includes:

(i) an agency record identifier;

(ii) the individual's name, sex, race, and date of birth;

(iii) the issue date, conditions, and expiration date for the protective order; and

(iv) if available, the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

(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:

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

[~~(ii)~~] (b) civil offenses are those under Subsections (2)(h), (j), (k), and (l), and Subsection (3)(a) as it refers to Subsections (2)(h), (j), (k), and (l).

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

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

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

(i) has contact with the respondent and service by that law enforcement agency is



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possible; or

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

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

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

~~[(11)]~~ (10) A court may modify or vacate ~~[an order of protection]~~ a protective order or any provisions in the protective 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 ~~[(1)]~~, as provided ~~[in Rules 4 and 5,]~~ in the Utah Rules of Civil Procedure, ~~[(1)]~~ 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)]~~ (11) 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 ~~[(50)]~~ 52. Section **78B-7-604**, which is renumbered from Section 78B-7-107 is renumbered and amended to read:

~~[78B-7-107].~~            **78B-7-604. Hearings.**

(1) (a) When a court issues an ex parte cohabitant abuse protective order the court shall set a date for a hearing on the petition to be held within 20 days after the day on which the ex parte cohabitant abuse protective order is issued.

(b) If at that hearing the court does not issue a protective order, the ex parte cohabitant abuse protective order shall expire, unless ~~[it]~~ the cohabitant abuse protective order is

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otherwise extended by the court. Extensions beyond the 20-day period may not be granted unless:

- (i) the petitioner is unable to be present at the hearing;
- (ii) the respondent has not been served;
- (iii) the respondent has had the opportunity to present a defense at the hearing;
- (iv) the respondent requests that the ex parte cohabitant abuse protective order be

extended; or

- (v) exigent circumstances exist.

(c) Under no circumstances may an ex parte cohabitant abuse protective order be extended beyond 180 days from the ~~[date of initial issuance]~~ day on which the court issues the initial ex parte cohabitant abuse protective order.

(d) If at that hearing the court issues a cohabitant abuse protective order, the ex parte cohabitant abuse protective order remains in effect until service of process of the protective order is completed.

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

(f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within 10 days ~~[of the entry of]~~ after the day on which the recommended order and the assigned judge shall hold a hearing within 20 days ~~[of the filing of]~~ after the day on which the objection is filed.

(2) Upon a hearing under this section, the court may grant any of the relief described in Section ~~[78B-7-106]~~ 78B-7-603.

(3) When a court denies a petition for an ex parte cohabitant abuse protective order or a petition to modify ~~[an order for protection]~~ a protective order ex parte, upon the request of the petitioner, the court shall set the matter for hearing to be held within 20 days after the day on which the court denied the ex parte cohabitant abuse protective order and notify the petitioner and serve the respondent.

(4) A respondent who has been served with an ex parte cohabitant abuse protective order may seek to vacate the ex parte cohabitant abuse protective order ~~[prior to the hearing scheduled pursuant to]~~ under Subsection (1)(a) by filing a verified motion to vacate before the day on which the hearing is set. The respondent's verified motion to vacate and a notice of

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hearing on that motion shall be personally served on the petitioner at least two days ~~[prior to]~~  
before the day on which the hearing on the motion to vacate is set.

Section ~~{51}~~53. Section **78B-7-605**, which is renumbered from Section 78B-7-115 is renumbered and amended to read:

~~[78B-7-115].~~            **78B-7-605. Dismissal.**

~~[(1) (a) 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, abuse, or domestic violence.]~~

~~[(b) In determining whether the petitioner no longer has a reasonable fear of future harm, abuse, or domestic violence, the court shall consider the following factors:]~~

~~[(i) whether the respondent is compliant with treatment recommendations related to domestic violence, entered at the time the protective order was entered;]~~

~~[(ii) whether the protective order was violated during the time the protective order was in force;]~~

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

~~[(iv) counseling or therapy undertaken by either party;]~~

~~[(v) impact on the well-being of any minor children of the parties, if relevant; and]~~

~~[(vi) any other factors the court considers relevant to the case before the court.]~~

~~[(2) Except as provided in Subsections (6) and (8), the]~~

(1) 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 the court 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; and

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

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

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~~[(3)]~~ (2) 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 the other 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)]~~ (3) Except as provided in Subsection ~~[(8)]~~ (5), 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, abuse, or domestic violence ~~[after considering the factors listed in Subsection (1)].~~

~~[(6)(a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a protective order that is entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to Subsection (6)(b), 10 years after 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, abuse, or domestic violence, as described in Subsection (1); or]~~

~~[(ii) the respondent committed or was convicted of a protective order violation or a qualifying domestic violence offense, as defined in Section 77-36-1.1, subsequent to the issuance of the protective order.]~~

~~[(c) (i) If the court grants the motion under Subsection (6)(b), the court shall set a new date on which the protective order expires.]~~

~~[(ii) The protective order will expire on the date set by the court unless the petitioner~~

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~~files a motion described in Subsection (6)(b) to extend the protective order.]~~

~~[(7)] (4)~~ 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)] (5)~~ Notwithstanding the other provisions of this section, a continuous protective order may not be modified or dismissed except as provided in ~~[Subsection 77-36-5.1(6)]~~ Section 78B-7-804.

Section ~~{52}~~54. Section **78B-7-606**, which is renumbered from Section 78B-7-115.5 is renumbered and amended to read:

~~[78B-7-115.5].~~        **78B-7-606. Expiration -- Extension.**

(1) Subject to the other provisions of this section, ~~[a civil] {the civil provisions of}~~ a cohabitant abuse protective order ~~[issued under this part]~~ automatically ~~[expires 10]~~ ~~{expire}~~expires three years after the day on which the cohabitant abuse protective order is entered.

(2) ~~[The]~~ A cohabitant abuse protective order automatically expires as described in Subsection (1), unless the petitioner files a motion before the day on which the cohabitant abuse protective order expires and demonstrates that:

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

(b) the respondent committed or was convicted of a cohabitant abuse protective order violation or a qualifying domestic violence offense, as defined in Section 77-36-1.1, subsequent to the issuance of the cohabitant abuse protective order.

(3) (a) If the court grants the motion under Subsection (2), the court shall set a new date on which the cohabitant abuse protective order expires.

(b) The cohabitant abuse protective order will expire on the date set by the court unless the petitioner files a motion described in Subsection (2) to extend the cohabitant abuse protective order.

Section ~~{53}~~55. Section **78B-7-607** is enacted to read:

**78B-7-607. Penalties.**

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

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Section ~~{54}~~56. Section **78B-7-608**, which is renumbered from Section 78B-7-110 is renumbered and amended to read:

~~[78B-7-110].~~            **78B-7-608**. **No denial of relief solely because of lapse of time.**

The court may not deny a petitioner relief requested [~~pursuant to~~] under this [~~chapter~~] part solely because of a lapse of time between an act of domestic violence or abuse and the filing of the petition for [~~an order of protection~~] a protective order.

Section ~~{55}~~57. Section **78B-7-609**, which is renumbered from Section 78B-7-111 is renumbered and amended to read:

~~[78B-7-111].~~            **78B-7-609**. **Prohibition of court-ordered or court-referred mediation.**

In any case brought under the provisions of this [~~chapter~~] part, the court may not order the parties into mediation for resolution of the issues in a petition for [~~an order for protection~~] a protective order.

Section ~~{56}~~58. Section **78B-7-701**, which is renumbered from Section 77-3a-101 is renumbered and amended to read:

### **Part 7. Civil Stalking Injunctions**

~~[77-3a-101].~~            **78B-7-701**. **Ex parte civil stalking injunction -- Civil stalking injunction.**

~~[(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.]~~

~~[(2) Any person]~~ (1) (a) Except as provided in Subsection (1)(b), an individual who believes that [he or she] the individual is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the [petitioner] individual or respondent resides or in which any of the events occurred. A minor with [his or her] the minor's parent or guardian may file a petition on [his or her] the minor's own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(b) A stalking injunction may not be obtained against a law enforcement officer, governmental investigator, or licensed private investigator, who is acting in official capacity.

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~~[(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.]~~

~~[(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be issued in the form adopted by the Administrative Office of the Courts.]~~

~~[(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.]~~

~~[(4)]~~ (2) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner~~;~~, however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

~~[(5)]~~ (3) (a) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(i) respondent may be enjoined from committing stalking;

(ii) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(iii) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

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(iv) any other relief necessary or convenient for the protection of the petitioner and other specifically designated [~~persons~~] individuals under the circumstances.

(b) If the petitioner and respondent have minor children, the court shall follow the provisions of Section [~~78B-7-106~~] 78B-7-603 and take into consideration the respondent's custody and parent-time rights while ensuring the safety of the victim and the minor children. If the court issues a civil stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered.

~~[(6)]~~ (4) Within 10 days [~~of service of~~] after the day on which the the ex parte civil stalking injunction is served, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within 10 days [~~from the date the~~] after the day on which the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on [~~its~~] the civil stalking injunction's face:

(i) that the respondent is entitled to a hearing, upon written request within 10 days [~~of the service of~~] after the day on which the order is served;

(ii) the name and address of the [~~district~~] court where the request may be filed;

(iii) that if the respondent fails to request a hearing within 10 days [~~of service,~~] after the day on which the ex parte civil stalking injunction is served, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and [~~that~~] the civil stalking injunction expires three years after [~~service of~~] the day on which the ex parte civil stalking injunction is served; and

(iv) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

~~[(7)]~~ (5) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.



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~~[(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."]~~

~~[(9) (6) The ex parte civil stalking injunction shall be served on the respondent within 90 days [from the date it] after the day on which the ex parte civil stalking injunction is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within 10 days [of service of] after the day on which the ex parte civil stalking injunction is served, the ex parte civil stalking injunction automatically becomes a civil stalking injunction without further notice to the respondent and expires three years [from the date of service of] after the day on which the ex parte civil stalking injunction is served.~~

~~[(10) (7) If the respondent requests a hearing after the [ten-day] 10-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.~~

~~[(11) (8) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.~~

~~(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction [shall] may not depend upon [its] entry of the ex parte civil stalking injunction or civil stalking injunction in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years [from the date of service of] after the day on which the ex parte civil stalking injunction is served on the respondent.~~

~~(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.~~

~~[(12) (9) Within 24 hours after the affidavit or acceptance of service [has been] is returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the~~

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changed or modified civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

~~[(13)]~~ (10) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court ~~[which]~~ that granted [it] the ex parte civil stalking injunction or civil stalking injunction.

~~[(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.]~~

(11) An ex parte civil stalking injunction and a civil stalking injunction shall be served by a sheriff or constable in accordance with this section.

~~[(15)]~~ (12) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The ~~[district]~~ court shall hear and decide all matters arising ~~[pursuant to]~~ under this section.

~~[(16)]~~ (13) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees.

~~[(17)]~~ (14) This ~~[chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or to]~~ section does not apply to preliminary injunctions issued [pursuant to] under an action for dissolution of marriage or legal separation.

Section ~~{57}~~59. Section **78B-7-702**, which is renumbered from Section 77-3a-101.1 is renumbered and amended to read:

~~[77-3a-101.1].~~        **78B-7-702. Mutual civil stalking injunctions.**

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

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

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

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

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

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

~~[(a) issued under:]~~

~~[(i) Chapter 3a, Stalking Injunctions;]~~

~~[(ii) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act;]~~

~~[(iii) Chapter 36, Cohabitant Abuse Procedures Act;]~~

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

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

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

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

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

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

~~or]~~

~~[(B) confers with the court that issued the order for protection:]~~

(3) (a) Except as provided in Subsection (3)(b), a court may not grant a protective order to a civil petitioner who is the respondent or defendant subject to:

(i) a civil stalking injunction;

(ii) a civil protective order that is issued under:

(A) this part;

(B) Part 2, Child Protective Orders;

(C) Part 6, Cohabitant Abuse Protective Orders;

(D) Part 8, Criminal Protective Orders; or

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

(iii) an ex parte civil protective order issued under Part 2, Child Protective Orders; or

(iv) a foreign protection order enforceable under Part 3, Uniform Interstate

Enforcement of Domestic Violence Protection Orders Act.

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(b) The court may issue a protective order to a civil petitioner described in Subsection (3)(a) if:

(i) the court determines that the requirements of Subsection (1) are met; and

(ii) (A) the same court issued the protective order against the respondent; or

(B) the subsequent court determines it would be impractical for the original court to consider the matter or confers with the court that issued the protective order described in Subsection (3)(a)(ii) or (iii).

Section ~~{58}~~60. Section **78B-7-703**, which is renumbered from Section 77-3a-103 is renumbered and amended to read:

~~[77-3a-103].~~            **78B-7-703. Violation.**

~~[(1) A peace or law enforcement officer shall, without a warrant, arrest a person if the peace or law enforcement officer has probable cause to believe that the person has violated an ex parte civil stalking injunction or civil stalking injunction issued pursuant to this chapter or has violated a permanent criminal stalking injunction issued pursuant to Section 76-5-106.5, whether or not the violation occurred in the presence of the officer.]~~

~~[(2)]~~ (1) A violation of an ex parte civil stalking injunction or of a civil stalking injunction issued [pursuant to this chapter] under this part constitutes the criminal offense of stalking [as defined in] under Section 76-5-106.5 and is also a violation of the civil stalking injunction. [Violations]

(2) A violation of an ex parte civil stalking injunction or of a civil stalking injunction issued under this part may be enforced by a civil action initiated by the petitioner, a criminal action initiated by a prosecuting attorney, or both.

Section ~~{59}~~61. Section **78B-7-801** is enacted to read:

### **Part 8. Criminal Protective Orders**

**78B-7-801. Definitions.**

As used in this part:

(1) "Jail release agreement" means a written agreement that is entered into by an arrested individual, regardless of whether the individual is booked into jail:

(a) under which the arrested individual agrees to not engage in any of the following:

(i) have personal contact with the alleged victim;

(ii) threaten or harass the alleged victim; or

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(iii) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim; and

(b) that specifies other conditions of release from jail or arrest.

(2) "Jail release court order" means a written court order that:

(a) orders an arrested individual not to engage in any of the following:

(i) have personal contact with the alleged victim;

(ii) threaten or harass the alleged victim; or

(iii) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim; and

(b) specifies other conditions of release from jail.

(3) "Minor" means an unemancipated individual who is younger than 18 years of age.

(4) "Offense against a child or vulnerable adult" means the commission or attempted commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.

(5) "Qualifying offense" means:

(a) domestic violence;

(b) an offense against a child or vulnerable adult; or

(c) the commission or attempted commission of an offense described in Title 76,

Chapter 5, Part 4, Sexual Offenses.

Section ~~760~~62. Section **78B-7-802**, which is renumbered from Section 77-20-3.5 is renumbered and amended to read:

**[77-20-3.5]. 78B-7-802. Conditions for release after arrest for domestic violence and other offenses -- Jail release agreements -- Jail release court orders.**

~~[(1) As used in this section:]~~

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

~~[(b) "Jail release agreement" means a written agreement that is entered into by an arrested individual:]~~

~~[(i) under which the arrested individual agrees to not engage in any of the following:]~~

~~[(A) have personal contact with the alleged victim;]~~

~~[(B) threaten or harass the alleged victim; or]~~

~~[(C) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim; and]~~

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~~[(ii) that specifies other conditions of release from jail.]~~

~~[(c) "Jail release court order" means a written court order that:]~~

~~[(f) orders an arrested individual not to engage in any of the following:]~~

~~[(A) have personal contact with the alleged victim;]~~

~~[(B) threaten or harass the alleged victim; or]~~

~~[(C) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim; and]~~

~~[(ii) specifies other conditions of release from jail.]~~

~~[(d) "Minor" means an unemancipated individual who is younger than 18 years of age.]~~

~~[(e) "Offense against a child or vulnerable adult" means the commission or attempted commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.]~~

~~[(f) "Qualifying offense" means:]~~

~~[(i) domestic violence;]~~

~~[(ii) an offense against a child or vulnerable adult; or]~~

~~[(iii) the commission or attempted commission of an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses.]~~

~~[(2)(a)]~~ (1) Upon arrest for a qualifying offense and before the individual is released on bail, recognizance, or otherwise, the individual may not personally contact the alleged victim.

~~[(b) An individual who violates Subsection (2)(a) is guilty of a class B misdemeanor.]~~

~~[(3)]~~ (2) (a) After an individual is arrested for a qualifying offense, the individual may not be released before:

(i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

(ii) the individual signs a jail release agreement.

(b) The arresting officer shall ensure that the information presented to the magistrate includes whether the alleged victim has made a waiver described in Subsection ~~[(6)]~~ (5)(a).

(c) (i) If the magistrate determines there is probable cause to support the charge or charges of one or more qualifying offenses, the magistrate shall determine whether the arrested individual may be held without bail, in accordance with Section 77-20-1.

(ii) If the magistrate determines that the arrested individual has the right to be admitted to bail, the magistrate shall determine:

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(A) whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; and

(B) any bail that is required to guarantee the arrested ~~[person's]~~ individual's subsequent appearance in court.

(d) The magistrate may not release an individual arrested for a qualifying offense unless the magistrate issues a jail release court order or the arrested individual signs a jail release agreement.

~~[(4)]~~ (3) (a) If an individual charged with a qualifying offense fails to either schedule an initial appearance or to appear at the time scheduled by the magistrate within 96 hours after the time of arrest, the individual shall comply with the release conditions of a jail release agreement or jail release court order until the individual makes an initial appearance.

(b) If the prosecutor has not filed charges against an individual who was arrested for a qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection ~~[(3)]~~ (2), or by the court under Subsection ~~[(4)]~~ (3)(b)(ii), the court:

(i) may, upon the motion of the prosecutor and after allowing the individual an opportunity to be heard on the motion, extend the release conditions described in the jail release court order or the jail release agreement by no more than three court days; and

(ii) if the court grants the motion described in Subsection ~~[(4)]~~ (3)(b)(i), shall order the arrested individual to appear at a time scheduled before the end of the granted extension.

(c) (i) If the prosecutor determines that there is insufficient evidence to file charges before an initial appearance scheduled under Subsection ~~[(4)]~~ (3)(a), the prosecutor shall transmit a notice of declination to either the magistrate who signed the jail release court order or, if the releasing agency obtains a jail release agreement from the released arrestee, to the statewide domestic violence network described in Section 78B-7-113.

(ii) A prosecutor's notice of declination transmitted under this Subsection ~~[(4)]~~ (3)(c) is considered a motion to dismiss a jail release court order and a notice of expiration of a jail release agreement.

~~[(5)]~~ (4) Except as provided in Subsection ~~[(4)]~~ (3) or otherwise ordered by a court, a jail release agreement or jail release court order expires at midnight after the earlier of:

(a) the arrested individual's initial scheduled court appearance described in Subsection ~~[(4)]~~ (3)(a);

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(b) the day on which the prosecutor transmits the notice of the declination under Subsection ~~[(4)]~~ (3)(c); or

(c) 30 days after the day on which the arrested individual is arrested.

~~[(6)]~~ (5) (a) (i) After an arrest for a qualifying offense, an alleged victim who is not a minor may waive in writing the release conditions prohibiting:

(A) personal contact with the alleged victim; or

(B) knowingly entering on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim.

(ii) Upon waiver, the release conditions described in Subsection ~~[(6)]~~ (5)(a)(i) do not apply to the arrested individual.

(b) A court or magistrate may modify a jail release agreement or a jail release court order in writing or on the record, and only for good cause shown.

~~[(7)]~~ (6) (a) When an arrested individual is released in accordance with Subsection ~~[(3)]~~ (2), the releasing agency shall:

(i) notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the alleged victim;

(ii) make a reasonable effort to notify the alleged victim of the release; and

(iii) before releasing the arrested individual, give the arrested individual a copy of the jail release agreement or the jail release court order.

(b) (i) When an individual arrested for domestic violence is released ~~[pursuant to]~~ under this section based on a jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When an individual arrested for domestic violence is released ~~[pursuant to]~~ under this section based upon a jail release court order or if a jail release agreement is modified ~~[pursuant to]~~ under Subsection ~~[(6)]~~ (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

(c) This Subsection ~~[(7)]~~ (6) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

~~[(8)](a) If a law enforcement officer has probable cause to believe that an individual has violated a jail release agreement or jail release court order, the officer shall, without a warrant, arrest the individual.]~~



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~~[(b) An individual who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (3) is guilty as follows:]~~

~~[(i) if the original arrest was for a felony, an offense under this section is a third degree felony; or]~~

~~[(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.]~~

~~[(c) A city attorney may prosecute class A misdemeanor violations under this section.]~~

~~[(9)] (7)~~ An individual who is arrested for a qualifying offense that is a felony and released in accordance with this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against the individual.

~~[(10)] (8)~~ At the time an arrest is made for a qualifying offense, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in this section, and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

(i) the alleged perpetrator enters into a jail release agreement to comply with the release conditions; or

(ii) the magistrate issues a jail release order that specifies the release conditions;

(b) notification of the penalties for violation of any jail release agreement or jail release court order;

(c) the address of the appropriate court in the district or county in which the alleged victim resides;

(d) the availability and effect of any waiver of the release conditions; and

(e) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

~~[(11)] (9)~~ At the time an arrest is made for a qualifying offense, the arresting officer shall provide the alleged perpetrator with written notice containing:

(a) notification that the alleged perpetrator may not contact the alleged victim before being released;

(b) the release conditions described in this section and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the

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offense for which the alleged perpetrator was arrested, unless:

(i) the alleged perpetrator enters into a jail release agreement to comply with the release conditions; or

(ii) the magistrate issues a jail release court order;

(c) notification of the penalties for violation of any jail release agreement or jail release court order; and

(d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.

~~[(12)]~~ (10) (a) A pretrial or sentencing protective order ~~[supersedes]~~ issued under this part supersedes a jail release agreement or jail release court order.

(b) If a court dismisses the charges for the qualifying offense that gave rise to a jail release agreement or jail release court order, the court shall dismiss the jail release agreement or jail release court order.

~~[(13)]~~ (11) This section does not apply if the individual arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.

Section ~~{61}~~ 63. Section **78B-7-803** is enacted to read:

### **78B-7-803. Pretrial protective orders.**

(1) (a) When a defendant is charged with a crime involving a qualifying offense, the court shall, at the time of the defendant's court appearance under Section 77-36-2.6:

(i) determine the necessity of imposing a pretrial protective order or other condition of pretrial release; and

(ii) state the court's findings and determination in writing.

(b) In any criminal case, the court may, during any court hearing where the defendant is present, issue a pretrial protective order, pending trial.

(2) A court may include any of the following provisions in a pretrial protective order:

(a) an order enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;

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

(c) an order removing and excluding the defendant from the victim's residence and the premises of the residence;

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(d) an order requiring the defendant to stay away from the victim's residence, school, or place of employment, and the premises of any of these, or any specified place frequented by the victim and any designated family member;

(e) an order for any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member;

(f) an order identifying and requiring an individual designated by the victim to communicate between the defendant and the victim if and to the extent necessary for family related matters;

(g) an order requiring the defendant to participate in an electronic or other type of monitoring program; and

(h) if the alleged victim and the defendant share custody of one or more minor children, an order for indirect or limited contact to temporarily facilitate parent visitation with a minor child.

(3) When issuing a pretrial protective order, the court shall determine whether to allow provisions for transfer of personal property to decrease the need for contact between the parties.

Section ~~62~~64. Section **78B-7-804** is enacted to read:

**78B-7-804. Sentencing and continuous protective orders for a domestic violence offense -- Modification.**

(1) Before a 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 condition probation or a plea in abeyance on the perpetrator's compliance with a sentencing protective order that includes:

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

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

(c) an order requiring the perpetrator to stay away from 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 household member;

(d) an order prohibiting the perpetrator from purchasing, using, or possessing a firearm

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or other specified weapon;

(e) an order directing the perpetrator to surrender any weapons the perpetrator owns or possesses; and

(f) an order imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) (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 issuance of continuous protective orders under this Subsection (3) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Title 77, Chapter 37, Victims' Rights, and Title 77, 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 (3)(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 (3) and may include:

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

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

(iii) an order 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;

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(iv) an order directing the perpetrator to pay restitution to the victim as may apply, and shall be enforced in accordance with Title 77, 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.

(4) A continuous protective order may be modified or dismissed only if the court determines by clear and convincing evidence that all requirements of Subsection (3) have been met and the victim does not have a reasonable fear of future harm or abuse.

(5) In addition to the process of issuing a continuous protective order described in Subsection (3), a district court may issue a continuous protective order at any time if the victim files a petition with the court, and after notice and hearing the court finds that a continuous protective order is necessary to protect the victim.

Section ~~{63}~~65. Section **78B-7-805** is enacted to read:

**78B-7-805. Sentencing protective orders and continuous protective orders for an offense that is not domestic violence -- Modification.**

(1) ~~{For}~~ **Before a perpetrator has been convicted of** an offense that is not domestic violence **is placed on probation**, the court may consider the safety and protection of the victim and any member of the victim's family or household ~~{ before placing the perpetrator on probation}~~.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with a sentencing protective order that includes:

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

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

(c) an order requiring the perpetrator to stay away from 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 household member;

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

(e) an order directing the perpetrator to surrender any weapons the perpetrator owns or possesses; and

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(f) an order imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

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

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

(ii) If the perpetrator requests a hearing under this Subsection (3), the court shall hold the hearing at the time determined by the court and the continuous protective order shall be in effect while the hearing is being scheduled and while the hearing is pending.

(c) A continuous protective order is permanent in accordance with this Subsection (3)(c) and may include any order described in Subsection 78B-7-804(3)(c).

(4) A continuous protective order issued under this section may be modified or dismissed only in accordance with Subsection 78B-7-804(4).

(5) In addition to the process of issuing a continuous protective order described in Subsection (3)(a), a district court may issue a continuous protective order at any time in accordance with Subsection 78B-7-804(5).

Section ~~64~~66. Section **78B-7-806** is enacted to read:

### **78B-7-806. Penalties.**

(1) (a) A violation of Subsection 78B-7-802(1) is a class B misdemeanor.

(b) An individual who knowingly violates a jail release court order or jail release agreement executed under Subsection 78B-7-802(2) is guilty of:

(i) a third degree felony, if the original arrest was for a felony; or

(ii) a class A misdemeanor, if the original arrest was for a misdemeanor.

(2) A violation of pretrial protective order issued under this part is:

(a) a third degree felony, if the original arrest or subsequent charge filed is a felony; or

(b) a class A misdemeanor, if the original arrest or subsequent charge filed is a misdemeanor.

(3) A violation of a sentencing protective order and of a continuous protective order issued under this part is:

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(a) a third degree felony, if the conviction was a felony; or

(b) a class A misdemeanor, if the conviction was a misdemeanor.

Section ~~65~~67. Section 78B-7-807 is enacted to read:

### **78B-7-807. Notice to victims.**

(1) (a) The court shall provide the victim with a certified copy of any pretrial protective order that has been issued if the victim can be located with reasonable effort.

(b) If the court is unable to locate the victim, the court shall provide the victim's certified copy to the prosecutor.

(c) A sentencing protective order or continuous protective order issued under this part shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(2) (a) Adult Probation and Parole, or another provider, shall immediately report to the court and notify the victim of any violation of any sentencing protective order issued under this part.

(b) Notification of the victim under Subsection (2)(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.

(3) (a) Before release of an individual who is subject to a continuous protective order issued under this part, the victim shall receive notice of the imminent release by the law enforcement agency that is releasing the individual 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 individual 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 punishable as described in Section 78B-7-806.

(4) The court shall transmit a dismissal, termination, and expiration of a pretrial protective order, sentencing protective order, or a continuous protective order to the statewide domestic violence network described in Section 78B-7-113.

Section ~~66~~68. Section 78B-7-901 is enacted to read:

### **Part 9. Criminal Stalking Injunctions**

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### **78B-7-901. Definitions.**

As used in this part:

(1) "Conviction" means:

(a) a verdict or conviction;

(b) a plea of guilty or guilty and mentally ill;

(c) a plea of no contest; or

(d) the acceptance by the court of a plea in abeyance.

(2) "Immediate family" means the same as that term is defined in Section 76-5-106.5.

Section ~~{67}~~69. Section **78B-7-902** is enacted to read:

### **78B-7-902. Permanent criminal stalking injunction -- Modification.**

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

(i) a conviction for:

(A) stalking; or

(B) attempt to commit stalking; or

(ii) a plea to any of the offenses described in Subsection (1)(a)(i) accepted by the court and held in abeyance for a period of time.

(b) (i) The district court shall issue a permanent criminal stalking injunction at the time of conviction.

(ii) The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (1)(b), the court shall hold the hearing at the time of the conviction unless the victim requests otherwise, or for good cause.

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

(2) The court shall issue a permanent criminal stalking injunction granting the following relief where appropriate:

(a) an order:

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



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(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (4), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (3), likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

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

(3) (a) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children.

(b) If the court issues a permanent criminal stalking injunction, but declines to address custody and parent-time issues, a copy of the permanent criminal stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and the court may modify the injunction to balance the parties' custody and parent-time rights.

(4) Except as provided in Subsection (3), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

Section ~~{68}~~70. Section **78B-7-903** is enacted to read:

### **78B-7-903. Penalties.**

(1) A violation of a permanent criminal stalking injunction issued under this part is a third degree felony in accordance with Subsection 76-5-106.5(7).

(2) A violation of a permanent criminal stalking injunction issued under this part may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

Section ~~{69}~~71. Section **78B-7-904** is enacted to read:

### **78B-7-904. Notice to victims.**

(1) The court shall send notice of permanent criminal stalking injunctions issued under

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this part to the statewide warrants network or similar system, including the statewide domestic violence network described in Section 78B-7-113.

(2) A permanent criminal stalking injunction issued under this part has effect statewide.

Section ~~{70}~~72. Section **78B-19-107** is amended to read:

### **78B-19-107. Emergency orders.**

During a collaborative law process, a court may issue emergency orders, including protective orders in accordance with Title 78B, Chapter 7, Part [1, ~~Cohabitant Abuse Act~~] 6, Cohabitant Abuse Protective Orders, or Part 2, Child Protective Orders, to protect the health, safety, welfare, or interest of a party or member of a party's household.

Section ~~{71}~~73. **Repealer.**

This bill repeals:

Section **77-3a-102, Fees -- Service of process.**

Section **78B-7-114, Authority to prosecute class A misdemeanor violations.**

Section **78B-7-401, Title.**

Section **78B-7-406, Fees -- Service of process.**

Section **78B-7-501, Title.**

Section **78B-7-507, Fees -- Forms.**

Section ~~{72}~~74. **Effective date.**

This bill takes effect on July 1, 2020.

**Section 75. Coordinating H.B. 403 with H.B. 206 -- Changing terminology.**

If this H.B. 403 and H.B. 206, Bail and Pretrial Release Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, change the terminology in Subsection 77-20-1(4)(d)(ii) of H.B. 403 from "bail" to "pretrial release".