

DOMESTIC VIOLENCE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies provisions relating to a domestic violence protective order.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to dismissal and expiration of a domestic violence protective order; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-115, as last amended by Laws of Utah 2018, Chapter 255

78B-7-115.5, as enacted by Laws of Utah 2018, Chapter 255

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

Section 1. Section **78B-7-115** is amended to read:

78B-7-115. Dismissal of protective order -- Expiration.

(1) (a) Except as provided in Subsections (6) and (8), a protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future harm ~~[or]~~, abuse, or domestic violence.

(b) In determining whether the petitioner no longer has a reasonable fear of future harm [or], abuse, or domestic violence, the court shall consider the following factors:

(i) whether the respondent ~~[has complied]~~ is compliant with treatment recommendations related to domestic violence, entered at the time the protective order was entered;

(ii) whether the protective order was violated during the time ~~[it]~~ the protective order was in force;

(iii) claims of harassment, abuse, or violence by either party during the time the protective order was in force;

(iv) counseling or therapy undertaken by either party;

(v) impact on the well-being of any minor children of the parties, if relevant; and

(vi) any other factors the court considers relevant to the case before ~~[it]~~ the court.

(2) Except as provided in Subsections (6) and (8), the court may amend or dismiss a protective order issued in accordance with this part that has been in effect for at least one year if ~~[it]~~ the court finds that:

(a) the basis for the issuance of the protective order no longer exists;

(b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;

(c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable fear of the respondent; and

(d) the respondent has not been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order, and there are no unresolved charges involving violent conduct still on file with the court.

(3) The court shall enter sanctions against either party if the court determines that either party acted:

(a) in bad faith; or

(b) with intent to harass or intimidate ~~[either]~~ the other party.

(4) Notice of a motion to dismiss a protective order shall be made by personal service

on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil Procedure.

(5) Except as provided in Subsection (8), if a divorce proceeding is pending between parties to a protective order action, the protective order shall be dismissed when the court issues a decree of divorce for the parties if:

(a) the respondent files a motion to dismiss a protective order in both the divorce action and the protective order action and personally serves the petitioner; and

(b) (i) the parties stipulate in writing or on the record to dismiss the protective order; or
(ii) based on evidence at the divorce trial, the court determines that the petitioner no longer has a reasonable fear of future harm ~~[or]~~, abuse, or domestic violence after considering the factors listed in ~~[Subsections (1)(a) through (f)]~~ Subsection (1).

(6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a protective order that ~~[has been]~~ is entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to Subsection (6)(b), 10 years ~~[from]~~ after the day on which the protective order is entered.

(b) The protective order shall automatically expire, as described in Subsection (6)(a), unless the petitioner files a motion before expiration of the protective order and demonstrates that:

(i) the petitioner has a reasonable fear of future harm ~~[or]~~, abuse, or domestic violence, as described in Subsection (1); or

(ii) the respondent ~~[has been]~~ committed or was convicted of a protective order violation or ~~[any crime of domestic violence]~~ a qualifying domestic violence offense, as defined in Section 77-36-1.1, subsequent to the issuance of the protective order.

(c) (i) If the court grants the motion under Subsection (6)(b), the court shall set a new date on which the protective order expires.

(ii) The protective order will expire on the date set by the court unless the petitioner files a motion described in Subsection (6)(b) to extend the protective order.

(7) When the court dismisses a protective order, the court shall immediately:

(a) issue an order of dismissal to be filed in the protective order action; and
(b) transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section 78B-7-113.

(8) Notwithstanding the other provisions of this section, a continuous protective order may not be modified or dismissed except as provided in Subsection 77-36-5.1(6).

Section 2. Section 78B-7-115.5 is amended to read:

78B-7-115.5. Expiration of protective order.

(1) Subject to the other provisions of this section, a civil protective order issued under this part automatically expires 10 years ~~[from]~~ after the day on which the protective order is entered.

(2) The protective order automatically expires as described in Subsection (1), unless the petitioner files a motion before ~~[expiration of the]~~ the day on which the protective order expires and demonstrates that:

(a) the petitioner has a current reasonable fear of future harm ~~[or]~~, abuse, or domestic violence, as described in Subsection 78B-7-115(1); or

(b) the respondent ~~[has been]~~ committed or was convicted of a protective order violation or ~~[any crime of domestic violence]~~ a qualifying domestic violence offense, as defined in Section 77-36-1.1, subsequent to the issuance of the protective order.

(3) (a) If the court grants the motion under Subsection (2), the court shall set a new date on which the protective order expires.

(b) The protective order will expire on the date set by the court unless the petitioner files a motion described in Subsection (2) to extend the protective order.