

## UACDL Opposition to H.B. 50 in Current Form

### Fundamental problems with this bill

1. Because of the low standard and broad definition in the bill, virtually anyone, at any time could get a dating protective order against someone else.
  - a. The standard for issuing a dating protective order is a “preponderance of the evidence.”
    - i. Judges have described preponderance of the evidence standard as evidence “to the judge’s satisfaction.”
  - b. In protective order cases, judges would rather issue the protective order in “an abundance of caution” rather than deny a petition in a possibly valid case. Therefore, instead of risking making a mistake, judges are motivated to issue the protective order because it is so easy to justify under a preponderance of the evidence standard.
  - c. Because of the low standard, and the judges’ inclination to be “better safe than sorry,” the potential for abuse of the system is extremely high. **Because of how easily a dating protective order can be obtained and because there is no penalty for frivolous petitions, many people will abuse the system to gain various advantages in various work/social/legal situations.**
2. There would be very little check against frivolous or abusive requests for protective orders, and little or no disincentive for people to seek frivolous protective orders.
  - a. A person seeking a protective order is very often represented in court by an attorney from Legal Aid.
  - b. Because protective order proceedings are not criminal in nature, a person being served with a protective order does not have the right to have an attorney appointed to him/her.
  - c. Even if a person wants to have an attorney defend them against a frivolous protective order, a private attorney would charge approximately \$1,000-2,000. **Because most people don’t fully recognize the negative long-term collateral consequences associated with having a protective order entered against them, most people will choose not to hire an attorney, and they will represent themselves against the other person, who does have an experienced attorney. This applies even in situations where the respondent may lose his right to possess a firearm under this bill.**
  - d. There is no penalty in the bill for filing a frivolous petition for a protective order.
    - i. If a judge finds that someone has filed a frivolous or highly-questionable petition, there is no redress for the respondent. He cannot be awarded attorney’s fees, and there is no penalty against the petitioner.

- ii. The only potential penalty is if a prosecutor can prove beyond a reasonable doubt that the petitioner intentionally lied on his/her sworn affidavit, then they can be prosecuted for perjury. Criminal charges are virtually never filed against people who lie on protective order petitions because of the high standard of proof for perjury.
  - e. The bill does not prohibit the petitioner from contacting the respondent.
    - i. By allowing the person who obtained the protective order to contact the respondent, the risk of abusing the law increases significantly. The petitioner would be allowed to call, text, harass, follow, photograph, videotape, or even bait the respondent into violating the protective order. Then, if the respondent reciprocates the communication, they can be arrested and charged with a crime, only later being able to explain to a judge what happened, and still technically being guilty of the offense, because this statute does not provide for that defense. This is a frequent occurrence with current domestic protective orders.
- 3. The consequences of having a protective order issued against you can be severe and long-lasting.
  - a. Although the order is supposed to expire after 120 days, the record of the order will remain on court records indefinitely.
  - b. For years to come—and perhaps forever with the advancement of digital records—a thorough background check will reveal that a person was involved in a protective order. This may hurt that person’s ability to get a job, volunteer for their children’s sports teams, adopt children, and participate in politics.**
  - c. Because it is not a criminal conviction, the current expungement process does not provide a way to erase this type of case off of someone’s record.**
- 4. A person can get a protective order against their dating partner even if the dating partner has done nothing to hurt or threaten to hurt anyone.
  - a. Lines 89-92 of the bill state that “A person may seek a protective order if the person is subjected to, or there is a substantial likelihood the person will be subjected to: abuse by a dating partner of the person; or dating violence by a dating partner of the person.”
  - b. Because a person only needs to show by a preponderance of the evidence that there is a substantial likelihood they will be subjected to abuse or dating violence, protective orders will be granted in some situations against people who have never harmed someone or threatened to harm someone.
- 5. The definitions in the bill are extremely broad, which greatly increases the potential for abuse.
  - a. The bill defines a “dating relationship” as a “social relationship of a romantic or intimate nature or a relationship which has romance or intimacy as a goal by **one** or both parties regardless of whether the relationship involves sexual intimacy.”
    - i. Because you only have to show that one of the parties had romance as a goal, this definition is virtually meaningless. A person seeking a protective order simply has to state that he/she had romance as a goal in the relationship.**

- b. The bill defines “dating violence” as “any criminal offense involving violence or physical harm or threat of violence or physical harm, when committed by a person against a dating partner of the person....”
  - i. Although this would include criminal violations such as Assault or Threats of Violence, it would also include violations for Criminal Mischief
  - ii. Criminal Mischief is the charge filed when someone intentionally damages or destroys the property of another person.
  - iii. Because Criminal Mischief is classified as a violent offense (see domestic violence statute), the “dating violence” definition would include instances where a boyfriend is caught cheating and the girlfriend rips up their joint photographs, or kicks his car, or rips up a shirt she gave him as a gift. If they happen to live in the same apartment building, the boyfriend would be able to get a protective order against her and prevent her from returning home.
- c. Many, many other unjust situations will be created because of the ease of obtaining a dating protective order and the extremely broad definitions in the bill. Some of these situations include:
  - i. Employee against boss
  - ii. Employee turned down for a promotion
  - iii. Job applicants not selected for a job by someone they know
  - iv. Coworker against coworker
  - v. College students
  - vi. Siblings’ dating partners
  - vii. Jealous or bitter boyfriends/girlfriends
  - viii. Any girl or boy who simply “would rather not be bothered” or “doesn’t want to deal with” someone they’ve dated, as long as they can tell a convincing story.

### Suggestions for Lawmakers

The bill will likely create more problems than it solves, and therefore should not be passed into law. However, if the bill is passed, several amendments must be included in the bill:

- Amendment 1:
  - **The standard for granting dating protective orders should be “clear and convincing evidence.”**
  - Line 115 should be amended to read: “(1) If it *is shown by clear and convincing evidence* from a petition for a protective order...”
  - Line 215 should be amended to read: “(2) Upon a hearing under this section, *if the district court finds by clear and convincing evidence that a dating partner of the petitioner has abused or committed dating violence against the petitioner*, the district court may...”
- Amendment 2:
  - **There must be some disincentive for abuse of the system!!**

- After line 222, the following text should be inserted: “(4) If, at a hearing described in this section, the district court finds that there is clear and convincing evidence that the petitioner intentionally or recklessly included false statements in the petition for a protective order or a petition to modify an existing protective order, with the intent of misleading the court, the court may award reasonable attorneys’ fees to the respondent.
- Amendment 3:
  - To minimize unfair manipulation, the petitioner should be required to not contact the respondent.
  - Above line 192, the following text should be inserted: “(11) If a protective order is granted under this section, the petitioner shall not contact the respondent directly or indirectly during the time the protective order is in effect. (a) Evidence that the petitioner has contacted the respondent while a protective order is in effect may be considered in the court’s decision to issue, not issue, or dismiss a protective order. (b) It is a defense to a violation of a protective order in 78B-7-407(2) that petitioner initiated contact with respondent during the time a protective order was in effect.
- Amendment 4:
  - There must be a way to remove a protective order from public records once certain criteria are met!!
  - Also after line 222, the following text should be inserted: “(5) If after a hearing described in this section, the court denies the petition for a protective order, upon respondent’s motion, the court shall order that all records of the petition in the court’s possession be destroyed within 90 days of respondent’s motion. (a) If after a hearing described in this section, the court issues a protective order, the respondent may move the court to destroy all records of the protective order in the court’s possession if, (i) one year has passed since the filing of the petition for the protective order, and (ii) no other protective orders have been issued upon the respondent in the past 12 months. (iii) If the court finds that subsections (i) and (ii) have been satisfied, the court shall order that all records of the protective order in the court’s possession be destroyed within 90 days of respondent’s motion.
- Amendment 5:
  - The definition of a “dating relationship” cannot remain as “a relationship which has romance or intimacy as a goal by **one** or both parties.”
  - Line 57 should be amended to read: “...a relationship which has romance or intimacy as a goal *of the respondent to a petition in this section or a goal of both parties.*”
- Amendment 6:
  - The definition of “dating violence” should not include minor instances involving destruction of property.
  - Line 76 should be amended to read: “any criminal offense involving violence or physical harm *to another person....*”