

CRIMINAL PROTECTIVE ORDER AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Stephanie Pitcher

LONG TITLE

General Description:

This bill modifies provisions related to criminal protective orders.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ allows a victim to request a hearing regarding a continuous protective order for domestic violence;
- ▶ requires notice to be provided to a victim for a hearing regarding a continuous protective order; and
- ▶ includes criminal protective order hearings as "important criminal justice hearings."

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- [77-38-2](#), as last amended by Laws of Utah 1997, Chapter 103
- [77-38-3](#), as last amended by Laws of Utah 2022, Chapters 133, 430
- [77-38-4](#), as last amended by Laws of Utah 2011, Chapter 28
- [78B-7-804](#), as last amended by Laws of Utah 2021, Chapters 159, 260 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 159

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

31 Section 1. Section **77-38-2** is amended to read:

32 **77-38-2. Definitions.**

33 For the purposes of this chapter and the Utah Constitution:

34 (1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or
35 disparage.

36 (2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

37 (3) "Fairness" means treating the crime victim reasonably, even-handedly, and
38 impartially.

39 (4) "Harassment" means treating the crime victim in a persistently annoying manner.

40 (5) "Important criminal justice hearings" or "important juvenile justice hearings" means
41 the following proceedings in felony criminal cases or cases involving a minor's conduct which
42 would be a felony if committed by an adult:

43 (a) any preliminary hearing to determine probable cause;

44 (b) any court arraignment where practical;

45 (c) any court proceeding involving the disposition of charges against a defendant or
46 minor or the delay of a previously scheduled trial date but not including any unanticipated
47 proceeding to take an admission or a plea of guilty as charged to all charges previously filed or
48 any plea taken at an initial appearance;

49 (d) any court proceeding to determine whether to release a defendant or minor and, if
50 so, under what conditions release may occur, excluding any such release determination made at
51 an initial appearance;

52 (e) any criminal or delinquency trial, excluding any actions at the trial that a court
53 might take in camera, in chambers, or at a sidebar conference;

54 (f) any court proceeding to determine the disposition of a minor or sentence, fine, or
55 restitution of a defendant or to modify any disposition of a minor or sentence, fine, or
56 restitution of a defendant; [~~and~~]

57 (g) a hearing regarding any criminal protective order described in Title 78B, Chapter 7,

58 Part 8, Criminal Protective Orders; and

59 ~~[(g)]~~ (h) any public hearing concerning whether to grant a defendant or minor parole or
60 other form of discretionary release from confinement.

61 (6) "Reliable information" means information worthy of confidence, including any
62 information whose use at sentencing is permitted by the United States Constitution.

63 (7) "Representative of a victim" means a person who is designated by the victim or
64 designated by the court and who represents the victim in the best interests of the victim.

65 (8) "Respect" means treating the crime victim with regard and value.

66 (9) (a) "Victim of a crime" means any natural person against whom the charged crime
67 or conduct is alleged to have been perpetrated or attempted by the defendant or minor
68 personally or as a party to the offense or conduct or, in the discretion of the court, against
69 whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural
70 person is the accused or appears to be accountable or otherwise criminally responsible for or
71 criminally involved in the crime or conduct or a crime or act arising from the same conduct,
72 criminal episode, or plan as the crime is defined under the laws of this state.

73 (b) For purposes of the right to be present, "victim of a crime" does not mean any
74 person who is in custody as a pretrial detainee, as a prisoner following conviction for an
75 offense, or as a juvenile who has committed an act that would be an offense if committed by an
76 adult, or who is in custody for mental or psychological treatment.

77 (c) For purposes of the right to be present and heard at a public hearing as provided in
78 Subsection ~~[77-38-2(5)(g)]~~ [77-38-2\(5\)\(h\)](#) and the right to notice as provided in Subsection
79 [77-38-3\(7\)\(a\)](#), "victim of a crime" includes any victim originally named in the allegation of
80 criminal conduct who is not a victim of the offense to which the defendant entered a negotiated
81 plea of guilty.

82 Section 2. Section **77-38-3** is amended to read:

83 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
84 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**
85 **order.**

86 (1) Within seven days after the day on which felony criminal charges are filed against a
87 defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and
88 locatable victims of the crime contained in the charges, except as otherwise provided in this
89 chapter.

90 (2) The initial notice to the victim of a crime shall provide information about electing
91 to receive notice of subsequent important criminal justice hearings listed in Subsections
92 77-38-2(5)(a) through [(f)] (g) and rights under this chapter.

93 (3) The prosecuting agency shall provide notice to a victim of a crime:

94 (a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a)
95 through [(f)] (g), which the victim has requested; and

96 (b) for a restitution request to be submitted in accordance with Section 77-38b-202.

97 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
98 in any reasonable manner, including telephonically, electronically, orally, or by means of a
99 letter or form prepared for this purpose.

100 (b) In the event of an unforeseen important criminal justice hearing, [~~listed~~] described
101 in Subsections 77-38-2(5)(a) through [(f)] (g) for which a victim has requested notice, a good
102 faith attempt to contact the victim by telephone shall be considered sufficient notice, provided
103 that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

104 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
105 for the proceedings provided in Subsections 77-38-2(5)(a) through [(f)] (g) permit an
106 opportunity for victims of crimes to be notified.

107 (b) The court shall consider whether any notification system that the court might use to
108 provide notice of judicial proceedings to defendants could be used to provide notice of judicial
109 proceedings to victims of crimes.

110 (6) A defendant or, if it is the moving party, the Division of Adult Probation and
111 Parole, shall give notice to the responsible prosecuting agency of any motion for modification
112 of any determination made at any of the important criminal justice hearings provided in
113 Subsections 77-38-2(5)(a) through [(f)] (g) in advance of any requested court hearing or action

114 so that the prosecuting agency may comply with the prosecuting agency's notification
115 obligation.

116 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
117 Parole for the important criminal justice hearing under Subsection [~~77-38-2(5)(g)~~]
118 77-38-2(5)(h).

119 (b) The board may provide notice in any reasonable manner, including telephonically,
120 electronically, orally, or by means of a letter or form prepared for this purpose.

121 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
122 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
123 [~~(f)~~] (g) only where the victim has responded to the initial notice, requested notice of
124 subsequent proceedings, and provided a current address and telephone number if applicable.

125 (9) To facilitate the payment of restitution and the notice of hearings regarding
126 restitution, a victim who seeks restitution and notice of restitution hearings shall provide the
127 court with the victim's current address and telephone number.

128 (10) (a) Law enforcement and criminal justice agencies shall refer any requests for
129 notice or information about crime victim rights from victims to the responsible prosecuting
130 agency.

131 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
132 prosecuting agency shall forward any request for notice the prosecuting agency has received
133 from a victim to the Board of Pardons and Parole.

134 (11) In all cases where the number of victims exceeds 10, the responsible prosecuting
135 agency may send any notices required under this chapter in the prosecuting agency's discretion
136 to a representative sample of the victims.

137 (12) (a) A victim's address, telephone number, and victim impact statement maintained
138 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
139 Services, Department of Corrections, Utah State Courts, and Board of Pardons and Parole, for
140 purposes of providing notice under this section, are classified as protected under Subsection
141 63G-2-305(10).

142 (b) The victim's address, telephone number, and victim impact statement is available
143 only to the following persons or entities in the performance of their duties:

- 144 (i) a law enforcement agency, including the prosecuting agency;
- 145 (ii) a victims' right committee as provided in Section 77-37-5;
- 146 (iii) a governmentally sponsored victim or witness program;
- 147 (iv) the Department of Corrections;
- 148 (v) the Utah Office for Victims of Crime;
- 149 (vi) the Commission on Criminal and Juvenile Justice;
- 150 (vii) the Utah State Courts; and
- 151 (viii) the Board of Pardons and Parole.

152 (13) The notice provisions as provided in this section do not apply to misdemeanors as
153 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
154 77-38-2.

155 (14) (a) When a defendant is charged with a felony crime under Sections 76-5-301
156 through 76-5-310.1 regarding kidnapping, human trafficking, and human smuggling; Sections
157 76-5-401 through 76-5-413.2 regarding sexual offenses; or Section 76-10-1306 regarding
158 aggravated exploitation of prostitution, the court may, during any court hearing where the
159 defendant is present, issue a pretrial criminal no contact order:

- 160 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
161 communicating with the victim directly or through a third party;
- 162 (ii) ordering the defendant to stay away from the residence, school, place of
163 employment of the victim, and the premises of any of these, or any specified place frequented
164 by the victim or any designated family member of the victim directly or through a third party;
165 and
- 166 (iii) ordering any other relief that the court considers necessary to protect and provide
167 for the safety of the victim and any designated family or household member of the victim.

168 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a
169 third degree felony.

170 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no
171 contact order that has been issued if the victim can be located with reasonable effort.

172 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide
173 domestic violence network in accordance with Section 78B-7-113.

174 (15) (a) When a case involving a victim may resolve before trial with a plea deal, the
175 prosecutor shall notify the victim of that possibility as soon as practicable.

176 (b) Upon the request of a victim described in Subsection (15)(a), the prosecutor shall
177 explain the available details of an anticipated plea deal.

178 Section 3. Section 77-38-4 is amended to read:

179 **77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal --**
180 **Control of disruptive acts or irrelevant statements -- Statements from persons in custody.**

181 (1) The victim of a crime, the representative of the victim, or both shall have the right:

182 (a) to be present at the important criminal or juvenile justice hearings provided in
183 Subsection 77-38-2(5);

184 (b) to be heard at the important criminal or juvenile justice hearings provided in
185 Subsections 77-38-2(5)(b), (c), (d), (f), [~~and (g)~~] (g), and (h);

186 (c) to submit a written statement in any action on appeal related to that crime; and

187 (d) upon request to the judge hearing the matter, to be present and heard at the initial
188 appearance of the person suspected of committing the conduct or criminal offense against the
189 victim on issues relating to whether to release a defendant or minor and, if so, under what
190 conditions release may occur.

191 (2) This chapter shall not confer any right to the victim of a crime to be heard:

192 (a) at any criminal trial, including the sentencing phase of a capital trial under Section
193 76-3-207 or at any preliminary hearing, unless called as a witness; and

194 (b) at any delinquency trial or at any preliminary hearing in a minor's case, unless
195 called as a witness.

196 (3) The right of a victim or representative of a victim to be present at trial is subject to
197 Rule 615 of the Utah Rules of Evidence.

198 (4) Nothing in this chapter shall deprive the court of the right to prevent or punish
199 disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

200 (5) The court shall have the right to limit any victim's statement to matters that are
201 relevant to the proceeding.

202 (6) In all cases where the number of victims exceeds five, the court may limit the
203 in-court oral statements it receives from victims in its discretion to a few representative
204 statements.

205 (7) Except as otherwise provided in this section, a victim's right to be heard may be
206 exercised at the victim's discretion in any appropriate fashion, including an oral, written,
207 audiotaped, or videotaped statement or direct or indirect information that has been provided to
208 be included in any presentence report.

209 (8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a
210 prisoner following conviction for an offense, or as a juvenile who has committed an act that
211 would be an offense if committed by an adult, or who is in custody for mental or psychological
212 treatment, the right to be heard under this chapter shall be exercised by submitting a written
213 statement to the court.

214 (9) The court may exclude any oral statement from a victim on the grounds of the
215 victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

216 (10) Except in juvenile court cases, the Constitution may not be construed as limiting
217 the existing rights of the prosecution to introduce evidence in support of a capital sentence.

218 Section 4. Section **78B-7-804** is amended to read:

219 **78B-7-804. Sentencing and continuous protective orders for a domestic violence**
220 **offense -- Modification -- Expiration.**

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

224 (2) The court may condition probation or a plea in abeyance on the perpetrator's
225 compliance with a sentencing protective order that includes:

226 (a) an order enjoining the perpetrator from threatening to commit or committing acts of
227 domestic violence against the victim or other family or household member;

228 (b) an order prohibiting the perpetrator from harassing, telephoning, contacting, or
229 otherwise communicating with the victim, directly or indirectly;

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

233 (d) an order prohibiting the perpetrator from purchasing, using, or possessing a firearm
234 or other specified weapon;

235 (e) an order directing the perpetrator to surrender any weapons the perpetrator owns or
236 possesses; and

237 (f) an order imposing any other condition necessary to protect the victim and any other
238 designated family or household member or to rehabilitate the perpetrator.

239 (3) (a) Because of the serious, unique, and highly traumatic nature of domestic violence
240 crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of
241 continued acts of violence subsequent to the release of a perpetrator who is convicted of or
242 adjudicated for domestic violence, it is the finding of the Legislature that domestic violence
243 crimes warrant the issuance of continuous protective orders under this Subsection (3) because
244 of the need to provide ongoing protection for the victim and to be consistent with the purposes
245 of protecting victims' rights under Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter
246 38, Rights of Crime Victims Act, and Article I, Section 28 of the Utah Constitution.

247 (b) Except as provided in Subsection (6), if a perpetrator is convicted of a domestic
248 violence offense resulting in a sentence of imprisonment, including jail, that is to be served
249 after conviction, the court shall issue a continuous protective order at the time of the conviction
250 or sentencing limiting the contact between the perpetrator and the victim unless:

251 (i) the court determines by clear and convincing evidence that the victim does not a
252 have a reasonable fear of future harm or abuse[-]; and

253 (ii) the court conducts a hearing.

254 (c) (i) The court shall notify the perpetrator of the right to request a hearing.
255 (ii) A victim has a right to request a hearing.
256 [~~(i)~~] (iii) If the perpetrator or the victim requests a hearing under this Subsection
257 (3)(c), the court shall hold the hearing at the time determined by the court.
258 (iv) The continuous protective order shall be in effect while the hearing is being
259 scheduled and while the hearing is pending.
260 (v) A prosecutor shall use reasonable efforts to notify a victim of a hearing described in
261 Subsection (3)(b)(ii).
262 (d) A continuous protective order is permanent in accordance with this Subsection (3)
263 and may include:
264 (i) an order enjoining the perpetrator from threatening to commit or committing acts of
265 domestic violence against the victim or other family or household member;
266 (ii) an order prohibiting the perpetrator from harassing, telephoning, contacting, or
267 otherwise communicating with the victim, directly or indirectly;
268 (iii) an order prohibiting the perpetrator from going to the victim's residence, school,
269 place of employment, and the premises of any of these, or a specified place frequented
270 regularly by the victim or any designated family or other household member;
271 (iv) an order directing the perpetrator to pay restitution to the victim as may apply, and
272 shall be enforced in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act; and
273 (v) any other order the court considers necessary to fully protect the victim and
274 members of the victim's family or other household member.
275 (4) A continuous protective order may be modified or dismissed only if the court
276 determines by clear and convincing evidence that all requirements of Subsection (3) have been
277 met and the victim does not have a reasonable fear of future harm or abuse.
278 (5) Except as provided in Subsection (6), in addition to the process of issuing a
279 continuous protective order described in Subsection (3), a district court may issue a continuous
280 protective order at any time if the victim files a petition with the court, and after notice and
281 hearing the court finds that a continuous protective order is necessary to protect the victim.

282 (6) (a) Unless the juvenile court transfers jurisdiction of the offense to the district court
283 under Section 80-6-504, a continuous protective order may not be issued under this section
284 against a perpetrator who is a minor.

285 (b) Unless the court sets an earlier date for expiration, a sentencing protective order
286 issued under this section against a perpetrator who is a minor expires on the earlier of:

287 (i) the day on which the juvenile court terminates jurisdiction; or

288 (ii) in accordance with Section 80-6-807, the day on which the Division of Juvenile
289 Justice Services discharges the perpetrator.