

DATING VIOLENCE PROTECTION ACT

2013 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

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:

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **78B-7-401**, Utah Code Annotated 1953

34 **78B-7-402**, Utah Code Annotated 1953

35 **78B-7-403**, Utah Code Annotated 1953

36 **78B-7-404**, Utah Code Annotated 1953

37 **78B-7-405**, Utah Code Annotated 1953

38 **78B-7-406**, Utah Code Annotated 1953

39 **78B-7-407**, Utah Code Annotated 1953



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

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

43 **Part 4. Dating Violence Protection Act**

44 **78B-7-401. Title.**

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

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

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

48 **78B-7-402. Definitions.**

49 As used in this part:

50 (1) "Abuse" means intentionally or knowingly:

51 (a) causing or attempting to cause physical harm to a dating partner; or

52 (b) placing a dating partner in reasonable fear of imminent physical harm.

53 (2) (a) "Dating partner" means a person who:

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

55 Emancipation; or

56 (B) is 18 years of age or older; and
57 (ii) is, or has been, in a dating relationship with the other party.
58 (b) "Dating partner" does not include an intimate partner, as defined in federal law in
59 Title 18 U.S.C. Section 921.
60 (3) (a) "Dating relationship" means a social relationship of a romantic or intimate
61 nature, or a relationship which has romance or intimacy as a goal by one or both parties,
62 regardless of whether the relationship involves sexual intimacy.
63 (b) "Dating relationship" does not mean casual fraternization in a business,
64 educational, or social context.
65 (c) In determining, based on a totality of the circumstances, whether a dating
66 relationship exists:
67 (i) all relevant factors shall be considered, including:
68 (A) whether the parties developed interpersonal bonding above a mere casual
69 fraternization;
70 (B) the length of the parties' relationship;
71 (C) the nature and the frequency of the parties' interactions, including communications
72 indicating that the parties intended to begin a dating relationship;
73 (D) the ongoing expectations of the parties, individual or jointly, with respect to the
74 relationship;
75 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
76 relationship to others; and
77 (F) whether other reasons exist that support or detract from a finding that a dating
78 relationship exists; and
79 (ii) it is not necessary that all, or a particular number, of the factors described in
80 Subsection (3)(c)(i) are found to support the existence of a dating relationship.
81 (4) "Dating violence" means:
82 (a) any criminal offense involving violence or physical harm, or threat of violence or
83 physical harm, when committed by a person against a dating partner of the person; or

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

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

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

90 (7) "Protective order" means:

91 (a) a dating violence protective order; or

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

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

94 **78B-7-403. Abuse or danger of abuse -- Dating violence protective orders.**

95 (1) A person may seek a protective order if the person is subjected to, or there is a
96 substantial likelihood the person will be subjected to:

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

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

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

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

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

104 (b) the other party:

105 (i) is a family or household member of the person seeking the protective order; and

106 (ii) there is a substantial likelihood the other party will be subjected to abuse by the
107 dating partner of the person.

108 (4) A person seeking a protective order under this part shall, to the extent possible,
109 provide information to facilitate identification of the respondent, including a name, Social
110 Security number, driver license number, date of birth, address, telephone number, and physical
111 description.

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

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

116 (b) A person may seek a protective order against a cohabitant, as defined by section
117 78B-7-102, or an intimate partner, as defined by federal law, of the person under Title 78B,
118 Chapter 7, Part 1, Cohabitant Abuse Act.

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

120 **78B-7-404. Dating violence orders -- Ex parte dating violence protective orders --**
121 **Modification of orders -- Service of process -- Duties of the court.**

122 (1) If it appears from a petition for a protective order or a petition to modify an existing
123 protective order that a dating partner of the petitioner has abused or committed dating violence
124 against the petitioner, the district court may:

125 (a) without notice, immediately issue an ex parte dating violence protective order
126 against the dating partner or modify an existing dating protective order ex parte if necessary to
127 protect the petitioner and all parties named in the petition; or

128 (b) upon notice to the respondent, issue a dating violence protective order or modify a
129 dating violence protective order after a hearing, regardless of whether the respondent appears.

130 (2) A district court may grant the following relief without notice in a dating violence
131 protective order or a modification issued ex parte:

132 (a) prohibit the respondent from threatening to commit or committing dating violence
133 or abuse against the petitioner and any designated family or household member described in the
134 protective order;

135 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
136 with the petitioner or any designated family or household member, directly or indirectly;

137 (c) order that the respondent:

138 (i) is excluded and shall stay away from the petitioner's residence and its premises;

139 (ii) except as provided in Subsection (4), stay away from the petitioner's:

140 (A) school and the school's premises; and
141 (B) place of employment and its premises; and
142 (iii) stay away from any specified place frequented by the petitioner or any designated
143 family or household member;
144 (d) prohibit the respondent from being within a specified distance of the petitioner; and
145 (e) order any further relief that the court considers necessary to provide for the safety
146 and welfare of the petitioner and any designated family or household member.
147 (3) A court may grant the following relief in a dating violence protective order or a
148 modification of a dating violence protective order, after notice and a hearing, regardless of
149 whether the respondent appears:
150 (a) the relief described in Subsection (2); and
151 (b) except as provided in Subsection (5), upon finding that the respondent's use or
152 possession of a weapon poses a serious threat of harm to the petitioner or any designated family
153 or household member, prohibit the respondent from purchasing, using, or possessing a weapon
154 specified by the court.
155 (4) If the petitioner or designated family or household member attends the same school
156 as the respondent, or is employed at the same place of employment as the respondent, the
157 district court:
158 (a) may not enter an order under Subsection (2)(c)(ii) that excludes the respondent
159 from the respondent's school or place of employment; and
160 (b) may enter an order governing the respondent's conduct at the respondent's school or
161 place of employment.
162 (5) The district court may not prohibit the respondent from possessing a firearm:
163 (a) if the respondent has not been given notice of the petition for a protective order and
164 an opportunity to be heard; and
165 (b) unless the petition establishes:
166 (i) by a preponderance of the evidence that the respondent has committed abuse or
167 dating violence against the petitioner; and

168 (ii) by clear and convincing evidence that the respondent's use or possession of a
169 firearm poses a serious threat of harm to petitioner or the designated family or household
170 member.

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

173 (7) After the district court issues a dating violence protective order, the district court
174 shall:

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

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

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

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

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

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

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

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

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

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

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

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

198 (10) A district court may modify or vacate a protective order under this part after notice
199 and hearing, if the petitioner:

200 (a) is personally served with notice of the hearing, as provided in the Utah Rules of
201 Civil Procedure, and appears before the court to give specific consent to the modification or
202 vacation of the provisions of the protective order; or

203 (b) submits an affidavit agreeing to the modification or vacation of the provisions of
204 the protective order.

205 (11) To the extent that the provisions of this part are more specific than the Utah Rules
206 of Civil Procedure regarding protective orders, the provisions of this part govern.

207 Section 5. Section **78B-7-405** is enacted to read:

208 **78B-7-405. Hearings on ex parte dating violence protective orders.**

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

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

214 (i) the petitioner is unable to be present at the hearing;

215 (ii) the respondent has not been served; or

216 (iii) exigent circumstances exist.

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

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

222 (e) A dating violence protective order issued after notice and a hearing shall remain in
223 effect from 180 days after the day on which the petition is issued.

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

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

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

235 (a) set the matter for hearing; and

236 (b) notify and serve the respondent.

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

238 **78B-7-406. Fees -- Service of process.**

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

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

244 (a) filing a petition under this part;

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

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

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

249 (b) The Administrative Office of the Courts shall:

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

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

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

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

258 (ii) language stating violating of any criminal provision is a class B misdemeanor; and

259 (iii) a space for any information the petitioner is able to provide to facilitate
260 identification of the respondent, including Social Security number, driver license number, date
261 of birth, address, telephone number, and physical description.

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

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

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

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

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

270 (e) a list of legal service organizations that may represent the petitioner in an action
271 brought under this part, with the phone numbers of those organizations; and

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

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

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

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

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

284 "Respondent was afforded both notice and opportunity to be heard in the hearing that
285 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
286 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
287 Columbia, tribal lands, and United States territories. This order complies with the Uniform
288 Interstate Enforcement of Domestic Violence Protection Orders Act."

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

290 **78B-7-407. Enforcement.**

291 (1) A law enforcement officer shall, without a warrant, arrest a person if the officer has
292 probable cause to believe that the person has intentionally or knowingly violated a protective
293 order issued under this part, regardless of whether the violation occurred in the presence of the
294 officer.

295 (2) A violation of a protective order issued under this part constitutes a class B
296 misdemeanor.