

**DOMESTIC VIOLENCE RELATED AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to domestic violence.

**Highlighted Provisions:**

This bill:

- ▶ amends definition provisions;
- ▶ modifies conditions for release after arrest for domestic violence;
- ▶ addresses enforcement of restitution requirements;
- ▶ provides the process for the issuance of continuous protective orders;
- ▶ addresses form for protective orders;
- ▶ modifies conditions for dismissals of protective orders;
- ▶ enacts language related to enforcement of domestic violence related provisions; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-20-1**, as last amended by Laws of Utah 2016, Chapter 234

**77-36-1**, as last amended by Laws of Utah 2016, Chapter 422



- 28 [77-36-2.1](#), as last amended by Laws of Utah 2011, Chapter 113
- 29 [77-36-2.4](#), as last amended by Laws of Utah 2010, Chapter 384
- 30 [77-36-2.5](#), as last amended by Laws of Utah 2016, Chapter 422
- 31 [77-36-5](#), as last amended by Laws of Utah 2016, Chapter 422
- 32 [77-36-5.1](#), as last amended by Laws of Utah 2010, Chapter 384
- 33 [78B-7-102](#), as last amended by Laws of Utah 2013, Chapter 348
- 34 [78B-7-105](#), as last amended by Laws of Utah 2009, Chapter 232
- 35 [78B-7-115](#), as last amended by Laws of Utah 2016, Chapter 196

36 ENACTS:

37 [77-36-11](#), Utah Code Annotated 1953



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

40 Section 1. Section **77-20-1** is amended to read:

41 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

42 (1) As used in this chapter:

- 43 (a) "Bail bond agency" means the same as that term is defined in Section [31A-35-102](#).
- 44 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
- 45 (c) "Surety insurer" means the same as that term is defined in Section [31A-35-102](#).

46 (2) A person charged with or arrested for a criminal offense shall be admitted to bail as  
47 a matter of right, except if the person is charged with a:

- 48 (a) capital felony, when the court finds there is substantial evidence to support the  
49 charge;
- 50 (b) felony committed while on probation or parole, or while free on bail awaiting trial  
51 on a previous felony charge, when the court finds there is substantial evidence to support the  
52 current felony charge;
- 53 (c) felony when there is substantial evidence to support the charge and the court finds  
54 by clear and convincing evidence that the person would constitute a substantial danger to any  
55 other person or to the community, or is likely to flee the jurisdiction of the court, if released on  
56 bail; or
- 57 (d) felony when the court finds there is substantial evidence to support the charge and  
58 it finds by clear and convincing evidence that the person violated a material condition of

59 release while previously on bail.

60 (3) Any person who may be admitted to bail may be released either on the person's own  
61 recognizance or upon posting bail, on condition that the person appear in court for future court  
62 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate  
63 or court that will reasonably:

64 (a) ensure the appearance of the accused;

65 (b) ensure the integrity of the court process;

66 (c) prevent direct or indirect contact with witnesses or victims by the accused, if  
67 appropriate; and

68 (d) ensure the safety of the public.

69 (4) (a) Except as otherwise provided, the initial order denying or fixing the amount of  
70 bail shall be issued by the magistrate or court issuing the warrant of arrest.

71 (b) A magistrate may set bail upon determining that there was probable cause for a  
72 warrantless arrest.

73 (c) A bail commissioner may set bail in a misdemeanor case in accordance with  
74 Sections 10-3-920 and 17-32-1.

75 (d) A person arrested for a violation of a jail release agreement or jail release order  
76 issued pursuant to Section 77-36-2.5:

77 (i) may not be released before the accused's first judicial appearance; and

78 (ii) may be denied bail by the court under Subsection 77-36-2.5(8) or ~~[(12)]~~ (11).

79 (5) The magistrate or court may rely upon information contained in:

80 (a) the indictment or information;

81 (b) any sworn probable cause statement;

82 (c) information provided by any pretrial services agency; or

83 (d) any other reliable record or source.

84 (6) (a) A motion to modify the initial order may be made by a party at any time upon  
85 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and  
86 to permit any victim to be notified and be present.

87 (b) Hearing on a motion to modify may be held in conjunction with a preliminary  
88 hearing or any other pretrial hearing.

89 (c) The magistrate or court may rely on information as provided in Subsection (5) and

90 may base its ruling on evidence provided at the hearing so long as each party is provided an  
91 opportunity to present additional evidence or information relevant to bail.

92 (7) Subsequent motions to modify bail orders may be made only upon a showing that  
93 there has been a material change in circumstances.

94 (8) An appeal may be taken from an order of any court denying bail to the Supreme  
95 Court, which shall review the determination under Subsection (2).

96 (9) For purposes of this section, any arrest or charge for a violation of Section  
97 76-5-202, Aggravated murder, is a capital felony unless:

98 (a) the prosecutor files a notice of intent to not seek the death penalty; or

99 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor  
100 has not filed a notice to seek the death penalty.

101 Section 2. Section 77-36-1 is amended to read:

102 **77-36-1. Definitions.**

103 As used in this chapter:

104 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

105 (2) "Department" means the Department of Public Safety.

106 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
107 3, Divorce.

108 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
109 involving violence or physical harm or threat of violence or physical harm, or any attempt,  
110 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
111 when committed by one cohabitant against another. "Domestic violence" or "domestic  
112 violence offense" also means commission or attempt to commit, any of the following offenses  
113 by one cohabitant against another:

114 (a) aggravated assault, as described in Section 76-5-103;

115 (b) assault, as described in Section 76-5-102;

116 (c) criminal homicide, as described in Section 76-5-201;

117 (d) harassment, as described in Section 76-5-106;

118 (e) electronic communication harassment, as described in Section 76-9-201;

119 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
120 76-5-301, 76-5-301.1, and 76-5-302;

- 121 (g) mayhem, as described in Section 76-5-105;
- 122 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
123 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 124 (i) stalking, as described in Section 76-5-106.5;
- 125 (j) unlawful detention or unlawful detention of a minor, as described in Section  
126 76-5-304;
- 127 (k) violation of a protective order or ex parte protective order, as described in Section  
128 76-5-108;
- 129 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property  
130 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,  
131 Part 3, Robbery;
- 132 (m) possession of a deadly weapon with intent to assault, as described in Section  
133 76-10-507;
- 134 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
135 person, building, or vehicle, as described in Section 76-10-508;
- 136 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
137 conduct is the result of a plea agreement in which the defendant was originally charged with a  
138 domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly  
139 conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does  
140 not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is  
141 exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or
- 142 (p) child abuse as described in Section 76-5-109.1.
- 143 (5) "Jail release agreement" means a written agreement:
- 144 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
145 may have with an alleged victim or other specified individuals; and
- 146 (b) specifying other conditions of release from jail as required in Subsection  
147 77-36-2.5(2).
- 148 (6) "Jail release court order" means a written court order:
- 149 (a) specifying and limiting the contact a person arrested for a domestic violence offense  
150 may have with an alleged victim or other specified individuals; and
- 151 (b) specifying other conditions of release from jail as required in Subsection

152 77-36-2.5(2).

153 (7) "Marital status" means married and living together, divorced, separated, or not  
154 married.

155 (8) "Married and living together" means a man and a woman whose marriage was  
156 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

157 (9) "Not married" means any living arrangement other than married and living together,  
158 divorced, or separated.

159 (10) "Protective order" includes an order issued under Subsection 77-36-5.1(6).

160 ~~(10)~~ (11) "Pretrial protective order" means a written order:

161 (a) specifying and limiting the contact a person who has been charged with a domestic  
162 violence offense may have with an alleged victim or other specified individuals; and

163 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(2),  
164 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

165 ~~(11)~~ (12) "Sentencing protective order" means a written order of the court as part of  
166 sentencing in a domestic violence case that limits the contact a person who has been convicted  
167 of a domestic violence offense may have with a victim or other specified individuals pursuant  
168 to Sections 77-36-5 and 77-36-5.1.

169 ~~(12)~~ (13) "Separated" means a man and a woman who have had their marriage  
170 solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

171 ~~(13)~~ (14) "Victim" means a cohabitant who has been subjected to domestic violence.

172 Section 3. Section 77-36-2.1 is amended to read:

173 **77-36-2.1. Duties of law enforcement officers -- Notice to victims.**

174 (1) A law enforcement officer who responds to an allegation of domestic violence shall  
175 use all reasonable means to protect the victim and prevent further violence, including:

176 (a) taking the action that, in the officer's discretion, is reasonably necessary to provide  
177 for the safety of the victim and any family or household member;

178 (b) confiscating the weapon or weapons involved in the alleged domestic violence;

179 (c) making arrangements for the victim and any child to obtain emergency housing or  
180 shelter;

181 (d) providing protection while the victim removes essential personal effects;

182 (e) arrange, facilitate, or provide for the victim and any child to obtain medical

183 treatment; and

184 (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the  
185 rights of victims and of the remedies and services available to victims of domestic violence, in  
186 accordance with Subsection (2).

187 (2) (a) A law enforcement officer shall give written notice to the victim in simple  
188 language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7,  
189 Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

190 (b) The written notice shall also include:

191 (i) a statement that the forms needed in order to obtain an order for protection are  
192 available from the court clerk's office in the judicial district where the victim resides or is  
193 temporarily domiciled;

194 (ii) a list of shelters, services, and resources available in the appropriate community,  
195 together with telephone numbers, to assist the victim in accessing any needed assistance; and

196 (iii) the information required to be provided to both parties in accordance with  
197 ~~Subsection 77-36-2.5(8)~~ Subsections 77-36-2.5(9) and (10).

198 Section 4. Section ~~77-36-2.4~~ is amended to read:

199 **77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.**

200 (1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator  
201 whenever there is probable cause to believe that the alleged perpetrator has violated any of the  
202 provisions of an ex parte protective order or protective order.

203 (2) (a) Intentional or knowing violation of any ex parte protective order or protective  
204 order is a class A misdemeanor, in accordance with Section ~~76-5-108~~, except where a greater  
205 penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section  
206 ~~77-36-1~~.

207 (b) Second or subsequent violations of ex parte protective orders or protective orders  
208 carry increased penalties, in accordance with Section ~~77-36-1.1~~.

209 (3) As used in this section, "ex parte protective order" or "protective order" includes:

210 (a) ~~[any]~~ a protective order or ex parte protective order issued under Title 78B, Chapter  
211 7, Part 1, Cohabitant Abuse Act;

212 (b) ~~[any]~~ a jail release agreement, jail release court order, pretrial protective order, ~~[or]~~  
213 sentencing protective order, or continuous protective order issued under ~~[Title 77, Chapter 36,~~

214 ~~Cohabitant Abuse Procedures Act~~] this chapter;

215 (c) any child protective order or ex parte child protective order issued under Title 78B,  
216 Chapter 7, Part 2, Child Protective Orders; or

217 (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform  
218 Interstate Enforcement of Domestic Violence Protection Orders Act.

219 Section 5. Section ~~77-36-2.5~~ is amended to read:

220 **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release**  
221 **agreements -- Jail release court orders.**

222 (1) (a) Upon arrest for domestic violence, and before the person is released on bail,  
223 recognizance, or otherwise, the person may not personally contact the alleged victim of  
224 domestic violence.

225 (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

226 (2) (a) After an arrest for domestic violence, the offender may not be released before:

227 (i) the matter is submitted to a magistrate in accordance with Section ~~77-7-23~~; or

228 (ii) the offender signs a jail release agreement in accordance with Subsection (2)(d)(i).

229 (b) The arresting officer shall ensure that the information presented to the magistrate  
230 includes whether the victim has made a waiver described in Subsection (5)(a).

231 (c) If the magistrate determines there is probable cause to support the charge or charges  
232 of domestic violence, the magistrate shall determine:

233 (i) whether grounds exist to hold the arrested person without bail, in accordance with  
234 Section ~~77-20-1~~;

235 (ii) if no grounds exist to hold the arrested person without bail, whether any release  
236 conditions, including electronic monitoring, are necessary to protect the victim; ~~[or]~~

237 (iii) any bail that is required to guarantee the defendant's subsequent appearance in  
238 court~~[-]; or~~

239 (iv) whether to designate a person that may communicate between the arrested person  
240 and the alleged victim if and to the extent necessary for family related matters.

241 (d) (i) The magistrate may not release a person arrested for domestic violence before  
242 the initial court appearance, before the court with jurisdiction over the offense for which the  
243 person was arrested, unless the arrested person agrees in writing or the magistrate orders, as a  
244 release condition, that, until the arrested person appears at the initial court appearance, the



245 person will not:

246 (A) have personal contact with the alleged victim;

247 (B) threaten or harass the alleged victim; or

248 (C) knowingly enter onto the premises of the alleged victim's residence or any premises  
249 temporarily occupied by the alleged victim.

250 (ii) The magistrate shall schedule the appearance described in Subsection (2)(d)(i) to  
251 take place no more than 96 hours after the time of the arrest.

252 (iii) The arrested person may make the appearance described in Subsection (2)(d)(i) by  
253 video if the arrested person is not released.

254 (3) (a) If a person charged with domestic violence fails to appear at the time scheduled  
255 by the magistrate to appear, as described in Subsection (2)(d), the person shall comply with the  
256 release conditions described in Subsection (2)(d)(i) until the arrested person makes an initial  
257 appearance.

258 (b) If the prosecutor has not filed charges against a person who was arrested for a  
259 domestic violence offense and who appears in court at the time scheduled by the magistrate  
260 under Subsection (2)(d), or by the court under Subsection (3)(b)(ii), the court:

261 (i) may, upon the motion of the prosecutor and after allowing the arrested person an  
262 opportunity to be heard on the motion, extend the release conditions described in Subsection  
263 (2)(d)(i) by no more than three court days; and

264 (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the  
265 arrested person to appear at a time scheduled before the end of the granted extension.

266 (4) Unless extended under Subsection (3), the jail release agreement or the magistrate  
267 order described in Subsection (2)(d)(i) expires at midnight on the day on which the person  
268 arrested is scheduled to appear, as described in Subsection (2)(d).

269 (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in  
270 writing the release conditions described in Subsection (2)(d)(i)(A) or (C). Upon waiver, those  
271 release conditions do not apply to the alleged perpetrator.

272 (b) A court or magistrate may modify the release conditions described in Subsection  
273 (2)(d)(i), in writing or on the record, and only for good cause shown.

274 (6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall  
275 notify the arresting law enforcement agency of the release, conditions of release, and any

276 available information concerning the location of the victim. The arresting law enforcement  
277 agency shall then make a reasonable effort to notify the victim of that release.

278 (b) (i) When a person is released pursuant to Subsection (2) based on a written jail  
279 release agreement, the releasing agency shall transmit that information to the statewide  
280 domestic violence network described in Section 78B-7-113.

281 (ii) When a person is released pursuant to Subsections (2) through (4) based upon a jail  
282 release court order or if a written jail release agreement is modified pursuant to Subsection  
283 (5)(b), the court shall transmit that order to the statewide domestic violence network described  
284 in Section 78B-7-113.

285 (iii) A copy of the jail release court order or written jail release agreement shall be  
286 given to the person by the releasing agency before the person is released.

287 (c) This Subsection (6) does not create or increase liability of a law enforcement officer  
288 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

289 (7) (a) If a law enforcement officer has probable cause to believe that a person has  
290 violated a jail release court order or jail release agreement executed pursuant to Subsection (2)  
291 the officer shall, without a warrant, arrest the alleged violator.

292 (b) ~~Any~~ A person who knowingly violates a jail release court order or jail release  
293 agreement executed pursuant to Subsection (2) is guilty as follows:

294 (i) if the original arrest was for a felony, an offense under this section is a third degree  
295 felony; or

296 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class  
297 A misdemeanor.

298 (c) City attorneys may prosecute class A misdemeanor violations under this section.

299 (8) An individual who was originally arrested for a felony under this chapter and  
300 released pursuant to this section may subsequently be held without bail if there is substantial  
301 evidence to support a new felony charge against ~~him~~ the individual.

302 (9) At the time an arrest is made for domestic violence, the arresting officer shall  
303 provide the alleged victim with written notice containing:

304 (a) the release conditions described in Subsections (2) through (4), and notice that the  
305 alleged perpetrator will not be released, before appearing before the court with jurisdiction over  
306 the offense for which the alleged perpetrator was arrested, unless:

307 (i) the alleged perpetrator enters into a written agreement to comply with the release  
308 conditions; or

309 (ii) the magistrate orders the release conditions;

310 (b) notification of the penalties for violation of any jail release court order or any jail  
311 release agreement executed under Subsection (2);

312 (c) notification that the alleged perpetrator is to personally appear in court on the next  
313 day the court is open for business after the day of the arrest;

314 (d) the address of the appropriate court in the district or county in which the alleged  
315 victim resides;

316 (e) the availability and effect of any waiver of the release conditions; and

317 (f) information regarding the availability of and procedures for obtaining civil and  
318 criminal protective orders with or without the assistance of an attorney.

319 (10) At the time an arrest is made for domestic violence, the arresting officer shall  
320 provide the alleged perpetrator with written notice containing:

321 (a) notification that the alleged perpetrator may not contact the alleged victim before  
322 being released;

323 (b) the release conditions described in Subsections (2) through (4) and notice that the  
324 alleged perpetrator will not be released, before appearing before the court with jurisdiction over  
325 the offense for which the alleged perpetrator was arrested, unless:

326 (i) the alleged perpetrator enters into a written agreement to comply with the release  
327 conditions; or

328 (ii) the magistrate orders the release conditions;

329 (c) notification of the penalties for violation of any jail release court order or any  
330 written jail release agreement executed under Subsection (2); and

331 (d) notification that the alleged perpetrator is to personally appear in court on the next  
332 day the court is open for business after the day of the arrest.

333 (11) In addition to ~~[the provisions of]~~ Subsections (2) through (10), because of the  
334 unique and highly emotional nature of domestic violence crimes, the high recidivism rate of  
335 violent offenders, and the demonstrated increased risk of continued acts of violence subsequent  
336 to the release of an offender who has been arrested for domestic violence, it is the finding of  
337 the Legislature that domestic violence ~~[crimes]~~ offenses, as defined in Section 77-36-1, are

338 crimes for which bail may be denied if there is substantial evidence to support the charge, and  
339 if the court finds by clear and convincing evidence that the alleged perpetrator would constitute  
340 a substantial danger to an alleged victim of domestic violence if released on bail.

341 Section 6. Section **77-36-5** is amended to read:

342 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**  
343 **Counseling -- Cost assessed against defendant -- Sentencing protective order.**

344 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a  
345 condition of the sentence restricts the defendant's contact with the victim, a sentencing  
346 protective order may be issued under Subsection [77-36-5.1\(2\)](#) for the length of the defendant's  
347 probation or a continuous protective order may be issued under Subsection [77-36-5.1\(6\)](#).

348 (b) (i) The sentencing protective order or continuous protective order shall be in  
349 writing, and the prosecutor shall provide a certified copy of that order to the victim.

350 (ii) The court shall transmit the sentencing protective order or continuous protective  
351 order to the statewide domestic violence network.

352 (c) Violation of a sentencing protective order or continuous protective order issued  
353 pursuant to this Subsection (1) is a class A misdemeanor.

354 (2) In determining its sentence the court, in addition to penalties otherwise provided by  
355 law, may require the defendant to participate in an electronic or other type of monitoring  
356 program.

357 (3) The court may also require the defendant to pay all or part of the costs of  
358 counseling incurred by the victim and any children affected by or exposed to the domestic  
359 violence offense, as well as the costs for the defendant's own counseling.

360 (4) The court shall:

361 (a) assess against the defendant, as restitution, any costs for services or treatment  
362 provided to the victim and affected children of the victim or the defendant by the Division of  
363 Child and Family Services under Section [62A-4a-106](#); and

364 (b) order those costs to be paid directly to the division or its contracted provider.

365 (5) The court may order the defendant to obtain and satisfactorily complete treatment  
366 or therapy in a domestic violence treatment program, as defined in Section [62A-2-101](#), that is  
367 licensed by the Department of Human Services.

368 Section 7. Section **77-36-5.1** is amended to read:

369           **77-36-5.1. Conditions of probation for person convicted of domestic violence**  
370 **offense -- Continuous protective orders.**

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

374           (2) The court may condition probation or a plea in abeyance on the perpetrator's  
375 compliance with one or more orders of the court, which may include a sentencing protective  
376 order:

377           (a) enjoining the perpetrator from threatening to commit or committing acts of  
378 domestic violence against the victim or other family or household member;

379           (b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise  
380 communicating with the victim, directly or indirectly;

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

384           (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled  
385 substances;

386           (e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other  
387 specified weapon;

388           (f) directing the perpetrator to surrender any weapons the perpetrator owns or  
389 possesses;

390           (g) directing the perpetrator to participate in and complete, to the satisfaction of the  
391 court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or  
392 psychiatric or psychological treatment;

393           (h) directing the perpetrator to pay restitution to the victim, enforcement of which shall  
394 be in accordance with Chapter 38a, Crime Victims Restitution Act; and

395           (i) imposing any other condition necessary to protect the victim and any other  
396 designated family or household member or to rehabilitate the perpetrator.

397           (3) The perpetrator is responsible for the costs of any condition of probation, according  
398 to the perpetrator's ability to pay.

399           (4) (a) Adult Probation and Parole, or other provider, shall immediately report to the

400 court and notify the victim of any offense involving domestic violence committed by the  
401 perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and  
402 any violation of any sentencing criminal protective order issued by the court.

403 (b) Notification of the victim under Subsection (4)(a) shall consist of a good faith  
404 reasonable effort to provide prompt notification, including mailing a copy of the notification to  
405 the last-known address of the victim.

406 (5) The court shall transmit all dismissals, terminations, and expirations of pretrial and  
407 sentencing criminal protective orders issued by the court to the statewide domestic violence  
408 network.

409 (6) (a) Because of the serious, unique, and highly emotional nature of domestic  
410 violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased  
411 risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of  
412 domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the  
413 issuance of continuous protective orders because of the need to provide ongoing protection for  
414 the victim.

415 (b) If a perpetrator is convicted for domestic violence resulting in incarceration, the  
416 court shall issue a continuous protective order at the time of the conviction or sentencing  
417 limiting the contact between the perpetrator and the victim unless the court determines by clear  
418 and convincing evidence that the victim does not have a reasonable fear of future harm or  
419 abuse.

420 (c) (i) The court shall notify the perpetrator of the right to request a hearing.

421 (ii) If the perpetrator requests a hearing under this Subsection (6)(c), the court shall  
422 hold the hearing at the time of the conviction or sentencing unless the court determines  
423 otherwise for good cause.

424 (d) A continuous protective order is permanent in accordance with this Subsection  
425 (6)(d) and may grant the following relief:

426 (i) enjoining the perpetrator from threatening to commit or committing acts of  
427 domestic violence against the victim or other family or household member;

428 (ii) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise  
429 communicating with the victim, directly or indirectly;

430 (iii) requiring the perpetrator to not go to the victim's residence, school, place of

431 employment, and the premises of any of these, or a specified place frequented regularly by the  
432 victim or any designated family or household member;

433 (iv) directing the perpetrator to pay restitution to the victim as may apply, and shall be  
434 enforced in accordance with Chapter 38a, Crime Victims Restitution Act; and

435 (v) any other order the court considers necessary to fully protect the victim and  
436 members of the victim's immediate family or household.

437 (e) A continuous protective order may be modified or dismissed only:

438 (i) if the court determines by clear and convincing evidence that all requirements of  
439 this Subsection (6) have been met and the victim does not have a reasonable fear of future harm  
440 or abuse; or

441 (ii) if the perpetrator and victim stipulate in writing to a modification or dismissal and  
442 files the stipulation with the court in support of a petition for modification or dismissal.

443 (f) Notice of a continuous protective order issued pursuant to this section shall be sent  
444 by the court to the statewide domestic violence network.

445 (g) Violation of a continuous protective order issued pursuant to this Subsection (6) is  
446 a class A misdemeanor, is a domestic violence offense under Section [77-36-1](#), and is subject to  
447 increased penalties in accordance with Section [77-36-1.1](#).

448 (h) In addition to the process of issuing a continuous protective order described in  
449 Subsection (6)(a), a district court may issue a continuous protective order at any time if the  
450 victim files a petition with the district court, and after notice and hearing the district court finds  
451 that a continuous protective order is necessary to protect the victim.

452 (7) (a) Before release of a person who is subject to a continuous protective order issued  
453 under Subsection (6), the victim shall receive reasonable advance notice of the imminent  
454 release by the law enforcement agency that is releasing the person who is subject to the  
455 continuous protective order:

456 (i) if the victim has provided the law enforcement agency contact information;

457 (ii) in accordance with Section [64-13-14.7](#), if applicable; and

458 (iii) including a statement that the person being released is notified of the penalties for  
459 violating the continuous protective order.

460 (b) Before release, the law enforcement agency shall notify in writing the person being  
461 released that a violation of the continuous protective order issued at the time of conviction or

462 sentencing continues to apply, and that a violation of the continuous protective order is a class  
463 A misdemeanor, is a separate domestic violence offense under Section 77-36-1, and is subject  
464 to increased penalties in accordance with Section 77-36-1.1.

465 Section 8. Section 77-36-11 is enacted to read:

466 **77-36-11. Enforcement.**

467 This chapter shall be enforced fully and consistently with Title 78B, Chapter 7, Part 1,  
468 Cohabitant Abuse Act.

469 Section 9. Section 78B-7-102 is amended to read:

470 **78B-7-102. Definitions.**

471 As used in this chapter:

472 (1) "Abuse" means intentionally or knowingly causing or attempting to cause a  
473 cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear  
474 of imminent physical harm.

475 (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person  
476 who is 16 years of age or older who:

- 477 (a) is or was a spouse of the other party;  
478 (b) is or was living as if a spouse of the other party;  
479 (c) is related by blood or marriage to the other party;  
480 (d) has or had one or more children in common with the other party;  
481 (e) is the biological parent of the other party's unborn child; or  
482 (f) resides or has resided in the same residence as the other party.

483 (3) Notwithstanding Subsection (2), "cohabitant" does not include:

- 484 (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or  
485 (b) the relationship between natural, adoptive, step, or foster siblings who are under 18  
486 years of age.

487 (4) "Court clerk" means a district court clerk.

488 (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

489 (6) "Ex parte protective order" means an order issued without notice to the defendant in  
490 accordance with this chapter.

491 (7) "Foreign protection order" [~~is as~~] means the same as that term is defined in Section  
492 78B-7-302.



493 (8) "Law enforcement unit" or "law enforcement agency" means any public agency  
494 having general police power and charged with making arrests in connection with enforcement  
495 of the criminal statutes and ordinances of this state or any political subdivision.

496 (9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace  
497 Officer Classifications.

498 (10) "Protective order" means:

499 (a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of  
500 which the petitioner and respondent have been given notice in accordance with this chapter[-];

501 or

502 (b) an order issued under Subsection 77-36-5.1(6).

503 Section 10. Section **78B-7-105** is amended to read:

504 **78B-7-105. Forms for petitions and protective orders -- Assistance.**

505 (1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to  
506 persons seeking to proceed under this chapter.

507 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for  
508 petitions and orders for protection in accordance with the provisions of this chapter. That  
509 office shall provide the forms to the clerk of each court authorized to issue protective orders.  
510 The forms shall include:

511 (i) a statement notifying the petitioner for an ex parte protective order that knowing  
512 falsification of any statement or information provided for the purpose of obtaining a protective  
513 order may subject the petitioner to felony prosecution;

514 (ii) a separate portion of the form for those provisions, the violation of which is a  
515 criminal offense, and a separate portion for those provisions, the violation of which is a civil  
516 violation, as provided in Subsection 78B-7-106(5);

517 (iii) language in the criminal provision portion stating violation of any criminal  
518 provision is a class A misdemeanor, and language in the civil portion stating violation of or  
519 failure to comply with a civil provision is subject to contempt proceedings;

520 (iv) a space for information the petitioner is able to provide to facilitate identification  
521 of the respondent, such as social security number, driver license number, date of birth, address,  
522 telephone number, and physical description;

523 (v) a space for the petitioner to request a specific period of time for the civil provisions

524 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for  
525 the requested extension of the length of time beyond 150 days;

526 (vi) a statement advising the petitioner that when a minor child is included in an ex  
527 parte protective order or a protective order, as part of either the criminal or the civil portion of  
528 the order, the petitioner may provide a copy of the order to the principal of the school where the  
529 child attends; and

530 (vii) a statement advising the petitioner that if the respondent fails to return custody of  
531 a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from  
532 the court a writ of assistance.

533 (2) If the person seeking to proceed under this chapter is not represented by an  
534 attorney, it is the responsibility of the court clerk's office to provide:

535 (a) the forms adopted pursuant to Subsection (1);

536 (b) all other forms required to petition for an order for protection including, but not  
537 limited to, forms for service;

538 (c) clerical assistance in filling out the forms and filing the petition, in accordance with  
539 Subsection (1)(a)~~[-A]~~, except that a court clerk's office may designate any other entity, agency,  
540 or person to provide that service, but the court clerk's office is responsible to see that the  
541 service is provided;

542 (d) information regarding the means available for the service of process;

543 (e) a list of legal service organizations that may represent the petitioner in an action  
544 brought under this chapter, together with the telephone numbers of those organizations; and

545 (f) written information regarding the procedure for transporting a jailed or imprisoned  
546 respondent to the protective order hearing, including an explanation of the use of transportation  
547 order forms when necessary.

548 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency  
549 for:

550 (a) filing a petition under this chapter;

551 (b) obtaining an ex parte protective order;

552 (c) obtaining copies, either certified or not certified, necessary for service or delivery to  
553 law enforcement officials; or

554 (d) fees for service of a petition, ex parte protective order, or protective order.

555 (4) A petition for an order of protection shall be in writing and verified.

556 (5) (a) [~~All orders~~] An order for protection shall be issued in the form adopted by the  
557 Administrative Office of the Courts pursuant to Subsection (1).

558 (b) [~~Each~~] A protective order issued, except orders issued ex parte, shall include the  
559 following language:

560 "Respondent was afforded both notice and opportunity to be heard in the hearing that  
561 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,  
562 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of  
563 Columbia, tribal lands, and United States territories. This order complies with the Uniform  
564 Interstate Enforcement of Domestic Violence Protection Orders Act."

565 (c) [~~Each~~] A protective order issued in accordance with this part, including protective  
566 orders issued ex parte and except for a continuous protective order, shall include the following  
567 language:

568 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order after  
569 one year if it finds that the basis for the issuance of the protective order no longer exists and the  
570 petitioner has repeatedly acted in contravention of the protective order provisions to  
571 intentionally or knowingly induce the respondent to violate the protective order, demonstrating  
572 to the court that the petitioner no longer has a reasonable fear of the respondent."

573 Section 11. Section **78B-7-115** is amended to read:

574 **78B-7-115. Dismissal of protective order.**

575 (1) Except as provided in [~~Subsection (6);~~] Subsections (6) and (8), a protective order  
576 that has been in effect for at least two years may be dismissed if the court determines that the  
577 petitioner no longer has a reasonable fear of future harm or abuse. In determining whether the  
578 petitioner no longer has a reasonable fear of future harm or abuse, the court shall consider the  
579 following factors:

580 (a) whether the respondent has complied with treatment recommendations related to  
581 domestic violence, entered at the time the protective order was entered;

582 (b) whether the protective order was violated during the time it was in force;

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

585 (d) counseling or therapy undertaken by either party;

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

587 (f) any other factors the court considers relevant to the case before it.

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

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

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

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

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

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

601 (a) in bad faith; or

602 (b) with intent to harass or intimidate either party.

603 (4) Notice of a motion to dismiss a protective order shall be made by personal service  
604 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil  
605 Procedure.

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

609 (a) the petitioner in the protective order action is present or has been given notice in  
610 both the divorce and protective order action of the hearing; and

611 (b) the court specifically finds that the order need not continue, and, as provided in  
612 Subsection (1), the petitioner no longer has a reasonable fear of future harm or abuse.

613 (6) (a) Notwithstanding Subsection (1) or (2), a protective order that has been entered  
614 under this chapter concerning a petitioner and a respondent who are divorced shall  
615 automatically expire, subject to Subsections (6)(b) and (c), 10 years from the day on which one  
616 of the following occurs:

- 617 (i) the decree of divorce between the petitioner and respondent became absolute; or  
618 (ii) the protective order was entered.
- 619 (b) The protective order shall automatically expire, as described in Subsection (6)(a),  
620 unless:
- 621 (i) the petitioner demonstrates that the petitioner has a reasonable fear of future harm or  
622 abuse, as described in Subsection (1); or
- 623 (ii) the respondent has been convicted of a protective order violation or any crime of  
624 violence subsequent to the issuance of the protective order.
- 625 (c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the  
626 respondent is incarcerated.
- 627 (7) When the court dismisses a protective order, the court shall immediately:
- 628 (a) issue an order of dismissal to be filed in the protective order action; and  
629 (b) transmit a copy of the order of dismissal to the statewide domestic violence  
630 network as described in Section [78B-7-113](#).
- 631 (8) Notwithstanding the other provisions of this section, a continuous protective order  
632 may not be modified or dismissed except as provided in Subsection [77-36-5.1\(6\)](#).

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**