

**PROTECTIONS FOR VICTIMS OF DOMESTIC
VIOLENCE**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies the Cohabitant Abuse Procedures Act regarding procedures, records, and protective orders and no contact agreements.

Highlighted Provisions:

This bill:

- ▶ provides time limits on criminal protective orders and no contact agreements, and provides for judicial discretion for good cause;
- ▶ authorizes the court to issue a pretrial criminal protective order if the defendant has been charged with a domestic violence offense;
- ▶ amends terms to reflect judicial procedures regarding release of a defendant;
- ▶ provides that if a person charged with domestic violence is released, the person shall receive a copy of the criminal protective order or no contact agreement prior to release;
- ▶ requires that the arresting officer shall provide, at the time of the arrest:
 - to the alleged victim the date of the defendant's court hearing, and that release conditions may expire at the end of that court day; and
 - to the alleged perpetrator information about the requirement to personally appear in court;
- ▶ provides that the court may allow the court jail release order or jail release



28 agreement to expire at the end of the day the defendant appears in court, or may extend the
29 order or agreement for good cause;

30 ▶ removes the requirement of a possible showing of future violence when the court
31 waives the requirement that the alleged victim's location be disclosed;

32 ▶ requires that action regarding criminal protective orders be transmitted to the
33 statewide domestic violence network;

34 ▶ provides that any criminal protective order related to a dismissed criminal domestic
35 violence shall be dismissed;

36 ▶ provides for a sentencing criminal protective order to be issued for the duration of a
37 domestic violence defendant's probation or sentence and provides that violation of
38 the order is a class A misdemeanor;

39 ▶ requires the defendant to pay the costs of counseling for children who are affected
40 by the domestic violence offense, in addition to the current requirement to pay for
41 the victim's counseling; and

42 ▶ requires the court to enter in the court record any finding that the defendant is not
43 required to complete treatment or therapy.

44 Monies Appropriated in this Bill:

45 None

46 Other Special Clauses:

47 None

48 Utah Code Sections Affected:

49 **AMENDS:**

50 **77-36-2.4**, as last amended by Laws of Utah 2008, Chapter 3

51 **77-36-2.5**, as last amended by Laws of Utah 2008, Chapter 3

52 **77-36-2.6**, as last amended by Laws of Utah 2003, Chapter 68

53 **77-36-2.7**, as last amended by Laws of Utah 2009, Chapter 238

54 **77-36-5**, as last amended by Laws of Utah 2003, Chapter 68

55 **77-36-5.1**, as last amended by Laws of Utah 1996, Chapter 244

56 **77-36-6**, as last amended by Laws of Utah 2008, Chapter 3



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

59 Section 1. Section **77-36-2.4** is amended to read:

60 **77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.**

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

64 (2) (a) Intentional or knowing violation of any ex parte protective order or protective
65 order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater
66 penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section
67 77-36-1.

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

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

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

73 (b) any written criminal protective order, including written jail release agreements or
74 court orders and pretrial and sentencing criminal protective orders issued under Title 77,
75 Chapter 36, Cohabitant Abuse Procedures Act;

76 ~~[(b)]~~ (c) any child protective order or ex parte child protective order issued under Title
77 78B, Chapter 7, Part 2, Child Protective Orders; or

78 ~~[(c)]~~ (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3,
79 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

80 Section 2. Section **77-36-2.5** is amended to read:

81 **77-36-2.5. Conditions for release after arrest for domestic violence.**

82 (1) Upon arrest for domestic violence, a person may not be released on bail,
83 recognizance, or otherwise prior to the close of the next court day following the arrest, unless
84 as a condition of that release ~~[he]~~ the person is ordered by the court or agrees in writing that
85 until ~~[the expiration of that time he]~~ further order of the court, the person will:

86 (a) have no personal contact with the alleged victim;

87 (b) not threaten or harass the alleged victim; and

88 (c) not knowingly enter onto the premises of the alleged victim's residence or any
89 premises temporarily occupied by the alleged victim.

90 (2) (a) The written jail release agreement or written jail release court order expires at
91 the end of the court day on which the person arrested personally appears, in person or by jail
92 video, for arraignment or when the person makes an initial appearance.

93 (b) (i) If criminal charges have not been filed against the arrested person, the court
94 may, for good cause and in writing, extend the written jail release agreement or written jail
95 release court order beyond the time period under Subsection (2)(a) as provided in Subsection
96 (2)(b)(ii).

97 (ii) (A) The court may extend a jail release or court order under Subsection (2)(b)(i) for
98 no longer than the close of the third business day after the arrested person's first court
99 appearance.

100 (B) If criminal charges are filed against the arrested person within the three business
101 days, the written jail release agreement or the written jail release court order continues in effect
102 until the arrested person personally appears in person or by jail video at the arrested person's
103 next scheduled court appearance.

104 (c) If criminal charges have been filed against the arrested person the court may, upon
105 the request of the prosecutor or the victim or upon the court's own motion, issue a written
106 pretrial criminal protective order pursuant to Section 77-36-2.6 and Subsection 77-36-2.7(3)(a).

107 ~~[(2)]~~ (3) As a condition of release, the court may order the defendant to participate in
108 an electronic or other monitoring program and to pay the costs associated with the program.

109 ~~[(3)]~~ (4) (a) Subsequent to an arrest for domestic violence, an alleged victim may
110 waive in writing ~~[any or all of the requirements]~~ the release conditions described in Subsection
111 (1)(a) or (c). Upon waiver, those ~~[requirements shall]~~ release conditions do not apply to the
112 alleged perpetrator.

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

115 ~~[(4)]~~ (5) (a) ~~[Whenever]~~ When a person is released pursuant to Subsection (1), the
116 releasing agency shall notify the arresting law enforcement agency of the release, conditions of
117 release, and any available information concerning the location of the victim. The arresting law
118 enforcement agency shall then make a reasonable effort to notify the victim of that release.

119 (b) (i) When a person is released pursuant to Subsection (1) based on a written jail
120 release agreement, the releasing agency shall transmit that information to the statewide

121 domestic violence network described in Section 78B-7-113.

122 (ii) When a person is released pursuant to Subsection (1) or (2) based upon a [~~court~~
123 ~~order~~] written jail release court order or if a written jail release agreement is modified pursuant
124 to Subsection (4)(b), the court shall transmit that order to the statewide domestic violence
125 network described in Section 78B-7-113.

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

128 (c) This Subsection [~~(4)~~] (5) does not create or increase liability of a law enforcement
129 officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

130 [~~(5)~~] (6) (a) If a law enforcement officer has probable cause to believe that a person has
131 violated a written jail release court order or written jail release agreement executed pursuant to
132 Subsection (1) the officer shall, without a warrant, arrest the alleged violator.

133 (b) Any person who knowingly violates a [~~court~~] written jail release court order or
134 written jail release agreement executed pursuant to Subsection (1) [~~shall be~~] is guilty as
135 follows:

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

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

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

141 [~~(6) An individual~~] (7) A person who was originally arrested for a domestic violence
142 felony or misdemeanor under this chapter and released pursuant to this section may
143 subsequently be held without bail if there is substantial evidence to support a new domestic
144 violence felony or misdemeanor charge against [~~him~~] the person.

145 [~~(7)~~] (8) At the time an arrest for domestic violence is made, the arresting officer shall
146 provide the alleged victim with written notice containing [~~the following information~~]:

147 (a) the [~~requirements~~] release conditions described in Subsection (1), and notice that
148 those [~~requirements~~] release conditions shall be ordered by a court or must be agreed to by the
149 alleged perpetrator prior to release;

150 (b) notification of the penalties for violation of [~~the~~] any written jail release court order
151 or any written jail release agreement executed under Subsection (1);

152 (c) the date ~~[and time, absent modification by a court or magistrate, that the~~
153 ~~requirements expire]~~ the alleged perpetrator is scheduled to personally appear in court and a
154 statement advising the alleged victim that the release conditions may expire at the end of that
155 court day or may be extended by the court for good cause shown;

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

158 (e) the availability and effect of any waiver of the ~~[requirements]~~ release conditions;
159 and

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

162 ~~[(8)]~~ (9) At the time an arrest for domestic violence is made, the arresting officer shall
163 provide the alleged perpetrator with written notice containing ~~[the following information]:~~

164 (a) the ~~[requirements]~~ release conditions described in Subsection (1) and notice that
165 those ~~[requirements]~~ release conditions shall be ordered by a court or ~~[must]~~ shall be agreed to
166 by the alleged perpetrator prior to release;

167 (b) notification of the penalties for violation of the written jail release court order or
168 any written jail release agreement executed under Subsection (1); and

169 (c) the date ~~[and time absent modification by a court or magistrate that the~~
170 ~~requirements expire]~~ the alleged perpetrator is to personally appear in court and that the written
171 jail release court order or the written jail release agreement may expire at the end of the court
172 day or may be extended by the court for good cause.

173 (10) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the
174 written jail release court order or written jail release agreement does not expire and continues
175 in effect until the alleged perpetrator makes the personal appearance in court as required by
176 Section 77-36-2.6.

177 (b) If, when the alleged perpetrator personally appears in court as required by Section
178 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow
179 the written jail release court order or written jail release agreement to expire at the end of the
180 court day or may extend it for good cause.

181 (c) If criminal charges have been filed, the court may issue a written pretrial criminal
182 protective order pursuant to Section 77-36-2.6 and Subsection 77-36-2.7(3)(a) upon request of

183 the prosecutor or the victim or upon the court's own motion.

184 [~~(9)~~] (11) In addition to the provisions of Subsections (1) through [~~(6)~~] (7), because of
 185 the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of
 186 violent offenders, and the demonstrated increased risk of continued acts of violence subsequent
 187 to the release of an offender who has been arrested for domestic violence, it is the finding of
 188 the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for
 189 which bail may be denied if there is substantial evidence to support the charge, and if the court
 190 finds by clear and convincing evidence that the alleged perpetrator would constitute a
 191 substantial danger to an alleged victim of domestic violence if released on bail. [~~If bail is~~
 192 ~~denied under this Subsection (9), it shall be under the terms and conditions described in~~
 193 ~~Subsections (1) through (6).]~~

194 Section 3. Section **77-36-2.6** is amended to read:

195 **77-36-2.6. Appearance of defendant required -- Determinations by court.**

196 (1) A defendant who has been arrested for an offense involving domestic violence shall
 197 appear in person personally or by jail video before the court or a magistrate within one judicial
 198 day after the arrest.

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

204 (3) At the time of an appearance under Subsection (1) or (2), the court shall determine
 205 the necessity of imposing a pretrial criminal protective order or other condition of pretrial
 206 release including, but not limited to, participating in an electronic or other type of monitoring
 207 program, and shall state its findings and determination in writing.

208 (4) Appearances required by this section are mandatory and may not be waived.

209 Section 4. Section **77-36-2.7** is amended to read:

210 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Order pending**
 211 **trial.**

212 (1) Because of the serious nature of domestic violence, the court, in domestic violence
 213 actions:

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

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

218 (c) shall waive any requirement that the victim's location be disclosed other than to the
219 defendant's attorney[~~-, upon a showing that there is any possibility of further violence,]~~ and
220 order the defendant's attorney not to disclose the victim's location to ~~[his]~~ the client;

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

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

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

227 (2) The court may issue a criminal protective order pursuant to Subsection
228 77-36-2.7(3)(a).

229 ~~[(2)]~~ (3) When the court holds a plea in abeyance in accordance with Subsection (1)(f),
230 the case against a perpetrator of domestic violence may be dismissed only if the perpetrator
231 successfully completes all conditions imposed by the court. If the defendant fails to complete
232 any condition imposed by the court under Subsection (1)(f), the court may accept the
233 defendant's plea.

234 ~~[(3)]~~ (4) (a) Because of the likelihood of repeated violence directed at those who have
235 been victims of domestic violence in the past, when any defendant is charged with a crime
236 involving domestic violence, the court may, during any court hearing where the defendant is
237 present, issue ~~[an]~~ a pretrial criminal protective order, pending trial:

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

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

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

244 (iv) ordering the defendant to stay away from the residence, school, place of

245 employment of the victim, and the premises of any of these, or any specified place frequented
246 by the victim and any designated family member; and

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

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

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

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

254 (c) (i) The court shall provide the victim with a certified copy of any pretrial criminal
255 protective order issued pursuant to this section or Section 77-36-2.6 if the victim can be located
256 with reasonable effort.

257 (ii) The court shall also transmit the pretrial criminal protective order to the statewide
258 domestic violence network.

259 (d) Issuance of a pretrial or sentencing criminal protective order supercedes a written
260 jail release agreement or a written jail release court order issued by the court at the time of
261 arrest.

262 [~~4~~] (5) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss
263 charges against a defendant accused of a domestic violence offense, the specific reasons for
264 dismissal shall be recorded in the court file and made a part of the statewide domestic violence
265 network described in Section 78B-7-113.

266 (b) The court shall transmit the dismissal to the statewide domestic violence network.

267 (c) Any pretrial criminal protective orders, including written jail release court orders
268 and written jail release agreements related to the dismissed domestic violence criminal charge,
269 shall also be dismissed.

270 [~~5~~] (6) When the privilege of confidential communication between spouses, or the
271 testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the
272 victim of an alleged domestic violence offense, the victim shall be considered to be an
273 unavailable witness under the Utah Rules of Evidence.

274 [~~6~~] (7) The court may not approve diversion for a perpetrator of domestic violence.

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

276 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**
277 **Counseling -- Cost assessed against defendant.**

278 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a
279 condition of the sentence restricts the defendant's contact with the victim, ~~[an]~~ a sentencing
280 criminal protective order may be issued ~~[or, if one has already been issued, it may be extended]~~
281 under Subsection 77-36-5.1(2) for the length of the defendant's probation or sentence,
282 whichever is longer. ~~[The]~~

283 (b) (i) The sentencing criminal protective order shall be in writing, and the prosecutor
284 shall provide a certified copy of that order to the victim.

285 (ii) The court shall transmit the sentencing criminal protective order to the statewide
286 domestic violence network.

287 (c) Violation of a sentencing criminal protective order issued pursuant to this
288 Subsection (1) is a class A misdemeanor.

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

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

295 (4) The court shall:

296 (a) assess against the defendant, as restitution, any costs for services or treatment
297 provided to the ~~[abused spouse]~~ victim and affected children of the victim or the defendant by
298 the Division of Child and Family Services under Section 62A-4a-106; and

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

300 (5) The court shall order the defendant to obtain and satisfactorily complete treatment
301 or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is
302 licensed by the Department of Human Services, unless the court finds that there is no licensed
303 program reasonably available or that the treatment or therapy is not necessary and enters the
304 finding in the court record.

305 Section 6. Section **77-36-5.1** is amended to read:

306 **77-36-5.1. Conditions of probation for person convicted of domestic violence**

307 **offense.**

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

311 (2) The court may condition probation or a plea in abeyance on the perpetrator's
312 compliance with one or more orders of the court, which may include~~[-but are not limited to;~~
313 ~~an]~~ a sentencing criminal protective order:

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

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

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

321 (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled
322 substances;

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

325 (f) directing the perpetrator to surrender any weapons ~~[that he]~~ the perpetrator owns or
326 possesses;

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

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

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

333 (3) The perpetrator is responsible for the costs of any condition of probation, according
334 to ~~[his]~~ the perpetrator's ability to pay.

335 (4) (a) Adult Probation and Parole, or other provider, shall immediately report to the
336 court and notify the victim of any ~~[assault]~~ offense involving domestic violence committed by
337 the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and

338 any [~~threat of harm made by the perpetrator~~] violation of any sentencing criminal protective
339 order issued by the court.

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

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

346 (6) (a) A sentencing criminal protective order remains in effect when a person is
347 sentenced to the Utah State Prison and terminates only upon expiration of the defendant's
348 sentence or release from parole by the Board of Pardons.

349 (b) The Board of Pardons shall transmit the termination or expiration of the sentencing
350 criminal protective order upon the expiration of the defendant's sentence or the termination of
351 the defendant's parole to the statewide domestic violence network.

352 Section 7. Section **77-36-6** is amended to read:

353 **77-36-6. Enforcement of orders.**

354 (1) Each law enforcement agency in this state shall enforce all [~~orders of the court~~]
355 written jail release agreements, written jail release court orders, pretrial criminal protective
356 orders, and sentencing criminal protective orders issued pursuant to the [~~requirements~~] release
357 conditions and procedures described in this chapter, and shall enforce:

358 (a) all protective orders and ex parte protective orders issued pursuant to Title 78B,
359 Chapter 7, Part 1, Cohabitant Abuse Act; and

360 (b) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3,
361 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

362 (2) The requirements of this section apply statewide, regardless of the jurisdiction in
363 which the order was issued or the location of the victim or the perpetrator.

Legislative Review Note
as of 1-26-10 10:22 AM

Office of Legislative Research and General Counsel

H.B. 303 - Protections for Victims of Domestic Violence

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses. Certain domestic violence offenders will be required to pay for counseling for children affected by the domestic violence offense. Local law enforcement will change certain procedures as a result of this legislation.
