

CLEAR AS MUD:



NAVIGATING THE CONFUSING WATERS OF ORDERS OF PROTECTION

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HB 403 – THE JOURNEY CONTINUES

PURPOSE:

1. CREATE EASIER ACCESS TO LOCATE AND UNDERSTAND ORDERS OF PROTECTION FOR ALL WHO MAY NEED IT
2. CREATE UNIFORMITY, WHERE POSSIBLE, BETWEEN ORDERS AVAILABLE TO SURVIVORS OF CRIME

THIS MEANS ALL THE CONFUSION WILL BE IN ONE PLACE

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78b-7 PROTECTIVE ORDERS AND STALKING INJUNCTIONS

- Part 1: General Provisions: (i.e. def'n, mutual PO, full faith and credit, LEO duties)
- Part 2: Child Protective Orders
- Part 3: Uniform Interstate Enforcement of DV Protection Orders Act
- Part 4: Dating Violence Protective Orders
- Part 5: Sexual Violence Protective Orders
- Part 6: Cohabitant Abuse Protective Orders
- Part 7: Civil Stalking Injunctions
- Part 8: Criminal Protective Orders (includes JRA/JRO)
- Part 9: Criminal Stalking Injunctions

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ORDERS OF PROTECTION - Changes are not retroactive			
ORDERS	ISSUED BY:	DURATION	POSSIBLE EXTENSION?
Jail Release Agreement (JRA) §78B-7-801,802	Jail staff prior to release or LEO upon arrest if not booked into jail	The earlier of (1) midnight of scheduled court appearance OR (2) 30 days from arrest	Can be extended by a Judge in the form of Jail Release Court Order (JRC)
Pretrial Criminal PO §78B-7-803	Judge	While case is filed, until sentence is imposed	Terminates at sentencing
Sentencing Criminal PO §78B-7-803	Judge	For period designated or case is closed	Terminates as ordered or case is closed
Continuous PO §78B-7-804(3)	Judge, upon DV or criminal conviction	Permanent	Permanent
Civil Stalking Injunction §78B-7-701 (initiated through ex parte/ temporary order)	Judge	3 years from issuance of ex parte/temporary order OR from the hearing (not all CSI go to hearing)	No
Criminal Stalking Injunction §78-5-106.5	Judge, upon stalking attempted conviction	Permanent	Permanent
Cohabitant PO §78B-7-803 (initiated through ex parte/ temporary order)	Judge	3 years (ex parte/temporary order expires at hearing if not continued/granted/dismissed)	Yes
Child PO §78B-7-202	Judge	Parents, Guardians, Custodians = 150 days Other Respondents = Until minor is 18	Parents, Guardians, and Custodians = Yes Other Respondents = No
Dating Violence PO §78B-7-403, 404 (initiated through ex parte/ temporary order)	Judge	3 years (ex parte/temporary order expires at hearing if not continued/granted/dismissed)	Yes
Sexual Violence PO §78B-7-504 (initiated through ex parte/ temporary order)	Judge	3 years (ex parte/temporary order expires at hearing if not continued/granted/dismissed)	Yes

78B-7-119 Duties of law enforcement to enforce orders:
A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an order served upon the alleged perpetrator.

UPC
Utah Protective Code

ORDERS OF PROTECTION QUICK REFERENCE CHART

Locate in UPC Toolbox at <https://upc.utah.gov>

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ORDERS OF PROTECTION - Changes are not retroactive

*Expiration of orders is based on statute at the time the order is issued. (i.e. there will be lifetime, 10 year, and 3 year cohabitant protective orders so check UCJS and/or paperwork when enforcing)

ORDERS	ISSUED BY:	DURATION	POSSIBLE EXTENSION?
Jail Release Agreement (JRA) §78B-7-801,802	Jail staff prior to release or LEO upon arrest if not booked into jail	The earlier of (1) midnight of scheduled court appearance OR (2) 30 days from arrest	Can be extended by a Judge in the form of Jail Release Court Order (JRO)
Pretrial Criminal PO §78B-7-803	Judge	While case is filed, until sentence is imposed	Terminates at sentencing
Sentencing Criminal PO §78B-7-803	Judge	For period designated or case is closed	Terminates as ordered or case is closed
Continuous PO §78B-7-804(3)	Judge, upon DV or criminal conviction	Permanent	Permanent
Civil Stalking Injunction §78B-7-701 (initiated through ex parte/ temporary order)	Judge	3 years from issuance of ex parte/ temporary order OR from the hearing (not all CSI go to hearing)	No
Criminal Stalking Injunction §78-5-106.5	Judge, upon stalking/attempted stalking conviction	Permanent	Permanent
Cohabitant PO			

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Cohabitant PO §78B-7-803 (initiated through ex parte/ temporary order)	Judge	3 years (ex parte/ temporary order expires at hearing if not continued/granted/dismissed)	Yes
Child PO §78B-7-202	Judge	Parents, Guardians, Custodians = 150 days	Parents, Guardians, and Custodians = Yes
		Other Respondents = Until minor is 18	Other Respondents = No
Dating Violence PO §78B-7-403,404 (initiated through ex parte/ temporary order)	Judge	3 years (ex parte/ temporary order expires at hearing if not continued/granted/dismissed)	Yes
Sexual Violence PO §78B-7-504 (initiated through ex parte/ temporary order)	Judge	3 years (ex parte/ temporary order expires at hearing if not continued/granted/dismissed)	Yes
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CAUTIONS & REMINDERS

UCJIS MAY SHOW UNSERVED WHEN:

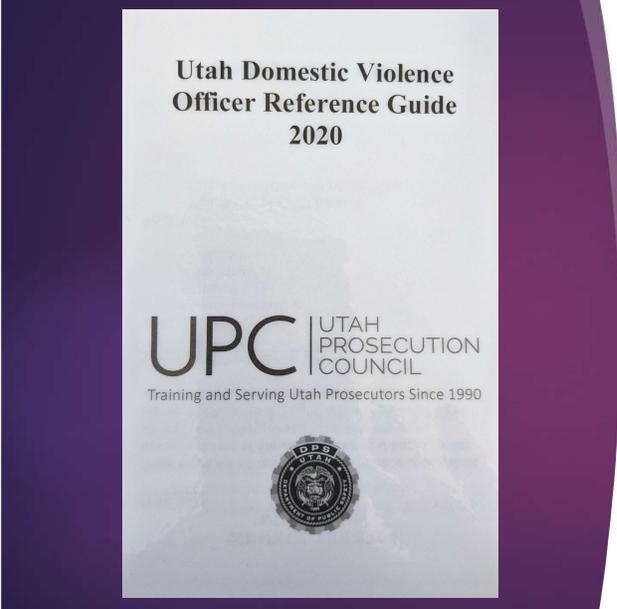
1. IT ACTUALLY HAS BEEN SERVED...CHECK WITH VICTIM
2. EX PARTE SERVED BUT RESPONDENT DIDN'T GO TO THE HEARING AND ITS NOW PAST THE HEARING DATE
 - 78B-7-604: Ex parte stays in effect until service of PO is completed

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CAUTIONS & REMINDERS

3. AVOID CHARGING DECISIONS, WHERE POSSIBLE, UNTIL YOU'VE LOOKED AT THE ACTUAL ORDER - - NOT JUST THE UCJIS SUMMARY PAGE! (UCJIS is a good faith place to start, but it is not always accurate)
4. AVOID PRIORITIZING SEVERITY OF VIOLATIONS – IF IT'S A VIOLATION THEN FILE IT. Don't let survivors suffer by a thousand pin pricks!

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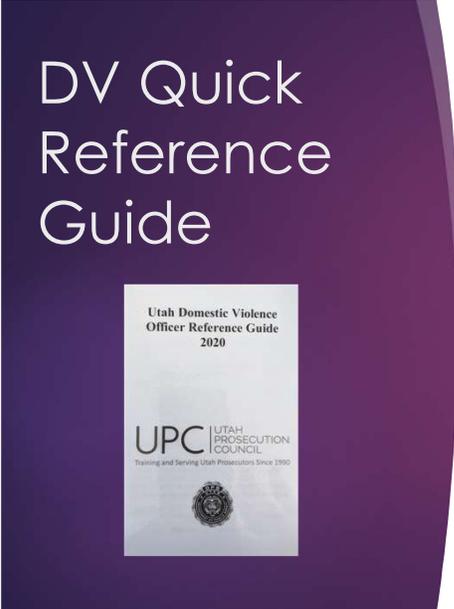
**Utah Domestic Violence
Officer Reference Guide
2020**

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**MOVE OVER QUICK
REFERENCE TRAFFIC
CODE AND DUI/FST
GUIDES:**

**UTAH DOMESTIC
VIOLENCE OFFICER
REFERENCE GUIDE IS
HERE!**

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**DV Quick
Reference
Guide**

Utah Domestic Violence
Officer Reference Guide
2020

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DV Definition 77-36-1(4)

Cohabitant Definition 78B-7-102

DV Eligible Offenses (for charging) 77-36-1(4)

Enhancement of DV Offenses 77-36-1.1

DV in the Presence of a Child 76-5-109.1

Predominant Aggressor Statute (and analysis factors) 77-36-2.2(3)

Crime Scene & Evidence Collection (tips/checklist)

Duties of LEO 77-36-2.1

Powers and Duties to Arrest 77-36-2.2

Orders of Protection chart

Trauma Informed Interview (tips/reminders)

Admonition and Waiver of Rights

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Protective Orders rejected by DPS in 2017-2018, 79% for lack of date of birth or SSN

Total Cases Rejected	2164	PCT
Protected Person, <u>neither DOB or SSN</u>	1127	52.08%
Respondent or Defendant, <u>neither DOB or SSN</u>	583	26.94%
Reject - Field Error WGT (Weight) - all child cases	159	7.35%
Protected Person name improper format	104	4.81%
Reject - Field Error HAI (Hair color)	93	4.30%
Invalid Originating Agency Identifier	30	1.39%
Respondent or Defendant name improperly formatted	25	1.16%

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Protected Persons

National Criminal Information Center requires a unique numerical identifier, either date of birth or Social Security number, to prevent confusion between similarly named persons.

DOB preferred to prevent ID theft.

Neither NCIC or state statute require the protected persons' name. However, if included, the protected person's name must be accompanied by date of birth or Social Security number.



Michael Jordan(s)

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A small survey of recently rejected continuous protective orders and criminal stalking injunctions

	2018-2019		2019-2020	
Cases Analyzed of Total	53	21.4%	55	12.5%
Cases without Expiration Date	53	100%	55	100%
Cases without RACE	38	71.7%	36	65.4%
Cases without GENDER	3	5.7%	10	18%
No Protected Person DOB in e-record	34	64.1%	36	65.4%
No PP DOB in e-record, but on printed form	22	41.5%	8	14.5%
Cases without PP DOB anywhere	12	22.5%	28	51%

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78B-7-603. Cohabitant abuse protective orders ...

- (5) Following the cohabitant abuse protective order hearing, the court shall ...
- (e) if the individual is a respondent or defendant subject to a court order that meets the qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal Identification that includes:
- (i) an agency record identifier;
 - (ii) the individual's [defendant's] name, sex, race, and date of birth;
 - (iii) the issue date, conditions, and expiration date for the protective order; and
 - (iv) if available, the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

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UTAH STATE COURTS

Information required by Utah Code 53-10-208.1
Information required by DPS, NCIC

Required:

The order's

Agency Record Identifier
(automatically generated)

Issue Date, Expiration Date,
Protective Conditions

Defendant's

Name, Sex, Race,
Date of Birth

Protected Person's

Name, Date of Birth

Optional, but encouraged:

Defendant's

Social Security Number

Driver License

Government Issued
Identification Number

Alien Registration Number

Passport Number

State Identification Number

FBI Number

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UTAH STATE COURTS

Daniel Levin, Ph. D.

PO Program Coordinator
Admin Ofc of the Courts
450 S State Street
Salt Lake City, UT 84111
Ph. 801-578-3844
daniell@utcourts.gov

Protective Order Information Checklist

This checklist will ensure that you complete the necessary items so that prohibited persons are properly listed on the Utah DPS and the FBI's NCIC databases.

The protective order involved is a:

Continuous Protective Order Criminal Stalking Order Sentencing Protective Order

ALL of the following items are completed:

Name Sex* Protective Order Conditions
 Race* Date of Issue Date of Expiration**

If name of protected person is present, so is the protected person's

Date of Birth OR Social Security Number

Important: If name of protected person is present without Date of Birth or Social Security Number, either add one (Date of Birth preferred) or remove name.

If name of protected person with DOB or SSN is not included, one of the following items is completed:

FBI Number/UCN Defendant's Date of Birth
 Defendant's Social Security Number Originating Agency Case Number
 DNA Location Protective Order Number

Or ALL in either box:

<input type="checkbox"/> Operator's License Number	<input type="checkbox"/> Date of Expiration
<input type="checkbox"/> Operator's License Year of Expiration	
<input type="checkbox"/> Vehicle Identification Number	<input type="checkbox"/> Vehicle Year
<input type="checkbox"/> Vehicle Make	<input type="checkbox"/> Vehicle Style

* If race or sex are not known, please enter U for unknown.
** Use NONEXP if no expiration date (i.e. Continuous Protection Orders). As temporary measure until system accepts NONEXP, use 01-01-3000.

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The Checklist, Part 1

ALL of the following items are completed:

Name Sex* Protective Order Conditions

Race* Date of Issue Date of Expiration**

If name of protected person is present, so is the protected person's

Date of Birth **OR** Social Security Number

Important: If name of protected person is present without Date of Birth or Social Security Number, either add one (Date of Birth preferred) or remove name, so long as have information specified below.

* If race or sex are not known, please enter U for unknown.

** Use NONEXP if no expiration date (i.e. Continuous Protection Orders). As a temporary measure until the system accepts NONEXP, use 01-01-3000.

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The Checklist, Part 2

If name of protected person with DOB or SSN **is not included**, one of the following items is completed (include as many as possible for fullest information):

FBI Number/UCN Defendant's Date of Birth

DNA Location Originating Agency Case Number

Defendant's Social Security Number

Or ALL in either box:

Operator's License Number Date of Expiration

Operator's License Year of Expiration

Vehicle Identification Number Vehicle Year

Vehicle Make Vehicle Style

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Marlesse Jones

SA/DV Resource Prosecutor
Utah Prosecution Council

marlessejones@agutah.gov

ph. 801-725-4748



If it makes any difference, I found the ball!