

**PROHIBITED PERSONS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Susan Duckworth**

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

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ requires a court to impose a protective order on a perpetrator of domestic violence as a condition of probation;
- ▶ prohibits the perpetrator from possessing a firearm under state and federal law;
- ▶ requires the Bureau of Criminal Identification to inform local law enforcement when a prohibited person attempts to purchase a weapon from a firearms dealer;
- ▶ enhances the level of offense for domestic violence when the perpetrator is in possession of a dangerous weapon; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



- 28 [76-10-526](#), as last amended by Laws of Utah 2018, Chapter 417
- 29 [77-36-1](#), as last amended by Laws of Utah 2018, Chapter 255
- 30 [77-36-1.1](#), as last amended by Laws of Utah 2015, Chapter 426
- 31 [77-36-5](#), as last amended by Laws of Utah 2017, Chapter 332
- 32 [77-36-5.1](#), as last amended by Laws of Utah 2018, Chapter 124
- 33 [78B-7-102](#), as last amended by Laws of Utah 2018, Chapter 255
- 34 [78B-7-105](#), as last amended by Laws of Utah 2018, Chapters 124 and 255
- 35 [78B-7-115](#), as last amended by Laws of Utah 2018, Chapter 255

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

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

39 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**  
 40 **Exemption for concealed firearm permit holders and law enforcement officers.**

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

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

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

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

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

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

55 (b) The form shall contain the following information:

- 56 (i) the dealer identification number;
- 57 (ii) the name and address of the individual receiving the firearm;
- 58 (iii) the date of birth, height, weight, eye color, and hair color of the individual

59 receiving the firearm; and

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

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

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

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

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

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

75 (b) inform the dealer that:

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

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

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

79 (d) provide a response to the requesting dealer during the call for a criminal  
80 background check, or by return call, or other electronic means, without delay, except in case of  
81 electronic failure or other circumstances beyond the control of the bureau, the bureau shall  
82 advise the dealer of the reason for the delay and give the dealer an estimate of the length of the  
83 delay.

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

88 (b) [~~However~~] Notwithstanding Subsection (8)(a), the bureau shall maintain a log of  
89 requests containing the dealer's federal firearms number, the transaction number, and the

90 transaction date for a period of 12 months.

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

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

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

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

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

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

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

112 (ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover  
113 the cost of administering and conducting the criminal history background check program.

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

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

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

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

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

128 Section 2. Section 77-36-1 is amended to read:

129 **77-36-1. Definitions.**

130 As used in this chapter:

- 131 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.  
 132 (2) "Department" means the Department of Public Safety.  
 133 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
 134 3, Divorce.  
 135 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
 136 involving violence or physical harm or threat of violence or physical harm, or any attempt,  
 137 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
 138 when committed by one cohabitant against another. "Domestic violence" or "domestic  
 139 violence offense" also means commission or attempt to commit, any of the following offenses  
 140 by one cohabitant against another:  
 141 (a) aggravated assault, as described in Section 76-5-103;  
 142 (b) assault, as described in Section 76-5-102;  
 143 (c) criminal homicide, as described in Section 76-5-201;  
 144 (d) harassment, as described in Section 76-5-106;  
 145 (e) electronic communication harassment, as described in Section 76-9-201;  
 146 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
 147 76-5-301, 76-5-301.1, and 76-5-302;  
 148 (g) mayhem, as described in Section 76-5-105;  
 149 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
 150 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;  
 151 (i) stalking, as described in Section 76-5-106.5;

- 152 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 153 [76-5-304](#);
- 154 (k) violation of a protective order or ex parte protective order, as described in Section
- 155 [76-5-108](#);
- 156 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 157 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
- 158 Part 3, Robbery;
- 159 (m) possession of a deadly weapon with criminal intent, as described in Section
- 160 [76-10-507](#);
- 161 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 162 person, building, or vehicle, as described in Section [76-10-508](#);
- 163 (o) disorderly conduct, as defined in Section [76-9-102](#), if a conviction of disorderly
- 164 conduct is the result of a plea agreement in which the defendant was originally charged with a
- 165 domestic violence offense otherwise described in this Subsection (4), except that a conviction
- 166 of disorderly conduct as a domestic violence offense, in the manner described in this
- 167 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
- 168 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
- 169 (p) child abuse, as described in Section [76-5-109.1](#);
- 170 (q) threatening use of a dangerous weapon, as described in Section [76-10-506](#);
- 171 (r) threatening violence, as described in Section [76-5-107](#);
- 172 (s) tampering with a witness, as described in Section [76-8-508](#);
- 173 (t) retaliation against a witness or victim, as described in Section [76-8-508.3](#);
- 174 (u) unlawful distribution of an intimate image, as described in Section [76-5b-203](#);
- 175 (v) sexual battery, as described in Section [76-9-702.1](#);
- 176 (w) voyeurism, as described in Section [76-9-702.7](#);
- 177 (x) damage to or interruption of a communication device, as described in Section
- 178 [76-6-108](#); or
- 179 (y) an offense described in Section [77-20-3.5](#).
- 180 (5) "Jail release agreement" means the same as that term is defined in Section
- 181 [77-20-3.5](#).
- 182 (6) "Jail release court order" means the same as that term is defined in Section

183 77-20-3.5.

184 (7) "Marital status" means married and living together, divorced, separated, or not  
185 married.

186 (8) "Married and living together" means a couple whose marriage was solemnized  
187 under Section 30-1-4 or 30-1-6 and who are living in the same residence.

188 (9) "Not married" means any living arrangement other than married and living together,  
189 divorced, or separated.

190 (10) "Protective order" includes an order issued under Subsection 77-36-5.1~~(6)~~(7).

191 (11) "Pretrial protective order" means a written order:

192 (a) specifying and limiting the contact a person who has been charged with a domestic  
193 violence offense may have with an alleged victim or other specified individuals; and

194 (b) specifying other conditions of release pursuant to Subsection 77-20-3.5(3),  
195 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

196 (12) "Sentencing protective order" means a written order of the court as part of  
197 sentencing in a domestic violence case that limits the contact a person who has been convicted  
198 of a domestic violence offense may have with a victim or other specified individuals pursuant  
199 to Sections 77-36-5 and 77-36-5.1.

200 (13) "Separated" means a couple who have had their marriage solemnized under  
201 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

202 (14) "Victim" means a cohabitant who has been subjected to domestic violence.

203 Section 3. Section 77-36-1.1 is amended to read:

204 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**  
205 **offenses.**

206 (1) For purposes of this section, "qualifying domestic violence offense" means:

207 (a) a domestic violence offense in Utah; or

208 (b) an offense in any other state, or in any district, possession, or territory of the United  
209 States, that would be a domestic violence offense under Utah law.

210 (2) A person who is convicted of a domestic violence offense is:

211 (a) guilty of a class B misdemeanor if:

212 (i) the domestic violence offense described in this Subsection (2) is designated by law  
213 as a class C misdemeanor; and

214 (ii) (A) the domestic violence offense described in this Subsection (2) is committed  
215 within five years after the person is convicted of a qualifying domestic violence offense; or

216 (B) the person is convicted of the domestic violence offense described in this  
217 Subsection (2) within five years after the person is convicted of a qualifying domestic violence  
218 offense;

219 (b) guilty of a class A misdemeanor if:

220 (i) the domestic violence offense described in this Subsection (2) is designated by law  
221 as a class B misdemeanor; and

222 (ii) (A) the domestic violence offense described in this Subsection (2) is committed  
223 within five years after the person is convicted of a qualifying domestic violence offense; [~~or~~]

224 (B) the person is convicted of the domestic violence offense described in this  
225 Subsection (2) within five years after the person is convicted of a qualifying domestic violence  
226 offense; [~~or~~]

227 (C) the domestic violence was committed while the perpetrator was carrying a firearm  
228 or dangerous weapon as defined in Section 76-10-501; or

229 (D) a conviction for the domestic violence will subject the defendant to the  
230 prohibitions of 18 U.S.C. Sec. 922(g); or

231 (c) guilty of a felony of the third degree if:

232 (i) the domestic violence offense described in this Subsection (2) is designated by law  
233 as a class A misdemeanor; and

234 (ii) (A) the domestic violence offense described in this Subsection (2) is committed  
235 within five years after the person is convicted of a qualifying domestic violence offense; or

236 (B) the person is convicted of the domestic violence offense described in this  
237 Subsection (2) within five years after the person is convicted of a qualifying domestic violence  
238 offense.

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

240 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**  
241 **Counseling -- Cost assessed against defendant -- Sentencing protective order --**  
242 **Continuous protective order.**

243 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a  
244 condition of the sentence restricts the defendant's contact with the victim, a sentencing

245 protective order may be issued under Subsection 77-36-5.1[(2)](3) for the length of the  
246 defendant's probation or a continuous protective order may be issued under Subsection  
247 77-36-5.1[(6)](7).

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

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

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

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

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

260 (4) The court shall:

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

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

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

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

269 **77-36-5.1. Conditions of probation for person convicted of domestic violence**  
270 **offense -- Continuous protective orders.**

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

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

276 protective order:

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

279 (b) requiring the perpetrator to:

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

283 (ii) certify compliance with Subsection (2)(b)(i) by affidavit filed with the court within  
284 72 hours of the imposition of the court's order; and

285 (c) if a conviction in the case will subject the defendant to the prohibitions of 18  
286 U.S.C. Sec. 922(g), notifying the perpetrator that the perpetrator is subject to 18 U.S.C. Sec.  
287 922(g) and may not:

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

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

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

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

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

298 (c) requiring the perpetrator to stay away from the victim's residence, school, place of  
299 employment, and the premises of any of these, or a specified place frequented regularly by the  
300 victim or any designated family or household member;

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

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

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

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

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

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

314           ~~[(3)]~~ (4) The perpetrator is responsible for the costs of any condition of probation,  
315 according to the perpetrator's ability to pay.

316           ~~[(4)]~~ (5) (a) Adult Probation and Parole, or other provider, shall immediately report to  
317 the court and notify the victim of any offense involving domestic violence committed by the  
318 perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and  
319 any violation of any sentencing criminal protective order issued by the court.

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

323           ~~[(5)]~~ (6) The court shall transmit all dismissals, terminations, and expirations of  
324 pretrial and sentencing criminal protective orders issued by the court to the statewide domestic  
325 violence network.

326           ~~[(6)]~~ (7) (a) Because of the serious, unique, and highly traumatic nature of domestic  
327 violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased  
328 risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of  
329 domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the  
330 issuance of continuous protective orders under this Subsection ~~[(6)]~~ (7) because of the need to  
331 provide ongoing protection for the victim and to be consistent with the purposes of protecting  
332 victims' rights under Chapter 37, Victims' Rights, and Chapter 38, Rights of Crime Victims  
333 Act, and Article I, Section 28 of the Utah Constitution.

334           (b) If a perpetrator is convicted of a domestic violence offense resulting in a sentence  
335 of imprisonment, including jail, that is to be served after conviction, the court shall issue a  
336 continuous protective order at the time of the conviction or sentencing limiting the contact  
337 between the perpetrator and the victim unless the court determines by clear and convincing

338 evidence that the victim does not a have a reasonable fear of future harm or abuse.

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

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

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

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

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

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

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

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

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

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

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

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

368 [~~(7)~~] (8) (a) Before release of a person who is subject to a continuous protective order

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

372 (i) if the victim has provided the law enforcement agency contact information; and

373 (ii) in accordance with Section 64-13-14.7, if applicable.

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

379 [~~(8)~~] (9) In addition to a protective order issued under this section, the court may issue  
380 a separate order relating to the transfer of a wireless telephone number in accordance with  
381 Section 77-36-5.3.

382 Section 6. Section 78B-7-102 is amended to read:

383 **78B-7-102. Definitions.**

384 As used in this chapter:

385 (1) "Abuse" means intentionally or knowingly causing or attempting to cause a  
386 cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear  
387 of imminent physical harm.

388 (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person  
389 who is 16 years of age or older who:

390 (a) is or was a spouse of the other party;

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

392 (c) is related by blood or marriage to the other party as the person's parent, grandparent,  
393 sibling, or any other person related to the person by consanguinity or affinity to the second  
394 degree;

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

396 (e) is the biological parent of the other party's unborn child;

397 (f) resides or has resided in the same residence as the other party; or

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

399 (3) Notwithstanding Subsection (2), "cohabitant" does not include:

400 (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or  
401 (b) the relationship between natural, adoptive, step, or foster siblings who are under 18  
402 years of age.

403 (4) "Court clerk" means a district court clerk.

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

405 (6) "Ex parte protective order" means an order issued without notice to the respondent  
406 in accordance with this chapter.

407 (7) "Foreign protection order" means the same as that term is defined in Section  
408 78B-7-302.

409 (8) "Law enforcement unit" or "law enforcement agency" means any public agency  
410 having general police power and charged with making arrests in connection with enforcement  
411 of the criminal statutes and ordinances of this state or any political subdivision.

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

414 (10) "Protective order" means:

415 (a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of  
416 which the petitioner and respondent have been given notice in accordance with this chapter; or

417 (b) an order issued under Subsection 77-36-5.1~~(6)~~(7).

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

419 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

420 (1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to  
421 persons seeking to proceed under this chapter.

422 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for  
423 petitions and orders for protection in accordance with the provisions of this chapter. That  
424 office shall provide the forms to the clerk of each court authorized to issue protective orders.  
425 The forms shall include:

426 (i) a statement notifying the petitioner for an ex parte protective order that knowing  
427 falsification of any statement or information provided for the purpose of obtaining a protective  
428 order may subject the petitioner to felony prosecution;

429 (ii) a separate portion of the form for those provisions, the violation of which is a  
430 criminal offense, and a separate portion for those provisions, the violation of which is a civil

431 violation, as provided in Subsection 78B-7-106(6);

432 (iii) language in the criminal provision portion stating violation of any criminal  
433 provision is a class A misdemeanor, and language in the civil portion stating violation of or  
434 failure to comply with a civil provision is subject to contempt proceedings;

435 (iv) a space for information the petitioner is able to provide to facilitate identification  
436 of the respondent, such as social security number, driver license number, date of birth, address,  
437 telephone number, and physical description;

438 (v) a space for the petitioner to request a specific period of time for the civil provisions  
439 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for  
440 the requested extension of the length of time beyond 150 days;

441 (vi) a statement advising the petitioner that when a minor child is included in an ex  
442 parte protective order or a protective order, as part of either the criminal or the civil portion of  
443 the order, the petitioner may provide a copy of the order to the principal of the school where the  
444 child attends;

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

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

451 (A) the case name;

452 (B) the file number;

453 (C) the county and state of the proceeding; and

454 (D) the judge's name.

455 (2) If the person seeking to proceed under this chapter is not represented by an  
456 attorney, it is the responsibility of the court clerk's office to provide:

457 (a) the forms adopted pursuant to Subsection (1);

458 (b) all other forms required to petition for an order for protection including, but not  
459 limited to, forms for service;

460 (c) clerical assistance in filling out the forms and filing the petition, in accordance with  
461 Subsection (1)(a), except that a court clerk's office may designate any other entity, agency, or

462 person to provide that service, but the court clerk's office is responsible to see that the service is  
463 provided;

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

465 (e) a list of legal service organizations that may represent the petitioner in an action  
466 brought under this chapter, together with the telephone numbers of those organizations; and

467 (f) written information regarding the procedure for transporting a jailed or imprisoned  
468 respondent to the protective order hearing, including an explanation of the use of transportation  
469 order forms when necessary.

470 (3) A court clerk, constable, or law enforcement agency may not impose a charge for:

471 (a) filing a petition under this chapter;

472 (b) obtaining an ex parte protective order;

473 (c) obtaining copies, either certified or not certified, necessary for service or delivery to  
474 law enforcement officials; or

475 (d) fees for service of a petition, ex parte protective order, or protective order.

476 (4) A petition for an order of protection shall be in writing and verified.

477 (5) (a) An order for protection shall be issued in the form adopted by the Administrative  
478 Office of the Courts pursuant to Subsection (1).

479 (b) A protective order issued, except orders issued ex parte, shall include the following  
480 language:

481 "Respondent was afforded both notice and opportunity to be heard in the hearing that  
482 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,  
483 108 Stat. 1796, 18 U.S.C. Sec. 2265, this order is valid in all the United States, the District of  
484 Columbia, tribal lands, and United States territories. This order complies with the Uniform  
485 Interstate Enforcement of Domestic Violence Protection Orders Act."

486 (c) A protective order issued in accordance with this part, including protective orders  
487 issued ex parte and except for a continuous protective order issued under Subsection

488 [77-36-5.1](#)~~(6)~~(7), shall include the following language:

489 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after  
490 one year if it finds that the basis for the issuance of the protective order no longer exists and the  
491 petitioner has repeatedly acted in contravention of the protective order provisions to  
492 intentionally or knowingly induce the respondent to violate the protective order, demonstrating

493 to the court that the petitioner no longer has a reasonable fear of the respondent."

494 Section 8. Section **78B-7-115** is amended to read:

495 **78B-7-115. Dismissal of protective order -- Expiration.**

496 (1) Except as provided in Subsections (6) and (8), a protective order that has been in  
497 effect for at least two years may be dismissed if the court determines that the petitioner no  
498 longer has a reasonable fear of future harm or abuse. In determining whether the petitioner no  
499 longer has a reasonable fear of future harm or abuse, the court shall consider the following  
500 factors:

501 (a) whether the respondent has complied with treatment recommendations related to  
502 domestic violence, entered at the time the protective order was entered;

503 (b) whether the protective order was violated during the time it was in force;

504 (c) claims of harassment, abuse, or violence by either party during the time the  
505 protective order was in force;

506 (d) counseling or therapy undertaken by either party;

507 (e) impact on the well-being of any minor children of the parties, if relevant; and

508 (f) any other factors the court considers relevant to the case before it.

509 (2) Except as provided in Subsections (6) and (8), the court may amend or dismiss a  
510 protective order issued in accordance with this part that has been in effect for at least one year  
511 if it finds that:

512 (a) the basis for the issuance of the protective order no longer exists;

513 (b) the petitioner has repeatedly acted in contravention of the protective order  
514 provisions to intentionally or knowingly induce the respondent to violate the protective order;

515 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable  
516 fear of the respondent; and

517 (d) the respondent has not been convicted of a protective order violation or any crime  
518 of violence subsequent to the issuance of the protective order, and there are no unresolved  
519 charges involving violent conduct still on file with the court.

520 (3) The court shall enter sanctions against either party if the court determines that  
521 either party acted:

522 (a) in bad faith; or

523 (b) with intent to harass or intimidate either party.

524 (4) Notice of a motion to dismiss a protective order shall be made by personal service  
525 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil  
526 Procedure.

527 (5) Except as provided in Subsection (8), if a divorce proceeding is pending between  
528 parties to a protective order action, the protective order shall be dismissed when the court  
529 issues a decree of divorce for the parties if:

530 (a) the respondent files a motion to dismiss a protective order in both the divorce  
531 action and the protective order action and personally serves the petitioner; and

532 (b) (i) the parties stipulate in writing or on the record to dismiss the protective order; or

533 (ii) based on evidence at the divorce trial, the court determines that the petitioner no  
534 longer has a reasonable fear of future harm or abuse after considering the factors listed in  
535 Subsections (1)(a) through (f).

536 (6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a  
537 protective order that has been entered under this chapter concerning a petitioner and a  
538 respondent who are divorced shall automatically expire, subject to Subsection (6)(b), 10 years  
539 from the day on which the protective order is entered.

540 (b) The protective order shall automatically expire, as described in Subsection (6)(a),  
541 unless the petitioner files a motion before expiration of the protective order and demonstrates  
542 that:

543 (i) the petitioner has a reasonable fear of future harm or abuse, as described in  
544 Subsection (1); or

545 (ii) the respondent has been convicted of a protective order violation or any crime of  
546 domestic violence subsequent to the issuance of the protective order.

547 (c) If the court grants the motion under Subsection (6)(b), the court shall set a new date  
548 on which the protective order expires. The protective order will expire unless the petitioner  
549 files a motion described in Subsection (6)(b) to extend the protective order.

550 (7) When the court dismisses a protective order, the court shall immediately:

551 (a) issue an order of dismissal to be filed in the protective order action; and

552 (b) transmit a copy of the order of dismissal to the statewide domestic violence  
553 network as described in Section [78B-7-113](#).

554 (8) Notwithstanding the other provisions of this section, a continuous protective order

555 may not be modified or dismissed except as provided in Subsection [77-36-5.1](#)~~(6)~~(7).