

**CRIMINAL PROTECTIVE ORDER AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

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

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**LONG TITLE****General Description:**

This bill modifies provisions related to criminal protective orders.

**Highlighted Provisions:**

This bill:

- ▶ modifies definitions;
- ▶ allows a victim to request a hearing regarding a continuous protective order for domestic violence;
- ▶ requires notice to be provided to a victim or perpetrator for a hearing regarding a continuous protective order; and
- ▶ includes criminal protective order hearings as "important criminal justice hearings."

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-38-2**, as last amended by Laws of Utah 1997, Chapter 103**78B-7-804**, as last amended by Laws of Utah 2021, Chapters 159, 260 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 159

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

Section 1. Section **77-38-2** is amended to read:

**77-38-2. Definitions.**

For the purposes of this chapter and the Utah Constitution:

(1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or disparage.

(2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

(3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.

(4) "Harassment" means treating the crime victim in a persistently annoying manner.

(5) "Important criminal justice hearings" or "important juvenile justice hearings" means the following proceedings in felony criminal cases or cases involving a minor's conduct which would be a felony if committed by an adult:

(a) any preliminary hearing to determine probable cause;

(b) any court arraignment where practical;

(c) any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceeding to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;

(d) any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;

(e) any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or at a sidebar conference;

(f) any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant; ~~and~~

(g) any public hearing concerning whether to grant a defendant or minor parole or other form of discretionary release from confinement~~[-]; and~~

(h) a hearing regarding any criminal protective order described in Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

(6) "Reliable information" means information worthy of confidence, including any information whose use at sentencing is permitted by the United States Constitution.

(7) "Representative of a victim" means a person who is designated by the victim or designated by the court and who represents the victim in the best interests of the victim.

(8) "Respect" means treating the crime victim with regard and value.

(9) (a) "Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

(b) For purposes of the right to be present, "victim of a crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment.

(c) For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

Section 2. Section 78B-7-804 is amended to read:

**78B-7-804. Sentencing and continuous protective orders for a domestic violence offense -- Modification -- Expiration.**

(1) Before a perpetrator who has been convicted of or adjudicated for 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 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 or adjudicated for 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) Except as provided in Subsection (6), 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 and the victim of the right to request a hearing.

(ii) If the perpetrator or the victim requests a hearing under this Subsection (3)(c), the court shall:

(A) provide notice to each party; and

(B) hold the hearing at the time determined by the court.

(iii) The continuous protective order shall be in effect while the hearing is being

121 scheduled and while the hearing is pending.

122 (d) A continuous protective order is permanent in accordance with this Subsection (3)  
123 and may include:

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

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

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

131 (iv) an order directing the perpetrator to pay restitution to the victim as may apply, and  
132 shall be enforced in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act; and

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

135 (4) A continuous protective order may be modified or dismissed only if the court  
136 determines by clear and convincing evidence that all requirements of Subsection (3) have been  
137 met and the victim does not have a reasonable fear of future harm or abuse.

138 (5) Except as provided in Subsection (6), in addition to the process of issuing a  
139 continuous protective order described in Subsection (3), a district court may issue a continuous  
140 protective order at any time if the victim files a petition with the court, and after notice and  
141 hearing the court finds that a continuous protective order is necessary to protect the victim.

142 (6) (a) Unless the juvenile court transfers jurisdiction of the offense to the district court  
143 under Section 80-6-504, a continuous protective order may not be issued under this section  
144 against a perpetrator who is a minor.

145 (b) Unless the court sets an earlier date for expiration, a sentencing protective order  
146 issued under this section against a perpetrator who is a minor expires on the earlier of:

147 (i) the day on which the juvenile court terminates jurisdiction; or

148 (ii) in accordance with Section 80-6-807, the day on which the Division of Juvenile  
149 Justice Services discharges the perpetrator.