

DATING VIOLENCE PROTECTION ACT

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

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



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **78B-7-401**, Utah Code Annotated 1953

31 **78B-7-402**, Utah Code Annotated 1953

32 **78B-7-403**, Utah Code Annotated 1953

33 **78B-7-404**, Utah Code Annotated 1953

34 **78B-7-405**, Utah Code Annotated 1953

35 **78B-7-406**, Utah Code Annotated 1953

36 **78B-7-407**, Utah Code Annotated 1953



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

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

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

41 **78B-7-401. Title.**

42 This part is known as the "Dating Violence Protection Act."

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

44 **78B-7-402. Definitions.**

45 As used in this part:

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

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

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

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

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

51 Emancipation; or

52 (B) is 18 years of age or older; and

53 (ii) is, or has been, in a dating relationship with the other party.

54 (b) "Dating partner" does not include an intimate partner, as defined in federal law in

55 Title 18 U.S.C. Section 921.

56 (3) (a) "Dating relationship" means a social relationship of a romantic or intimate

57 nature, regardless of whether the relationship involves sexual intimacy.

58 (b) "Dating relationship" does not mean casual fraternization in a business,

59 educational, or social context.

60 (c) In determining, based on a totality of the circumstances, whether a dating
61 relationship exists:

62 (i) all relevant factors shall be considered, including:

63 (A) whether the parties developed interpersonal bonding above a mere casual
64 fraternization;

65 (B) the length of the parties' relationship;

66 (C) the nature and the frequency of the parties' interactions;

67 (D) the ongoing expectations of the parties, individual or jointly, with respect to the
68 relationship;

69 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
70 relationship to others; and

71 (F) whether other reasons exist that support or detract from a finding that a dating
72 relationship exists; and

73 (ii) it is not necessary that all, or a particular number, of the factors described in
74 Subsection (3)(c)(i) are found to support the existence of a dating relationship.

75 (4) "Dating violence" means:

76 (a) any criminal offense involving violence or physical harm, or threat of violence or
77 physical harm, when committed by a person against a dating partner of the person; or

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

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

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

84 (7) "Protective order" means:

85 (a) a dating violence protective order; or

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

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

88 **78B-7-403. Abuse or danger of abuse -- Dating violence protective orders.**

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

90 substantial likelihood the person will be subjected to:

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

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

93 (2) A person may seek an order described in Subsection (1) whether or not the person

94 has taken other action to end the relationship.

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

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

98 (b) the other party:

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

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

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

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

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

110 (b) A person may seek a protective order against an intimate partner, as defined by
111 federal law, of the person under title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

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

113 **78B-7-404. Dating violence orders -- Ex parte dating violence protective orders --**
114 **Modification of orders -- Service of process -- Duties of the court.**

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

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

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

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

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

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

130 (c) order that the respondent:

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

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

133 (A) school and the school's premises; and

134 (B) place of employment and its premises; and

135 (iii) stay away from any specified place frequented by the petitioner or any designated
136 family or household member;

137 (d) prohibit the respondent from being within a specified distance of the petitioner; and

138 (e) order any further relief that the court considers necessary to provide for the safety
139 and welfare of the petitioner and any designated family or household member.

140 (3) A court may grant the following relief in a dating violence protective order or a
141 modification of a dating violence protective order, after notice and a hearing, regardless of
142 whether the respondent appears:

143 (a) the relief described in Subsection (2); and

144 (b) except as provided in Subsection (5), upon finding that the respondent's use or
145 possession of a weapon poses a serious threat of harm to the petitioner or any designated family
146 or household member, prohibit the respondent from purchasing, using, or possessing a firearm
147 or other weapon specified by the court.

148 (4) If the petitioner or designated family or household member attends the same school
149 as the respondent, or is employed at the same place of employment as the respondent, the court:

150 (a) may not enter an order under Subsection (2)(c)(ii) that excludes the respondent
151 from the respondent's school or place of employment; and

152 (b) may enter an order governing the respondent's conduct at the respondent's school or
153 place of employment.

154 (5) The court may not prohibit the respondent from possessing a firearm:

155 (a) if the respondent has not been given notice of the petition for a protective order and
156 an opportunity to be heard; and

157 (b) unless there is clear and convincing evidence that the respondent has committed
158 abuse or dating violence against the petitioner.

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

161 (7) After the court issues a dating violence protective order, the court shall:

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

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

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

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

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

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

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

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

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

180 (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,

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

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

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

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

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

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

195 **78B-7-405. Hearings on ex parte dating violence protective orders.**

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

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

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

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

203 (iii) exigent circumstances exist.

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

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

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

211 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or
212 respondent may file an objection within 10 calendar days after the day on which the
213 recommended order is entered, and the assigned judge shall hold a hearing on the objection

214 within 20 days after the day on which the objection is filed.

215 (2) Upon a hearing under this section, the court may grant any of the relief permitted
216 under Section 78B-7-404, except the court shall not grant the relief described in Subsection
217 78B-7-404(3)(b) without providing the respondent notice and an opportunity to be heard.

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

221 (a) set the matter for hearing; and

222 (b) notify and serve the respondent.

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

224 **78B-7-406. Fees -- Service of process.**

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

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

230 (a) filing a petition under this part;

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

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

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

234 **78B-7-407. Enforcement.**

235 (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 violated a 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