

**Representative Ben C. Ferry** proposes the following substitute bill:

**PROTECTIVE ORDER AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

**This act enacts a new chapter in the Judicial Code regarding child protective orders. It provides for the filing of a petition, notice to the parties, appointment of a guardian ad litem, and hearings. Provision is also made for the review or expiration of the order. The act also requires that the order be entered into the statewide domestic violence network.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**30-6-1**, as last amended by Chapter 9, Laws of Utah 2001

**30-6-2**, as last amended by Chapter 244, Laws of Utah 1996

**30-6-3**, as last amended by Chapter 300, Laws of Utah 1995

**30-6-4.2**, as last amended by Chapter 255, Laws of Utah 2001

**62A-4a-412**, as last amended by Chapter 283, Laws of Utah 2002

**76-5-108**, as last amended by Chapter 246, Laws of Utah 1999

**77-36-2.1**, as last amended by Chapter 13, Laws of Utah 1998

**77-36-2.4**, as last amended by Chapter 246, Laws of Utah 1999

**77-36-2.5**, as renumbered and amended by Chapter 300, Laws of Utah 1995

**77-36-2.6**, as last amended by Chapter 244, Laws of Utah 1996

**77-36-5**, as last amended by Chapter 47, Laws of Utah 2002

**78-3a-104**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

**78-3a-105**, as last amended by Chapters 213 and 255, Laws of Utah 2001

**78-3a-118**, as last amended by Chapters 2 and 8, Laws of Utah 2002, Fifth Special

Session

26           **78-3a-305**, as last amended by Chapter 274, Laws of Utah 1998

27   ENACTS:

28           **30-6-15**, Utah Code Annotated 1953

29           **78-3h-101**, Utah Code Annotated 1953

30           **78-3h-102**, Utah Code Annotated 1953

31           **78-3h-103**, Utah Code Annotated 1953

32           **78-3h-104**, Utah Code Annotated 1953

33           **78-3h-105**, Utah Code Annotated 1953

34           **78-3h-106**, Utah Code Annotated 1953

35           **78-3h-107**, Utah Code Annotated 1953

36   REPEALS:

37           **30-6-4.8**, as enacted by Chapter 252, Laws of Utah 1995

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

39           Section 1. Section **30-6-1** is amended to read:

40           **30-6-1. Definitions.**

41           As used in this chapter:

42           (1) "Abuse" means intentionally or knowingly causing or attempting to cause[;] a  
43           cohabitant physical harm or intentionally or knowingly [~~causing to an adult or minor physical~~  
44           ~~harm or intentionally placing another~~] placing a cohabitant in reasonable fear of imminent  
45           physical harm.

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

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

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

50           (c) is related by blood or marriage to the other party;

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

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

53           (f) resides or has resided in the same residence as the other party.

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

55           (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

56           (b) the relationship between natural, adoptive, step, or foster siblings who are under 18

years of age.

(4) "Court clerk" means a district court clerk ~~[or juvenile court clerk]~~.

~~[(5)]~~ "Department" means the Department of Human Services.

~~[(6)]~~ (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

~~[(7)]~~ (6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

~~[(8)]~~ (7) "Foreign protective order" means a protective order issued by another state, territory, or possession of the United States, tribal lands of the United States, the Commonwealth of Puerto Rico, or the District of Columbia which shall be given full faith and credit in Utah, if the protective order is similar to a protective order issued in compliance with Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and includes the following requirements:

(a) the requirements of due process were met by the issuing court, including subject matter and personal jurisdiction;

(b) the respondent received reasonable notice; and

(c) the respondent had an opportunity for a hearing regarding the protective order.

~~[(9)]~~ (7) "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.

~~[(10)]~~ (8) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

~~[(11)]~~ (9) "Protective order" means ~~[a restraining]~~ an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner ~~[has]~~ and respondent have been given notice in accordance with this chapter.

Section 2. Section 30-6-2 is amended to read:

**30-6-2. Abuse or danger of abuse -- Protective orders.**

(1) Any ~~[cohabitant or any child residing with a]~~ cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood ~~[of immediate danger]~~ of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises

88 in an effort to avoid further abuse.

89 (2) [(a)] A petition for a protective order may be filed under this chapter regardless of  
90 whether an action for divorce between the parties is pending.

91 [(b) If a complaint for divorce has already been filed in district court, a petition under  
92 this chapter may be filed as part of the divorce proceedings.]

93 [(3) A cohabitant, the department, or any person or institution interested in a minor  
94 may seek a protective order on behalf of the minor under the circumstances described in  
95 Subsection (1), regardless of whether the minor could have filed a petition on his own behalf. If  
96 a cohabitant intends to seek a protective order on his own behalf and on behalf of a minor, a  
97 single petition may be filed.]

98 [(4) The court shall appoint a guardian ad litem to represent the minor if the court  
99 considers the appointment necessary for the welfare of the minor.]

100 [(5) The county attorney or district attorney, if appropriate, shall represent the  
101 department where the department appears as a petitioner.]

102 [(6)] (3) A petition seeking a protective order may not be withdrawn without approval  
103 of the court.

104 Section 3. Section 30-6-3 is amended to read:

105 **30-6-3. Venue of action.**

106 (1) The district court has jurisdiction of any action brought under this chapter. [The  
107 juvenile court has concurrent jurisdiction of an action brought under this chapter if a protective  
108 order is sought on behalf of a minor unless the petition is filed by a natural parent, adoptive  
109 parent, or step-parent of the minor against a natural parent, adoptive parent, or step-parent of  
110 the minor.]

111 (2) An action brought pursuant to this chapter shall be filed in the county where either  
112 party resides or in which the action complained of took place.

113 Section 4. Section 30-6-4.2 is amended to read:

114 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**  
115 **-- Service of process -- Duties of the court.**

116 (1) If it appears from a petition for an order for protection or a petition to modify an  
117 order for protection that domestic violence or abuse has occurred or a modification of an order  
118 for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it 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 or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;

(d) 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;

(e) 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;

(f) grant to the petitioner temporary custody of any minor children ~~[to]~~ of the ~~[petitioner]~~ parties;

(g) 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

(h) 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.

150 (3) A court may grant the following relief in an order for protection or a modification  
151 of an order after notice and hearing, whether or not the respondent appears:

152 (a) grant the relief described in Subsection (2); and

153 (b) specify arrangements for parent-time of any minor child by the respondent and  
154 require supervision of that parent-time by a third party or deny parent-time if necessary to  
155 protect the safety of the petitioner or child.

156 (4) Following the protective order hearing, the court shall:

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

158 (b) make reasonable efforts to ensure that the order for protection is understood by the  
159 petitioner, and the respondent, if present;

160 (c) transmit, by the end of the next business day after the order is issued, a copy of the  
161 order for protection to the local law enforcement agency or agencies designated by the  
162 petitioner; and

163 (d) transmit a copy of the order to the statewide domestic violence network described  
164 in Section 30-6-8.

165 (5) (a) Each protective order shall include two separate portions, one for provisions, the  
166 violation of which are criminal offenses, and one for provisions, the violation of which are civil  
167 violations, as follows:

168 (i) criminal offenses are those under Subsections (2)(a) through (e), and under  
169 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

170 (ii) civil offenses are those under Subsections (2)(f) through (h), and Subsection (3)(a)  
171 as it refers to Subsections (2)(f) through (h).

172 (b) The criminal provision portion shall include a statement that violation of any  
173 criminal provision is a class A misdemeanor.

174 (c) The civil provision portion shall include a notice that violation of or failure to  
175 comply with a civil provision is subject to contempt proceedings.

176 (6) The protective order shall include:

177 (a) a designation of a specific date, determined by the court, when the civil portion of  
178 the protective order either expires or is scheduled for review by the court, which date may not  
179 exceed 150 days after the date the order is issued, unless the court indicates on the record the  
180 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 three 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 three-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.

(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.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 30-6-8.

(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 possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(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.

(10) ~~[(a)]~~ A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except ~~[as limited under Subsection (10)(b). (b) Criminal]~~ that

the criminal provisions of a protective order may not be vacated within ~~three~~ two years of issuance unless the petitioner~~[-(i)]~~:

(a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

~~[(ii)]~~ (b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) 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 5. Section 30-6-15 is enacted to read:

**30-6-15. Dismissal of protective order when divorce is final.**

When a protective order exists and a divorce proceeding is pending between the same parties named in the protective order, the protective order shall be dismissed when the court issues a decree of divorce for the parties if the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing, and the court specifically finds that the order need not continue. If the court dismisses the protective order, the court shall immediately issue an order of dismissal to be filed in the protective order action and transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section 30-6-8.

Section 6. Section 62A-4a-412 is amended to read:

**62A-4a-412. Reports and information confidential.**

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;



(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; ~~and~~

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2)~~[-]; and~~

(l) a person filing a petition for a child protective order on behalf of a minor who is the subject of the report.

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Section 62A-4a-116.3, the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Section 7. 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 Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Court Act of 1996, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protective order as described in Section 30-6-12, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures 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 8. 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 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 ~~[for]~~ while the victim ~~[while he or she]~~ 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 ~~[to her]~~ under this chapter ~~[and]~~, Title 30, Chapter 6, Cohabitant Abuse Act, and Title 78, Chapter 3h, 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 ~~[district]~~ 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 Subsection 77-36-2.5(7).

Section 9. Section **77-36-2.4** is amended to read:

**77-36-2.4. Violation of protective orders -- Mandatory arrest.**

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

(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, 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 any protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, any child protective order or ex parte child protective order issued under Title 78, Chapter 3h, Child Protective Orders, or a foreign protective order enforceable under Section 30-6-12.

Section 10. Section **77-36-2.5** is amended to read:

**77-36-2.5. Conditions for release after arrest for domestic violence.**

(1) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release he is ordered by the court or agrees in writing that until the expiration of that time he will:

- (a) have no personal contact with the alleged victim;
- (b) not threaten or harass the alleged victim; and
- (c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(2) As a condition of release, the court may order the defendant to participate in an electronic monitoring program [~~described in Section 30-6-4.8;~~] and pay the costs associated with the program.

(3) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the requirements described in Subsection (1). Upon waiver, those requirements shall not apply to the alleged perpetrator.

(b) A court or magistrate may modify the requirements described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.

(4) (a) Whenever a person is released pursuant to Subsection (1), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make reasonable effort to notify the victim of that release.

(b) (i) When a person is released pursuant to Subsection (1) based on a written agreement, the releasing agency shall transmit that information to the statewide domestic

violenve network described in Section 30-6-8.

(ii) When a person is released pursuant to Subsection (1) based upon a court order, the court shall transmit that order to the statewide domestic violence network described in Section 30-6-8.

(c) This Subsection (4) 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.

(5) (a) If a law enforcement officer has probable cause to believe that a person has violated a court order or agreement executed pursuant to Subsection (1) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a court order or agreement executed pursuant to Subsection (1) shall be guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony;

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

(6) An individual who was originally arrested for a felony under this chapter and released pursuant to this section, may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(7) At the time an arrest for domestic violence is made, the arresting officer shall provide both the alleged victim and the alleged perpetrator with written notice containing the following information:

(a) the requirements described in Subsection (1), and notice that those requirements shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of the court order or any agreement executed under Subsection (1);

(c) the date and time, absent modification by a court or magistrate, that the requirements expire;

(d) the address of the appropriate court in the district or county in which the alleged victim resides;

(e) the availability and effect of any waiver of the requirements; and

(f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

(8) In addition to the provisions of Subsections (1) through (6), because of the unique and highly emotional 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 an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail. If bail is denied under this Subsection (8), it shall be under the terms and conditions described in Subsections (1) through (6).

Section 11. Section **77-36-2.6** is amended to read:

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

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

(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 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 determine the necessity of imposing a protective order or other condition of pretrial release including, but not limited to, participating in an electronic monitoring program [~~described in Section 30-6-4.8, in accordance with the provisions of that section~~], and shall state its findings and determination in writing.

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

Section 12. Section **77-36-5** is amended to read:

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

(1) When a defendant is found guilty of a crime and a condition of the sentence

restricts the defendant's contact with the victim, an order may be issued or, if one has already been issued, it may be extended for the length of the defendant's probation. The order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic monitoring program~~[as described in Section 30-6-4.8, in accordance with the provisions of that section]~~.

(3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim, as well as the costs for defendant's own counseling.

(4) The court shall:

(a) assess against the defendant, as restitution, any costs for services or treatment provided to the abused spouse 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 shall 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, unless the court finds that there is no licensed program reasonably available or that the treatment or therapy is not necessary.

Section 13. Section **78-3a-104** is amended to read:

**78-3a-104. 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 minor 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 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor [~~who is alleged to be an abused child or neglected child, except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor~~] pursuant to the provisions of Title 78, Chapter 3h, Child Protective Orders;

(e) [~~the determination of the custody of a minor or to appoint~~] 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;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

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

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Substance Abuse and Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-15-301;

(n) de novo review of final agency actions resulting from an informal adjudicative



proceeding as provided in Section 63-46b-15; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption, 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 minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic or boating offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic or boating offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving or Section 73-18-12, reckless operation;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5 or 73-18-20, fleeing a peace officer.

(3) The court also has jurisdiction over traffic and boating offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

~~[(4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and visitation certified to it by the district court pursuant to Section 78-3a-105.]~~

~~[(5)]~~ (4) The juvenile court has jurisdiction over an ungovernable or runaway minor 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 minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

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

(b) has run away from home.

~~[(6)]~~ (5) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

~~[(7)]~~ (6) The juvenile court has jurisdiction of all magistrate functions relative to cases

arising under Section 78-3a-602.

~~[(8)]~~ (7) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78-3a-320.

Section 14. Section **78-3a-105** is amended to read:

**78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act~~[-and]~~.

~~[(c) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor.]~~

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) ~~[(a)]~~ This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and parent-time of a minor upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

~~[(b) However, if a petition involving the same minor is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same minor, the district court shall certify the question of support, custody, and parent-time to the juvenile court for determination.]~~

~~[(4) When a question is certified to the juvenile court under Subsection (3), the findings and order of the juvenile court judge are the order of the district court.]~~

~~[(5)]~~ (4) (a) Where a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the

case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-104.

(b) The juvenile court may, by order, change the custody, support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

~~[(6)]~~ (c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section 78-3a-104.

Section 15. Section 78-3a-118 is amended to read:

**78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department

584 of the court, under the legal custody of:

585 (A) his parent or guardian;

586 (B) the Division of Youth Corrections; or

587 (C) the Division of Child and Family Services.

588 (iii) If the court orders probation or state supervision, the court shall direct that notice  
589 of its order be provided to designated persons in the local law enforcement agency and the  
590 school or transferee school, if applicable, which the minor attends. The designated persons  
591 may receive the information for purposes of the minor's supervision and student safety.

592 (iv) Any employee of the local law enforcement agency and the school which the  
593 minor attends who discloses the court's order of probation is not:

594 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in  
595 Section 63-30-4; and

596 (B) civilly or criminally liable except when the disclosure constitutes a knowing  
597 violation of Section 63-2-801.

598 (b) The court may place the minor in the legal custody of a relative or other suitable  
599 person, with or without probation or protective supervision, but the juvenile court may not  
600 assume the function of developing foster home services.

601 (c) (i) The court may:

602 (A) vest legal custody of the minor in the Division of Child and Family Services,  
603 Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

604 (B) order the Department of Human Services to provide dispositional  
605 recommendations and services.

606 (ii) For minors who may qualify for services from two or more divisions within the  
607 Department of Human Services, the court may vest legal custody with the department.

608 (iii) (A) Minors who are committed to the custody of the Division of Child and Family  
609 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,  
610 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title  
611 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

612 (B) Prior to the court entering an order to place a minor in the custody of the Division  
613 of Child and Family Services on grounds other than abuse or neglect, the court shall provide  
614 the division with notice of the hearing no later than five days before the time specified for the

615 hearing so the division may attend the hearing.

616 (C) Prior to committing a minor to the custody of the Division of Child and Family  
617 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
618 prevent the minor's removal from his home.

619 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure  
620 confinement.

621 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
622 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of  
623 Youth Corrections.

624 (e) The court may commit the minor, subject to the court retaining continuing  
625 jurisdiction over him, to the temporary custody of the Division of Youth Corrections for  
626 observation and evaluation for a period not to exceed 45 days, which period may be extended  
627 up to 15 days at the request of the director of the Division of Youth Corrections.

628 (f) (i) The court may commit the minor to a place of detention or an alternative to  
629 detention for a period not to exceed 30 days subject to the court retaining continuing  
630 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions  
631 ordered by the court.

632 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

633 (A) an act which if committed by an adult would be a criminal offense; or

634 (B) contempt of court under Section 78-3a-901.

635 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
636 the Division of Child and Family Services or any other appropriate person in accordance with  
637 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and  
638 Dependency Proceedings.

639 (h) The court may place the minor on a ranch or forestry camp, or similar facility for  
640 care and also for work, if possible, if the person, agency, or association operating the facility  
641 has been approved or has otherwise complied with all applicable state and local laws. A minor  
642 placed in a forestry camp or similar facility may be required to work on fire prevention,  
643 forestation and reforestation, recreational works, forest roads, and on other works on or off the  
644 grounds of the facility and may be paid wages, subject to the approval of and under conditions  
645 set by the court.

(i) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318 and impose fines in limited amounts. If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by Section 78-3a-506.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order

that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Substance Abuse and Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency[~~excluding cases arising under Subsection 78-3a-105(4)~~].

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority;

(B) are not subject to review under Section 78-3a-119; and

(C) may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the court to serve in the National



739 Guard in lieu of other sanctions, provided:

740 (a) the minor meets the current entrance qualifications for service in the National

741 Guard as determined by a recruiter, whose determination is final;

742 (b) the minor is not under the jurisdiction of the court for any act that:

743 (i) would be a felony if committed by an adult;

744 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

745 (iii) was committed with a weapon; and

746 (c) the court retains jurisdiction over the minor under conditions set by the court and

747 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

748 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of

749 the court as described in Subsection 53-10-403(3). The specimen shall be obtained by

750 designated employees of the court or, if the minor is in the legal custody of the Division of

751 Youth Corrections, then by designated employees of the division under Subsection

752 53-10-404(5)(b).

753 (b) The responsible agency shall ensure that employees designated to collect the saliva

754 DNA specimens receive appropriate training and that the specimens are obtained in accordance

755 with accepted protocol.

756 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA

757 Specimen Restricted Account created in Section 53-10-407.

758 (d) Payment of the reimbursement is second in priority to payments the minor is

759 ordered to make for restitution under this section and treatment under Section 78-3a-318.

760 Section 16. Section **78-3a-305** is amended to read:

761 **78-3a-305. Petition filed.**

762 (1) Any interested person may file a petition to commence proceedings in the juvenile

763 court alleging that a minor is abused, neglected, or dependent. The person shall first make a

764 referral with the division.

765 ~~[(2) Any interested person may file a petition seeking a protective order on behalf of a~~

766 ~~minor who is alleged to be an abused child or a neglected child, except as provided in Sections~~

767 ~~78-3a-104 and 78-3a-105.]~~

768 ~~[(3)]~~ (2) If the child who is the subject of a petition was removed from his home by the

769 Division of Child and Family Services that petition shall be filed on or before the date of the

initial shelter hearing described in Section 78-3a-306.

~~[(4)]~~ (3) The petition shall be verified, and contain all of the following:

(a) the name, age, and address, if any, of the minor upon whose behalf the petition is brought;

(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the minor;

(c) a concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is abused, neglected, or dependent; and

(d) a statement regarding whether the minor is in protective custody, and if so, the date and precise time the minor was taken into protective custody.

Section 17. Section **78-3h-101** is enacted to read:

### **CHAPTER 3h. CHILD PROTECTIVE ORDERS**

#### **78-3h-101. Definitions.**

As used in this chapter:

(1) "Court" means the juvenile court.

(2) "Division" means the Division of Child and Family Services.

Section 18. Section **78-3h-102** is enacted to read:

**78-3h-102. Petition -- Ex parte determination -- Guardian ad litem -- Referral to division.**

(1) Any interested person may file a petition for a protective order on behalf of a child who has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned. The petitioner shall first make a referral to the division.

(2) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned. If so, the court shall enter an ex parte child protective order.

(3) The court may appoint an attorney guardian ad litem for the child who is the subject of the petition.

Section 19. Section **78-3h-103** is enacted to read:

#### **78-3h-103. Hearing.**

(1) The court shall schedule a hearing within 20 days after the ex parte determination.

(2) The petitioner shall serve a copy of the petition, ex parte child protective order, and notice of hearing on the respondent, the minor's parent or guardian, and the guardian ad litem.

The notice shall contain:

(a) the name and address of the person to whom it is directed;

(b) the date, time, and place of the hearing;

(c) the name of the minor on whose behalf a petition is being brought; and

(d) a statement that a person 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 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 determines, based on a preponderance of the evidence, that the minor has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned, the court shall enter a child protective order. With the exception of the provisions of Section 78-3a-320, a child protective order does not constitute an adjudication of abuse, neglect, or dependency under Title 78, Chapter 3a, Part 3, Abuse Neglect and Dependency Proceedings.

Section 20. Section **78-3h-104** is enacted to read:

**78-3h-104. Content of order.**

(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:

(a) enjoin the respondent from threatening to commit or committing abuse or neglect of the minor;

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

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

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the minor, prohibit the respondent from purchasing, using, or

832 possessing a firearm or other specified weapon; and

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

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

838 (a) determine temporary custody of a minor who is the subject of the petition;

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

842 (c) determine support in accordance with Title 78, Chapter 45, Uniform Liability for  
843 Support Act; and

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

846 (3) A child protective order and an ex parte child protective order shall include:

847 (a) a statement that violation of a criminal provision is a class A misdemeanor and  
848 violation of a civil provision is contempt of court; and

849 (b) information the petitioner is able to provide to facilitate identification of the  
850 respondent, such as Social Security number, driver license number, date of birth, address,  
851 telephone number, and physical description.

852 (4) A child protective order shall include:

853 (a) a statement that:

854 (i) three years from entry of the order, the respondent may petition to dismiss the  
855 criminal portion of the order;

856 (ii) the petitioner should, within the 30 days prior to the end of the three-year period,  
857 advise the court of the petitioner's address for notice of any hearing; and

858 (iii) the address provided by the petitioner will not be made available to the  
859 respondent;

860 (b) the date when the civil portion of the order will expire or be reviewed; and

861 (c) the following statement: "Respondent was afforded notice and opportunity to be  
862 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."

Section 21. Section **78-3h-105** is enacted to read:

**78-3h-105. Service -- Income withholding -- Expiration.**

(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 a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section 30-6-8.

(3) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section 30-6-8 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.

(4) 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.

(5) 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.

(6) After notice and hearing a court may modify or vacate a child protective order without a showing of substantial and material change in circumstances, except that the criminal provisions of the child protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of Civil Procedure, and the petitioner personally appears 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.

(7) The civil provisions of the child protective order expire 150 days after the date of the pretrial hearing unless a different date is set by the court. The court may not set a date more than 150 days after the date of the pretrial hearing without a finding of good cause. The court may review and extend the expiration date, but may not extend it to more than 150 days after the date of the pretrial hearing without a finding of good cause. Any civil provision of the child protective order assimilated into the order remains effective until the minor is 18 years of age unless otherwise ordered by the court.

Section 22. Section **78-3h-106** is enacted to read:

**78-3h-106. Statewide domestic violence network.**

The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, shall post ex parte child protective orders, child protective orders, and any modifications to them on the statewide network established in Section 30-6-8.

Section 23. Section **78-3h-107** is enacted to read:

**78-3h-107. Forms and assistance -- No fees.**

(1) The Administrative Office of the Courts shall adopt and make available uniform forms for petitions and orders conforming to this part. The forms shall notify the petitioner that:

(a) a knowing falsehood in any statement under oath may subject the petitioner to felony prosecution;

(b) the petitioner may provide a copy of the order to the principal of the minor's school;  
and

(c) the petitioner may enforce a court order through the court if the respondent violates or fails to comply with a provision of the order.

(2) If the petitioner is not represented, the clerk of the court shall provide, directly or through an agent:

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

(b) clerical assistance in completing the forms and filing the petition;

(c) information regarding means for service of process;

925 (d) a list of organizations with telephone numbers that may represent the petitioner;

926 and

927 (e) information regarding the procedure for transporting a jailed or imprisoned

928 respondent to hearings, including transportation order forms when necessary.

929 (3) No fee may be imposed by a court, constable, or law enforcement agency for:

930 (a) filing a petition under this chapter;

931 (b) obtaining copies necessary for service or delivery to law enforcement officials; or

932 (c) service of a petition, ex parte child protective order, or child protective order.

933 **Section 24. Repealer.**

934 This act repeals:

935 **Section 30-6-4.8, Electronic monitoring of domestic violence offenders.**



## Fiscal Note

### SB0128 - Protective Order Amendments

**State Impact:**

Any additional effort required by this bill can be absorbed within existing budgets.

**Individual and Business Impact:**

No significant fiscal impact.

Office of the Legislative Fiscal Analyst  
1/29/2003 10:50:25 AM

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*Last Revised: 30 August, 2000*