

Representative Brent H. Goodfellow proposes to substitute the following bill:

DOMESTIC VIOLENCE DEFINITION AMENDMENT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent H. Goodfellow

AN ACT RELATING TO COHABITANT ABUSE PROCEDURES ACT; INCLUDING THE
CRIME OF DISORDERLY CONDUCT WITHIN THE DEFINITION OF DOMESTIC
VIOLENCE UNDER CERTAIN CONDITIONS; AND EXEMPTING SPECIFIED
CONVICTION FROM FEDERAL FIREARMS ACT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-36-1, as last amended by Chapter 79, Laws of Utah 1996

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

Section 1. Section **77-36-1** is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" has the same meaning as in Section 30-6-1.

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

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

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

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

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

- 26 (e) telephone harassment, as described in Section 76-9-201;
- 27 (f) kidnaping, child kidnaping, or aggravated [kidnapping] kidnaping, as described in
- 28 Sections 76-5-301, 76-5-301.1, and 76-5-302;
- 29 (g) mayhem, as described in Section 76-5-105;
- 30 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;
- 31 (i) stalking, as described in Section 76-5-106.5;
- 32 (j) unlawful detention, as described in Section 76-5-304;
- 33 (k) violation of a protective order or ex parte protective order, as described in Section
- 34 76-5-108;
- 35 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
- 36 (m) possession of a deadly weapon with intent to assault, as described in Section
- 37 76-10-507; [or]
- 38 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person,
- 39 building, or vehicle, as described in Section 76-10-508[.]; or
- 40 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
- 41 conduct is the result of a plea agreement in which the defendant was originally charged with any
- 42 of the domestic violence offenses otherwise described in this Subsection (2). Conviction of
- 43 disorderly conduct as a domestic violence offense, in the manner described in this Subsection (o),
- 44 does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and
- 45 is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.
- 46 (3) "Victim" means a cohabitant who has been subjected to domestic violence.

Legislative Review Note**as of 2-4-99 5:15 PM**

This legislation raises the following constitutional or statutory concerns:

This bill defines "disorderly conduct" as a domestic violence offense (committed by one cohabitant against another) if the conviction of disorderly conduct is the result of a plea agreement where the original charge was another domestic violence offense, as currently defined in the Utah Code.

The bill further exempts such a conviction of "disorderly conduct-domestic violence" from the provisions of the federal Firearms Act, 18 U.S.C. Section 921, et seq.

However, the federal act covers, by definition, an offense that is a misdemeanor under state law and that includes, as an element of the offense, "the use or attempted use of physical force". 18 U.S.C. Subsection 921(33). The Utah crime of disorderly conduct is a misdemeanor offense which includes, as an element of the offense, "engaging in fighting, or in violent, tumultuous, or threatening behavior". Utah Code Annotated Subsection 76-9-102(1)(b)(i).

Because of this there is a risk that the state is federally preempted from exempting this re-defined offense of "disorderly conduct-domestic violence" from the provisions of the federal law.

Office of Legislative Research and General Counsel