

1                                   **LAW ENFORCEMENT TRACKING OF**  
2                                   **DOMESTIC VIOLENCE STATISTICS**

3                                   2008 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Jon J. Greiner**

6                                   House Sponsor: Carl Wimmer

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Code of Criminal Procedure by requiring the reporting of domestic  
11   violence statistics to the Department of Public Safety.

12   **Highlighted Provisions:**

13           This bill:

14           ▶ requires law enforcement officers employed by a city of the first or second class,  
15   when responding to a complaint of domestic violence, to gather and report the  
16   following information to the Department of Public Safety for a period beginning  
17   January 1, 2009 and ending December 31, 2013:

- 18           • marital status of the parties involved;
- 19           • relationship of the suspect to the victim; and
- 20           • whether or not an arrest was made; and

21           ▶ provides definitions.

22   **Monies Appropriated in this Bill:**

23           None

24   **Other Special Clauses:**

25           None

26   **Utah Code Sections Affected:**

27   AMENDS:

28           **77-36-1**, as last amended by Laws of Utah 2006, Chapter 46

29           **77-36-2.2**, as last amended by Laws of Utah 1998, Chapter 105

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*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) "Department" means the Department of Public Safety.

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

~~[(2)]~~ (4) "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;

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

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

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

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Title 76, Chapter 5a, Sexual Exploitation of Children;

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

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

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

58 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property  
59 Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;

60 (m) possession of a deadly weapon with intent to assault, as described in Section  
61 76-10-507;

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

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

71 (p) child abuse as described in Section 76-5-109.1.

72 (5) "Marital status" means married and living together, divorced, separated, or not  
73 married.

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

76 (7) "Not married" means any living arrangement other than married and living together,  
77 divorced, or separated.

78 (8) "Separated" means a man and a woman who have had their marriage solemnized  
79 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

80 [~~(3)~~] (9) "Victim" means a cohabitant who has been subjected to domestic violence.

81 Section 2. Section **77-36-2.2** is amended to read:

82 **77-36-2.2. Powers and duties of law enforcement officers to arrest -- Reports of**  
83 **domestic violence cases -- Reports of parties' marital status.**

84 (1) The primary duty of law enforcement officers responding to a domestic violence  
85 call is to protect the victim and enforce the law.

86 (2) (a) In addition to the arrest powers described in Section 77-7-2, when a peace  
87 officer responds to a domestic violence call and has probable cause to believe that an act of  
88 domestic violence has been committed, the peace officer shall arrest without a warrant or shall  
89 issue a citation to any person that ~~he~~ the peace officer has probable cause to believe has  
90 committed an act of domestic violence.

91 (b) (i) If the peace officer has probable cause to believe that there will be continued  
92 violence against the alleged victim, or if there is evidence that the perpetrator has either recently  
93 caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the  
94 officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option  
95 of issuing a citation under this section.

96 (ii) For purposes of ~~[this section]~~ Subsection (2)(b)(i), "serious bodily injury" and  
97 "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.

98 (c) If a peace officer does not immediately exercise arrest powers or initiate criminal  
99 proceedings by citation or otherwise, ~~he~~ the officer shall notify the victim of ~~his or her~~ the  
100 right to initiate a criminal proceeding and of the importance of preserving evidence, in  
101 accordance with the requirements of Section 77-36-2.1.

102 (3) If a law enforcement officer receives complaints of domestic violence from two or  
103 more opposing persons, the officer shall evaluate each complaint separately to determine who  
104 the predominant aggressor was. If the officer determines that one person was the predominant  
105 physical aggressor, the officer need not arrest the other person alleged to have committed  
106 domestic violence. In determining who the predominant aggressor was, the officer shall  
107 consider:

- 108 (a) any prior complaints of domestic violence;  
109 (b) the relative severity of injuries inflicted on each person;  
110 (c) the likelihood of future injury to each of the parties; and  
111 (d) whether one of the parties acted in self defense.

112 (4) A law enforcement officer may not threaten, suggest, or otherwise indicate the  
113 possible arrest of all parties in order to discourage any party's request for intervention by law

114 enforcement.

115 (5) (a) A law enforcement officer who does not make an arrest after investigating a  
116 complaint of domestic violence, or who arrests two or more parties, shall submit a detailed,  
117 written report specifying the grounds for not arresting any party or for arresting both parties.

118 (b) A law enforcement officer who does not make an arrest shall notify the victim of  
119 ~~[his or her]~~ the right to initiate a criminal proceeding and of the importance of preserving  
120 evidence.

121 (6) (a) A law enforcement officer responding to a complaint of domestic violence shall  
122 prepare an incident report that includes the officer's disposition of the case.

123 (b) From January 1, 2009 until December 31, 2013, any law enforcement officer  
124 employed by a city of the first or second class responding to a complaint of domestic violence  
125 shall also report, either as a part of an incident report or on a separate form, the following  
126 information:

127 (i) marital status of each of the parties involved;

128 (ii) social, familial, or legal relationship of the suspect to the victim; and

129 (iii) whether or not an arrest was made.

130 (c) The information obtained in Subsection (6)(b):

131 (i) shall be reported monthly to the department;

132 (ii) shall be reported as numerical data that contains no personal identifiers; and

133 (iii) is a public record as defined in Section 63-2-103.

134 ~~[(b) That]~~ (d) The incident report shall be made available to the victim, upon request,  
135 at no cost.

136 ~~[(e)]~~ (e) The law enforcement agency shall forward a copy of the incident report to the  
137 appropriate prosecuting attorney within five days after the complaint of domestic violence  
138 occurred.

139 (7) Each law enforcement agency shall, as soon as practicable, make a written record  
140 and maintain records of all incidents of domestic violence reported to it, and shall be identified  
141 by a law enforcement agency code for domestic violence.

