

DATING VIOLENCE PROTECTION ACT

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: Curtis S. Bramble

LONG TITLE**Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill provides for the issuance, modification, and enforcement of protective orders between individuals who are, or have been, in a dating relationship.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for the issuance, modification, and enforcement of protective orders between parties who are, or who have been, in a dating relationship when:
 - the parties are emancipated or 18 years of age or older;
 - the parties are, or have been, in a dating relationship with each other; and
 - a party commits abuse or dating violence against the other party;
- ▶ describes the restrictions that a court may include in a protective order; and
- ▶ describes the conditions that may be placed on an alleged perpetrator of dating violence in a protective order.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

ENACTS:

78B-7-401, Utah Code Annotated 1953

78B-7-402, Utah Code Annotated 1953

78B-7-403, Utah Code Annotated 1953

78B-7-404, Utah Code Annotated 1953

78B-7-405, Utah Code Annotated 1953

78B-7-406, Utah Code Annotated 1953

78B-7-407, Utah Code Annotated 1953

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

Section 1. Section 78B-7-401 is enacted to read:

Part 4. Dating Violence Protection Act

78B-7-401. Title.

↔ (1) ↔ This part is known as the "Dating Violence Protection Act."

↔ (2) This part is not related to marriage. ↔

Section 2. Section 78B-7-402 is enacted to read:

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:

(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 ~~the~~ , including communications indicating that the parties intended to begin a dating relationship ~~the~~ ;

(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) "Dating violence protective order" means an order issued pursuant to this part subsequent to a hearing on the petition, as described in Section 78B-7-403.

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

(7) "Protective order" means:

(a) a dating violence protective order; or

(b) an ex parte dating violence protective order.

Section 3. Section **78B-7-403** is enacted to read:

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

(1) A person may seek a protective order if the person is subjected to, or there is a

substantial likelihood the person will be subjected to:

(a) abuse by a dating partner of the person; or

(b) dating violence by a dating partner of the person.

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

(3) A person seeking a protective order may include another party in the petition for a protective order if:

(a) the person seeking the order meets the requirements of Subsection (1); and

(b) the other party:

(i) is a family or household member of the person 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.

(4) A person 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 may not seek a protective order against an intimate partner, as defined by federal law in Title 18 U.S.C. Section ~~931~~ 921 ~~←H~~, of the person under this part.

(b) A person may seek a protective order against ~~H~~→ a cohabitant, as defined by Section 78B-7-102, or ~~←H~~ an intimate partner, as defined by federal law, of the person under title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

Section 4. Section 78B-7-404 is enacted to read:

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

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

(a) without notice, immediately issue an ex parte dating violence protective order against the dating partner or modify an existing dating protect 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 ~~H~~→ **district** ~~←H~~ 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 ~~H~~→ **[firearm or other]** ~~←H~~ weapon specified by the court.

(4) If the petitioner or designated family or household member attends the same school as the respondent, or is employed at the same place of employment as the respondent, the ~~H~~→ **district** ~~←H~~ 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 ~~H~~→ ~~district~~ ~~←H~~ 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 ~~H~~→ [there is clear and convincing] the petitioner establishes:

(i) by a preponderance of the ~~←H~~ evidence that the respondent has committed abuse or dating violence against the petitioner ~~H~~→ [:] ; 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. ~~←H~~

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

(7) After the ~~H~~→ ~~district~~ ~~←H~~ court issues a dating violence protective order, the ~~H~~→ ~~district~~ ~~←H~~ court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts at the hearing to ensure that the dating violence protective order is understood by the petitioner and the respondent, if present;

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

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

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

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

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

(b) This section does not prohibit another law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that, under the circumstances, providing service of process on the

181 respondent is in the best interests of the petitioner.

182 (9) When a protective order is served on a respondent in jail, or other holding facility,

the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(10) A ~~the~~ **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 5. Section **78B-7-405** is enacted to read:

78B-7-405. Hearings on ex parte dating violence protective orders.

(1) (a) Within 20 days after the day on which the court issues an ex parte protective order, the ~~the~~ **district** court shall set a date for a hearing on the petition.

(b) If, at the hearing described in Subsection (1)(a), the ~~the~~ **district** court does not issue a dating

violence protective order, the ex parte dating protective order shall expire, unless it is extended by the ~~the~~ **district** 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; or

(iii) exigent circumstances exist.

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

(d) If, at the hearing described in Subsection (1)(a), the ~~the~~ **district** court issues a dating violence

protective order, the ex parte 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 after the day on which the petition 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 ~~H→ district ←H~~ court may grant any of the relief permitted

under Section 78B-7-404, except the ~~H→ district ←H~~ 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 ~~H→ district ←H~~ 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 ~~H→ district ←H~~ court shall, upon the

petitioner's request:

(a) set the matter for hearing; and

(b) notify and serve the respondent.

Section 6. Section **78B-7-406** is enacted to read:

78B-7-406. Fees -- Service of process.

(1) Protective orders issued under this part shall be served by the sheriff's office, constable's office, or any law enforcement agency or peace officer, in accordance with Subsection 78B-7-404(8).

(2) Fees may not be imposed by a court clerk, sheriff, constable, or law enforcement agency for:

(a) filing a petition under this part;

(b) obtaining a protective order under this part; or

(c) service of a protective order issued under this part.

~~H→~~ (3)(a) **The offices of the court clerk shall provide forms and nonlegal assistance to an individual seeking to proceed under this part.**

(b) The Administrative Office of the Courts shall:

(i) develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter; and

(ii) provide the forms described in Subsection(3)(b)(i) to the clerk of each court authorized to issue protective orders.

(c) The forms described in Subsection(3)(b)(i) shall include:

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

(ii) language stating violating of any criminal provision is a class B misdemeanor; and
(iii) a space for any information the petitioner is able to provide to facilitate
identification of the respondent, including Social Security number, driver license number, date
of birth, address, telephone number, and physical description.

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

(a) the forms adopted pursuant to Subsection (3);

(b) all other forms required to petition for an order for protection, including forms for
service;

(c) except for as provided by Subsection (5), clerical assistance in filling out the forms
and filing the petition, in accordance with Subsection (3)(a);

(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 part, with the phone numbers of those organizations; and

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

(5) A court clerk's office may designate any other entity, agency, or individual to
provide the service described in Subsection (4)(c), but the court clerk's office is responsible
to see that the service is provided.

(6) A petition for a dating violence protective order or ex parte dating violence
protective order shall be in writing and verified.

(7)(a) All protective orders issued under this part shall be issued in the form
adopted by the Administrative Office of the Courts under Section (3)(b).

(b) Each protective order issued under this part, except orders issued ex parte, shall
include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that
gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108
Stat. 1796, 18 U.S.C.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." ←H

Section 7. Section **78B-7-407** is enacted to read:

78B-7-407. Enforcement.

(1) A law enforcement officer shall, without a warrant, arrest a person if the officer has

236 probable cause to believe that the person has ~~H~~→ intentionally or knowingly ←~~H~~ violated a
236a protective order issued under this part,
237 regardless of whether the violation occurred in the presence of the officer.
238 (2) A violation of a protective order issued under this part constitutes a class B
239 misdemeanor.

Legislative Review Note
as of 11-7-12 5:08 PM

Office of Legislative Research and General Counsel