

1 **COHABITANT ABUSE PROCEDURES ACT**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brent H. Goodfellow**

6 House Sponsor: Kay L. McIff

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Cohabitant Abuse Procedures Act relating to an
11 order issued to a defendant pending trial.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ permits a court to issue an order to a person awaiting trial on a crime of domestic
15 violence during any court hearing where the defendant is present, instead of at the
16 time that the person is released from custody; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **77-36-2.7**, as last amended by Laws of Utah 2008, Chapter 3

25

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

27 Section 1. Section **77-36-2.7** is amended to read:

28 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Order pending**
29 **trial.**

30 (1) Because of the serious nature of domestic violence, the court, in domestic violence
31 actions:

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

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

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

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

41 (e) may dismiss a charge on stipulation of the prosecutor and the victim; and

42 (f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a,
43 Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of
44 that status.

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

50 (3) (a) Because of the likelihood of repeated violence directed at those who have been
51 victims of domestic violence in the past, when any defendant is charged with a crime
52 involving domestic violence [~~is released from custody before trial~~], the court [~~authorizing the~~
53 ~~release~~] may, during any court hearing where the defendant is present, issue an order, pending
54 trial:

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

57 (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise

58 communicating with the victim, directly or indirectly;

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

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

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

66 (b) Violation of an order issued pursuant to this section is punishable as follows:

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

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

71 (c) The court shall provide the victim with a certified copy of any order issued
72 pursuant to this section if the victim can be located with reasonable effort.

73 (4) When a court dismisses criminal charges or a prosecutor moves to dismiss charges
74 against a defendant accused of a domestic violence offense, the specific reasons for dismissal
75 shall be recorded in the court file and made a part of the statewide domestic violence network
76 described in Section 78B-7-113.

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

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