

1 **COHABITANT ABUSE PROCEDURES ACT**

2 **AMENDMENT**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Millie M. Peterson**

6 AN ACT RELATING TO THE COHABITANT ABUSE PROCEDURES ACT; CLARIFYING
7 PUNISHMENTS FOR VIOLATIONS OF ORDERS; DEFINING "CRIMINAL PROTECTIVE
8 ORDER"; REQUIRING ALL ORDERS TO BE IN WRITING; DESCRIBING CONDITIONS
9 FOR VIOLATION OF ORDER; REQUIRING TRANSMISSION OF ORDERS TO STATEWIDE
10 DOMESTIC VIOLENCE NETWORK; AND MAKING TECHNICAL CORRECTIONS.

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

12 AMENDS:

13 **76-5-108**, as last amended by Chapter 246, Laws of Utah 1999

14 **77-36-1**, as last amended by Chapter 229, Laws of Utah 1999

15 **77-36-2.1**, as last amended by Chapter 13, Laws of Utah 1998

16 **77-36-2.4**, as last amended by Chapter 246, Laws of Utah 1999

17 **77-36-2.5**, as renumbered and amended by Chapter 300, Laws of Utah 1995

18 **77-36-2.6**, as last amended by Chapter 244, Laws of Utah 1996

19 **77-36-2.7**, as last amended by Chapter 54, Laws of Utah 1999

20 **77-36-5**, as last amended by Chapter 318, Laws of Utah 1996

21 **77-36-5.1**, as last amended by Chapter 244, Laws of Utah 1996

22 **77-36-6**, as last amended by Chapter 300, Laws of Utah 1995

23 ENACTS:

24 **77-36-5.5**, Utah Code Annotated 1953

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

26 Section 1. Section **76-5-108** is amended to read:

27 **76-5-108. Protective orders restraining abuse of another -- Violation.**

28 (1) Any person who is the respondent or defendant subject to a protective order or ex parte
29 protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a,
30 Juvenile Court Act of 1996, a criminal protective order issued pursuant to Title 77, Chapter 36,
31 Cohabitant Abuse Procedures Act, or a foreign protective order as described in Section 30-6-12,
32 who intentionally or knowingly violates that order after having been properly served, is guilty of
33 a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36,
34 Cohabitant Abuse Procedures Act.

35 (2) Violation of an order as described in Subsection (1) is a domestic violence offense
36 under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

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

38 **77-36-1. Definitions.**

39 As used in this chapter:

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

41 (2) "Criminal protective order" means an order issued by the court pursuant to the
42 provisions of this chapter.

43 [(2)] (3) "Domestic violence" means any criminal offense involving violence or physical
44 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit
45 a criminal offense involving violence or physical harm, when committed by one cohabitant against
46 another. "Domestic violence" also means commission or attempt to commit, any of the following
47 offenses by one cohabitant against another:

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

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

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

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

52 (e) telephone harassment, as described in Section 76-9-201;

53 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301,
54 76-5-301.1, and 76-5-302;

55 (g) mayhem, as described in Section 76-5-105;

56 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;

57 (i) stalking, as described in Section 76-5-106.5;

58 (j) unlawful detention, as described in Section 76-5-304;

59 (k) violation of a protective order or ex parte protective order, as described in Section
60 76-5-108;

61 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;

62 (m) possession of a deadly weapon with intent to assault, as described in Section
63 76-10-507;

64 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person,
65 building, or vehicle, as described in Section 76-10-508; or

66 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
67 conduct is the result of a plea agreement in which the defendant was originally charged with any
68 of the domestic violence offenses otherwise described in this Subsection [~~(2)~~] (3). Conviction of
69 disorderly conduct as a domestic violence offense, in the manner described in this Subsection [(2)]
70 (3)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921,
71 and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.

72 (4) "Ex parte protective order" means the same as that term is defined in Section 30-6-1.

73 (5) "Foreign protective order" means the same as that term is defined in Section 30-6-1.

74 (6) "Protective order" means the same as that term is defined in Section 30-6-1.

75 [~~(3)~~] (7) "Victim" means a cohabitant who has been subjected to domestic violence.

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

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

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

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

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

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

85 (d) providing protection for the victim while he or she removes essential personal effects;

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

87 and

88 (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the
89 rights of victims and of the remedies and services available to victims of domestic violence, in

90 accordance with Subsection (2).

91 (2) (a) A law enforcement officer shall give written notice to the victim in simple
92 language, describing the rights and remedies available to her under this chapter and Title 30,
93 Chapter 6, Cohabitant Abuse Act.

94 (b) The written notice shall also include:

95 (i) a statement that the forms needed in order to obtain an [~~order for protection~~] ex parte
96 protective order, foreign protective order, or a protective order are available from the district court
97 clerk's office in the judicial district where the victim resides or is temporarily domiciled;

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

100 (iii) the information required to be provided to both parties in accordance with Subsection
101 77-36-2.5(7).

102 Section 4. Section **77-36-2.4** is amended to read:

103 **77-36-2.4. Violation of protective orders -- Mandatory arrest.**

104 (1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator
105 whenever he has probable cause to believe that the alleged perpetrator has violated any of the
106 provisions of an ex parte protective order [~~or~~], protective order, or criminal protective order.

107 (2) [~~(a) Intentional~~] Unless a greater penalty is provided pursuant to the terms of this
108 chapter:

109 (a) intentional or knowing violation of any ex parte protective order [~~or~~], protective order,
110 or criminal protective order is a class A misdemeanor, in accordance with Section 76-5-108, and
111 is a domestic violence offense, pursuant to Section 77-36-1[~~7~~]; and

112 (b) second or subsequent violations of ex parte protective orders [~~or~~], protective orders,
113 or criminal protective orders carry increased penalties, in accordance with Section 77-36-1.1.

114 (3) As used in this section, "ex parte protective order" or "protective order" includes any
115 foreign protective order enforceable under Section 30-6-12.

116 Section 5. Section **77-36-2.5** is amended to read:

117 **77-36-2.5. Conditions for release after arrest for domestic violence.**

118 (1) Upon arrest for domestic violence, a person may not be released on bail, recognizance,
119 or otherwise prior to the close of the next court day following the arrest, unless as a condition of
120 that release he is ordered by the court or agrees in writing that until the expiration of that time he

121 will:

- 122 (a) have no personal contact with the alleged victim;
- 123 (b) not threaten or harass the alleged victim; and
- 124 (c) not knowingly enter onto the premises of the alleged victim's residence or any premises
- 125 temporarily occupied by the alleged victim.

126 (2) As a condition of release, the court may order the defendant to participate in an
127 electronic monitoring program described in Section 30-6-4.8, and pay the costs associated with the
128 program.

129 (3) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in
130 writing any or all of the requirements described in Subsection (1). Upon waiver, those
131 requirements shall not apply to the alleged perpetrator.

132 (b) A court or magistrate may modify the requirements described in Subsections (1)(a) or
133 (c), in writing [~~or on the record~~], and only for good cause shown.

134 (4) (a) Whenever a person is released pursuant to Subsection (1), the releasing agency shall
135 notify the arresting law enforcement agency of the release, conditions of release, and any available
136 information concerning the location of the victim. The arresting law enforcement agency shall
137 then make reasonable effort to notify the victim of that release.

138 (b) (i) When a person is released pursuant to Subsection (1) based on a written agreement,
139 the releasing agency shall transmit that information to the statewide domestic violence network
140 described in Section 30-6-8.

141 (ii) When a person is released pursuant to Subsection (1) based upon a court order, the
142 court shall transmit that order to the statewide domestic violence network described in Section
143 30-6-8.

144 (c) This Subsection (4) does not create or increase liability of a law enforcement officer
145 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

146 (5) (a) If a law enforcement officer has probable cause to believe that a person has violated
147 a court order or agreement executed pursuant to Subsection (1) the officer shall, without a warrant,
148 arrest the alleged violator.

149 (b) Any person who knowingly violates a court order or agreement executed pursuant to
150 Subsection (1) shall be guilty as follows:

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

152 felony; or

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

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

156 (6) An individual who was originally arrested for a felony under this chapter and released
157 pursuant to this section, may subsequently be held without bail if there is substantial evidence to
158 support a new felony charge against him.

159 (7) At the time an arrest for domestic violence is made, the arresting officer shall provide
160 both the alleged victim and the alleged perpetrator with written notice containing the following
161 information:

162 (a) the requirements described in Subsection (1), and notice that those requirements shall
163 be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

164 (b) notification of the penalties for violation of the court order or any agreement executed
165 under Subsection (1);

166 (c) the date and time, absent modification by a court or magistrate, that the requirements
167 expire;

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

170 (e) the availability and effect of any waiver of the requirements; and

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

173 (8) In addition to the provisions of Subsections (1) through (6), because of the unique and
174 highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders,
175 and the demonstrated increased risk of continued acts of violence subsequent to the release of an
176 offender who has been arrested for domestic violence, it is the finding of the Legislature that
177 domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied
178 if there is substantial evidence to support the charge, and if the court finds by clear and convincing
179 evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of
180 domestic violence if released on bail. If bail is denied under this subsection, it shall be under the
181 terms and conditions described in Subsections (1) through (6).

182 Section 6. Section **77-36-2.6** is amended to read:

183 **77-36-2.6. Appearance of defendant required -- Determinations by court.**

184 (1) A defendant who has been arrested for an offense involving domestic violence shall
185 appear in person before the court or a magistrate within one judicial day after the arrest.

186 (2) A defendant who has been charged by citation, indictment, or information with an
187 offense involving domestic violence but has not been arrested, shall appear before the court in
188 person for arraignment as soon as practicable, but no later than 14 days after the next day on which
189 court is in session following the issuance of the citation or the filing of the indictment or
190 information.

191 (3) At the time of an appearance under Subsection (1) or (2), the court shall determine the
192 necessity of imposing a criminal protective order or other condition of pretrial release including,
193 but not limited to, [~~participating~~] the conditions described in Subsections 77-36-2.5(1)(a), (b), and
194 (c), and participation in an electronic monitoring program described in Section 30-6-4.8, in
195 accordance with the provisions of that section[~~, and~~]. The court shall state its findings and
196 determination in writing.

197 (4) A criminal protective order or any other order issued pursuant to this section is
198 punishable in accordance with the provisions of Subsection 77-36-2.7(3)(b).

199 [~~(4)~~] (5) Appearances required by this section are mandatory and may not be waived.

200 Section 7. Section **77-36-2.7** is amended to read:

201 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before trial**
202 **-- Provisions regarding violations of orders.**

203 (1) Because of the serious nature of domestic violence, the court, in domestic violence
204 actions:

205 (a) may not dismiss any charge or delay disposition because of concurrent divorce or other
206 civil proceedings;

207 (b) may not require proof that either party is seeking a dissolution of marriage before
208 instigation of criminal proceedings;

209 (c) shall waive any requirement that the victim's location be disclosed other than to the
210 defendant's attorney, upon a showing that there is any possibility of further violence, and order the
211 defendant's attorney not to disclose the victim's location to his client;

212 (d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic
213 violence;

214 (e) may dismiss a charge on stipulation of the prosecutor and the victim; and
215 (f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, making
216 treatment or any other requirement for the defendant a condition of that status.

217 (2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the case
218 against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully
219 completes all conditions imposed by the court. If the defendant fails to complete any condition
220 imposed by the court under Subsection (1)(f), the court may accept the defendant's plea.

221 (3) (a) Because of the likelihood of repeated violence directed at those who have been
222 victims of domestic violence in the past, when any defendant charged with a crime involving
223 domestic violence is released from custody before trial, the court authorizing the release may issue
224 [an] a criminal protective order:

225 (i) enjoining the defendant from threatening to commit or committing acts of domestic
226 violence or abuse against the victim and any designated family or household member;

227 (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
228 communicating with the victim, directly or indirectly;

229 (iii) removing and excluding the defendant from the victim's residence and the premises
230 of the residence;

231 (iv) ordering the defendant to stay away from the residence, school, place of employment
232 of the victim, and the premises of any of these, or any specified place frequented by the victim and
233 any designated family member; and

234 (v) ordering any other relief that the court considers necessary to protect and provide for
235 the safety of the victim and any designated family or household member.

236 (b) Violation of [an] a criminal protective order or any other order issued pursuant to this
237 section or Section 77-36-2.6 is punishable as follows:

238 (i) if the original arrest or subsequent charge filed is a felony, an offense under this section
239 is a third degree felony; and

240 (ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this
241 section is a class A misdemeanor.

242 (c) The court shall provide the victim with a certified copy of any order issued pursuant
243 to this section or Section 77-36-2.6 if the victim can be located with reasonable effort.

244 (4) When a court dismisses criminal charges or a prosecutor moves to dismiss charges

245 against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall
246 be recorded in the court file and made a part of the statewide domestic violence network described
247 in Section 30-6-8.

248 (5) When the privilege of confidential communication between spouses, or the testimonial
249 privilege of spouses is invoked in any criminal proceeding in which a spouse is the victim of an
250 alleged domestic violence offense, the victim shall be considered to be an unavailable witness
251 under the Utah Rules of Evidence.

252 (6) The court may not approve diversion for a perpetrator of domestic violence.

253 (7) The court shall transmit a criminal protective order and any other order issued pursuant
254 to this section or Section 77-36-2.6 to the statewide domestic violence network described in
255 Section 30-6-8.

256 Section 8. Section **77-36-5** is amended to read:

257 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**
258 **Counseling -- Cost assessed against defendant.**

259 (1) When a defendant is found guilty of [~~a crime and a condition of the sentence restricts~~
260 ~~the defendant's contact with the victim, an] domestic violence, or has pled guilty or no contest to
261 a charge of domestic violence, including circumstances where a plea is held in abeyance, a criminal
262 protective order may be issued or, if one has already been issued, it may be extended for the length
263 of [the defendant's probation] time determined appropriate by the court. The criminal protective
264 order shall be in writing, and the prosecutor shall provide a certified copy of that order to the
265 victim[-], if the victim can be located with reasonable effort. Violation of a criminal protective
266 order issued pursuant to this Subsection (1) shall be prosecuted in accordance with the provisions
267 of Section 76-5-108 unless a greater penalty is provided pursuant to the terms of this chapter.~~

268 (2) In determining its sentence the court, in addition to penalties otherwise provided by
269 law, may require the defendant to participate in:

270 (a) an electronic monitoring program, as described in Section 30-6-4.8, in accordance with
271 the provisions of that section; and

272 (b) treatment or therapy in a domestic violence treatment program, as defined in Section
273 62A-2-101, licensed by the Department of Human Services.

274 (3) The court may also require the defendant to pay all or part of the costs of counseling
275 incurred by the victim, as well as the costs for defendant's own counseling.

276 (4) The court shall assess against the defendant, as restitution, any costs for services or
277 treatment provided to the abused spouse by the Division of Child and Family Services under
278 Section 62A-4a-106. The court shall order those costs to be paid directly to the division or its
279 contracted provider.

280 Section 9. Section **77-36-5.1** is amended to read:

281 **77-36-5.1. Conditions of probation for person convicted of domestic violence offense.**

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

285 (2) The court may condition probation or a plea in abeyance on the perpetrator's
286 compliance with one or more orders of the court which may include, but are not limited to, [an]
287 a criminal protective order:

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

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

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

295 (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled
296 substances;

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

299 (f) directing the perpetrator to surrender any weapons that he owns or possesses;

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

303 (h) directing the perpetrator to pay restitution to the victim; and

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

306 (3) The perpetrator is responsible for the costs of any condition of probation, according

307 to his ability to pay.

308 (4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court
309 and notify the victim of any assault by the perpetrator, the perpetrator's failure to comply with any
310 condition imposed by the court, and any threat of harm made by the perpetrator.

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

314 Section 10. Section 77-36-5.5 is enacted to read:

315 **77-36-5.5. Forms for criminal protective orders.**

316 No later than September 1, 2000, the Administrative Office of the Courts shall:

317 (1) develop and adopt uniform forms for criminal protective orders in accordance with the
318 provisions of this chapter, and provide the forms to each justice and district court; and

319 (2) develop and adopt uniform forms for agreements and court orders issued in accordance
320 with Section 77-36-2.5, and provide the forms to all jails and to each justice and district court.

321 Section 11. Section 77-36-6 is amended to read:

322 **77-36-6. Enforcement of orders.**

323 Each law enforcement agency in this state shall enforce all criminal protective orders and
324 all other orders of the court issued pursuant to the requirements and procedures described in this
325 chapter, and shall enforce all protective orders [and], ex parte protective orders, and foreign
326 protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act. The requirements
327 of this section apply statewide, regardless of the jurisdiction in which the order was issued or the
328 location of the victim or the perpetrator.

Legislative Review Note
as of 2-4-00 11:23 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel