

**PRETRIAL RELEASE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

**General Description:**

This bill modifies pretrial release provisions.

**Highlighted Provisions:**

This bill:

- ▶ addresses the right to bail involving qualifying offenses;
- ▶ modifies terms related to jail release agreements and jail release court orders;
- ▶ addresses conditions for release after arrest for domestic violence and other offenses;
- ▶ amends provisions related to dismissal of certain offenses;
- ▶ addresses contents of pretrial protective orders;
- ▶ repeals language regarding privileged communications; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 77-20-1, as last amended by Laws of Utah 2017, Chapters 289, 311, and 332

29 77-20-3.5, as last amended by Laws of Utah 2018, Chapter 281

30 77-36-1, as last amended by Laws of Utah 2018, Chapter 255

31 77-36-2.7, as last amended by Laws of Utah 2017, Chapter 289



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

34 Section 1. Section 77-20-1 is amended to read:

35 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

36 (1) As used in this chapter:

37 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

38 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

39 (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

40 (2) ~~[A person]~~ An individual charged with or arrested for a criminal offense shall be  
41 admitted to bail as a matter of right, except if the ~~[person]~~ individual is charged with a:

42 (a) capital felony, when the court finds there is substantial evidence to support the  
43 charge;

44 (b) felony committed while on probation or parole, or while free on bail awaiting trial  
45 on a previous felony charge, when the court finds there is substantial evidence to support the  
46 current felony charge;

47 (c) felony when there is substantial evidence to support the charge and the court finds  
48 by clear and convincing evidence that the ~~[person]~~ individual would constitute a substantial  
49 danger to any other ~~[person]~~ individual or to the community, or is likely to flee the jurisdiction  
50 of the court, if released on bail; ~~[or]~~

51 (d) felony when the court finds there is substantial evidence to support the charge and  
52 it finds by clear and convincing evidence that the ~~[person]~~ individual violated a material  
53 condition of release while previously on bail~~[-]; or~~

54 (e) domestic violence offense if the court finds:

55 (i) that there is substantial evidence to support the charge; and

56 (ii) by clear and convincing evidence, that the individual would constitute a substantial  
57 danger to an alleged victim of domestic violence if released on bail.

58 (3) Any ~~[person]~~ individual who may be admitted to bail may be released by written

59 undertaking or an equal amount of cash bail, or on the ~~[person's]~~ individual's own  
60 recognizance, on condition that the ~~[person]~~ individual appear in court for future court  
61 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate  
62 or court that will reasonably:

63 (a) ensure the appearance of the accused;  
64 (b) ensure the integrity of the court process;  
65 (c) prevent direct or indirect contact with witnesses or victims by the accused, if  
66 appropriate; and

67 (d) ensure the safety of the public.

68 (4) (a) Except as otherwise provided, the initial order denying or fixing the amount of  
69 bail shall be issued by the magistrate or court issuing the warrant of arrest.

70 (b) A magistrate may set bail upon determining that there was probable cause for a  
71 warrantless arrest.

72 (c) A bail commissioner may set bail in a misdemeanor case in accordance with  
73 Sections [10-3-920](#) and [17-32-1](#).

74 (d) ~~[A person]~~ An individual arrested for a violation of a jail release agreement or jail  
75 release court order issued in accordance with Section [77-20-3.5](#):

76 (i) may not be released before the accused's first judicial appearance; and

77 (ii) may be denied bail by the court under Subsection ~~[[77-20-3.5](#)(9) or (11)]~~ (2).

78 (5) The magistrate or court may rely upon information contained in:

79 (a) the indictment or information;

80 (b) any sworn probable cause statement;

81 (c) information provided by any pretrial services agency; or

82 (d) any other reliable record or source.

83 (6) (a) A motion to modify the initial order may be made by a party at any time upon  
84 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and  
85 to permit any victim to be notified and be present.

86 (b) Hearing on a motion to modify may be held in conjunction with a preliminary  
87 hearing or any other pretrial hearing.

88 (c) The magistrate or court may rely on information as provided in Subsection (5) and  
89 may base its ruling on evidence provided at the hearing so long as each party is provided an

90 opportunity to present additional evidence or information relevant to bail.

91 (7) Subsequent motions to modify bail orders may be made only upon a showing that  
92 there has been a material change in circumstances.

93 (8) An appeal may be taken from an order of any court denying bail to the Supreme  
94 Court, which shall review the determination under Subsection (2).

95 (9) For purposes of this section, any arrest or charge for a violation of Section  
96 76-5-202, Aggravated murder, is a capital felony unless:

- 97 (a) the prosecutor files a notice of intent to not seek the death penalty; or
- 98 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor  
99 has not filed a notice to seek the death penalty.

100 Section 2. Section 77-20-3.5 is amended to read:

101 **77-20-3.5. Conditions for release after arrest for domestic violence and other**  
102 **offenses -- Jail release agreements -- Jail release court orders.**

103 (1) As used in this section:

104 (a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

105 (b) "Jail release agreement" means a written agreement [~~described in Subsection (3)]~~  
106 that is entered into by an arrested individual:

107 [~~(i) limits the contact an individual arrested for a qualifying offense may have with an~~  
108 ~~alleged victim; and]~~

109 (i) under which the arrested individual agrees to not engage in any of the following:

110 (A) have personal contact with the alleged victim;

111 (B) threaten or harass the alleged victim; or

112 (C) knowingly enter on the premises of the alleged victim's residence or on premises  
113 temporarily occupied by the alleged victim; and

114 (ii) that specifies other conditions of release from jail.

115 (c) "Jail release court order" means a written court order [~~issued in accordance with~~  
116 ~~Subsection (3)] that:~~

117 [~~(i) limits the contact an individual arrested for a qualifying offense may have with an~~  
118 ~~alleged victim; and]~~

119 (i) orders an arrested individual not to engage in any of the following:

120 (A) have personal contact with the alleged victim;

121 (B) threaten or harass the alleged victim; or  
 122 (C) knowingly enter on the premises of the alleged victim's residence or on premises  
 123 temporarily occupied by the alleged victim; and

124 (ii) specifies other conditions of release from jail.

125 (d) "Minor" means an unemancipated individual who is younger than 18 years of age.

126 (e) "Offense against a child or vulnerable adult" means the commission or attempted  
 127 commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.

128 (f) "Qualifying offense" means:

129 (i) domestic violence;

130 (ii) an offense against a child or vulnerable adult; or

131 (iii) the commission or attempted commission of an offense described in Title 76,  
 132 Chapter 5, Part 4, Sexual Offenses.

133 (2) (a) Upon arrest for a qualifying offense and before the [person] individual is  
 134 released on bail, recognizance, or otherwise, the [person] individual may not personally contact  
 135 the alleged victim.

136 (b) ~~[A person]~~ An individual who violates Subsection (2)(a) is guilty of a class B  
 137 misdemeanor.

138 (3) (a) After ~~[a person]~~ an individual is arrested for a qualifying offense, the [person]  
 139 individual may not be released before:

140 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

141 (ii) the [person] individual signs a jail release agreement ~~[in accordance with~~  
 142 ~~Subsection (3)(d)(i)].~~

143 (b) The arresting officer shall ensure that the information presented to the magistrate  
 144 includes whether the alleged victim has made a waiver described in Subsection (6)(a).

145 (c) (i) If the magistrate determines there is probable cause to support the charge or  
 146 charges of one or more qualifying offenses, the magistrate shall determine~~[(i) whether~~  
 147 ~~grounds exist to hold the arrested person]~~ whether the arrested individual may be held without  
 148 bail, in accordance with Section 77-20-1~~;~~].

149 ~~[(ii) if no grounds exist to hold the arrested person without bail;]~~

150 (ii) If the magistrate determines that the arrested individual has the right to be admitted  
 151 to bail, the magistrate shall determine:

152 (A) whether any release conditions, including electronic monitoring, are necessary to  
153 protect the alleged victim; ~~[or]~~ and

154 ~~[(iii)]~~ (B) any bail that is required to guarantee the arrested person's subsequent  
155 appearance in court.

156 ~~[(d)(i) The magistrate may not release a person arrested for a qualifying offense before  
157 the person's initial court appearance before the court with jurisdiction over the offense for  
158 which the person was arrested, unless the arrested person agrees in writing or the magistrate  
159 orders, as a release condition, that, until the arrested person appears at the initial court  
160 appearance, the arrested person will not:]~~

161 ~~[(A) have personal contact with the alleged victim;]~~

162 ~~[(B) threaten or harass the alleged victim; or]~~

163 ~~[(C) knowingly enter onto the premises of the alleged victim's residence or any  
164 premises temporarily occupied by the alleged victim.]~~

165 ~~[(ii) The magistrate shall schedule the appearance described in Subsection (3)(d)(i) to  
166 take place no more than 96 hours after the time of the arrest.]~~

167 ~~[(iii) The arrested person may make the appearance described in Subsection (3)(d)(i) by  
168 video if the arrested person is not released.]~~

169 (d) The magistrate may not release an individual arrested for a qualifying offense  
170 unless the magistrate issues a jail release court order or the arrested individual signs a jail  
171 release agreement.

172 (4) (a) If ~~[a person]~~ an individual charged with a qualifying offense fails to either  
173 schedule an initial appearance or to appear at the time scheduled by the magistrate ~~[under~~  
174 Subsection (3)(d), the person] within 96 hours after the time of arrest, the individual shall  
175 comply with the release conditions ~~[described in Subsection (3)(d)(i) until the person]~~ of a jail  
176 release agreement or jail release court order until the individual makes an initial appearance.

177 (b) If the prosecutor has not filed charges against ~~[a person]~~ an individual who was  
178 arrested for a qualifying offense and who appears in court at the time scheduled by the  
179 magistrate under Subsection (3)~~[(d)]~~, or by the court under Subsection (4)(b)(ii), the court:

180 (i) may, upon the motion of the prosecutor and after allowing the ~~[person]~~ individual  
181 an opportunity to be heard on the motion, extend the release conditions described in  
182 ~~[Subsection (3)(d)(i)]~~ the jail release court order or the jail release agreement by no more than

183 three court days; and

184 (ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the  
185 arrested ~~[person]~~ individual to appear at a time scheduled before the end of the granted  
186 extension.

187 (c) (i) If the prosecutor determines that there is insufficient evidence to file charges  
188 before an initial appearance scheduled under Subsection (4)(a), the prosecutor shall transmit a  
189 notice of declination to either the magistrate who signed the jail release court order or, if the  
190 releasing agency obtains a jail release agreement from the released arrestee, to the statewide  
191 domestic violence network described in Section [78B-7-113](#).

192 (ii) A prosecutor's notice of declination transmitted under this Subsection (4)(c) is  
193 considered a motion to dismiss a jail release court order and a notice of expiration of a jail  
194 release agreement.

195 (5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release  
196 agreement or jail release court order expires at midnight after the earlier of:

197 (a) the arrested ~~[person's]~~ individual's initial scheduled court appearance described in  
198 Subsection ~~[(3)(d)(i)] (4)(a);~~

199 (b) the day on which the prosecutor transmits the notice of the declination under  
200 Subsection (4)(c); or

201 (c) 30 days after the day on which the arrested individual is arrested.

202 (6) (a) (i) After an arrest for a qualifying offense, an alleged victim who is not a minor  
203 may waive in writing the release conditions ~~[described in Subsection (3)(d)(i)(A) or (C)].~~  
204 prohibiting:

205 (A) personal contact with the alleged victim; or

206 (B) knowingly entering on the premises of the alleged victim's residence or on  
207 premises temporarily occupied by the alleged victim.

208 (ii) Upon waiver, ~~[those]~~ the release conditions described in Subsection (6)(a)(i) do not  
209 apply to the arrested ~~[person]~~ individual.

210 (b) A court or magistrate may modify ~~[the release conditions described in Subsection~~  
211 ~~(3)(d)(i);]~~ a jail release agreement or a jail release court order in writing or on the record, and  
212 only for good cause shown.

213 (7) (a) When an arrested ~~[person]~~ individual is released in accordance with Subsection

214 (3), the releasing agency shall:

215 (i) notify the arresting law enforcement agency of the release, conditions of release, and  
216 any available information concerning the location of the alleged victim;

217 (ii) make a reasonable effort to notify the alleged victim of the release; and

218 (iii) before releasing the arrested [~~person~~] individual, give the arrested [~~person~~]  
219 individual a copy of the jail release agreement or the jail release court order.

220 (b) (i) When [~~a person~~] an individual arrested for domestic violence is released  
221 pursuant to [~~Subsection (3)]~~ this section based on a [~~written~~] jail release agreement, the  
222 releasing agency shall transmit that information to the statewide domestic violence network  
223 described in Section 78B-7-113.

224 (ii) When [~~a person~~] an individual arrested for domestic violence is released pursuant  
225 to [~~Subsections (3) through (5)]~~ this section based upon a jail release court order or if a  
226 [~~written~~] jail release agreement is modified pursuant to Subsection (6)(b), the court shall  
227 transmit that order to the statewide domestic violence network described in Section 78B-7-113.

228 (c) This Subsection (7) does not create or increase liability of a law enforcement officer  
229 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

230 (8) (a) If a law enforcement officer has probable cause to believe that [~~a person~~] an  
231 individual has violated a jail release agreement or jail release court order, the officer shall,  
232 without a warrant, arrest the [~~person~~] individual.

233 (b) [~~Any person~~] An individual who knowingly violates a jail release court order or jail  
234 release agreement executed pursuant to Subsection (3) is guilty as follows:

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

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

239 (c) [~~City attorneys~~] A city attorney may prosecute class A misdemeanor violations  
240 under this section.

241 (9) [~~A person~~] An individual who is arrested for a qualifying offense that is a felony  
242 and released in accordance with this section may subsequently be held without bail if there is  
243 substantial evidence to support a new felony charge against the [~~person~~] individual.

244 (10) At the time an arrest is made for a qualifying offense, the arresting officer shall



245 provide the alleged victim with written notice containing:

246 (a) the release conditions described in [~~Subsections (3) through (5)~~] this section, and  
247 notice that the alleged perpetrator will not be released, before appearing before the court with  
248 jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

249 (i) the alleged perpetrator enters into a [~~written~~] jail release agreement to comply with  
250 the release conditions; or

251 (ii) the magistrate [~~orders~~] issues a jail release order that specifies the release  
252 conditions;

253 (b) notification of the penalties for violation of any jail release agreement or jail release  
254 court order;

255 [~~(c) notification that the alleged perpetrator is to personally appear in court on the next  
256 day the court is open for business after the day of the arrest;~~]

257 [~~(d)~~] (c) the address of the appropriate court in the district or county in which the  
258 alleged victim resides;

259 [~~(e)~~] (d) the availability and effect of any waiver of the release conditions; and

260 [~~(f)~~] (e) information regarding the availability of and procedures for obtaining civil and  
261 criminal protective orders with or without the assistance of an attorney.

262 (11) At the time an arrest is made for a qualifying offense, the arresting officer shall  
263 provide the alleged perpetrator with written notice containing:

264 (a) notification that the alleged perpetrator may not contact the alleged victim before  
265 being released;

266 (b) the release conditions described in [~~Subsections (3) through (5)~~] this section and  
267 notice that the alleged perpetrator will not be released, before appearing before the court with  
268 jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

269 (i) the alleged perpetrator enters into a [~~written~~] jail release agreement to comply with  
270 the release conditions; or

271 (ii) the magistrate [~~orders the release conditions~~] issues a jail release court order;

272 (c) notification of the penalties for violation of any jail release agreement or jail release  
273 court order; and

274 (d) notification that the alleged perpetrator is to personally appear in court on the next  
275 day the court is open for business after the day of the arrest.

276 (12) (a) A pretrial or sentencing protective order supercedes a jail release agreement or  
277 jail release court order.

278 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail  
279 release agreement or jail release court order, the court shall dismiss the jail release agreement  
280 or jail release court order.

281 ~~[(13) In addition to the provisions of Subsections (3) through (12), because of the~~  
282 ~~unique and highly emotional nature of domestic violence crimes, the high recidivism rate of~~  
283 ~~violent offenders, and the demonstrated increased risk of continued acts of violence subsequent~~  
284 ~~to the release of an offender who has been arrested for domestic violence, it is the finding of~~  
285 ~~the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for~~  
286 ~~which bail may be denied if there is substantial evidence to support the charge, and if the court~~  
287 ~~finds by clear and convincing evidence that the alleged perpetrator would constitute a~~  
288 ~~substantial danger to an alleged victim of domestic violence if released on bail.]~~

289 ~~[(14) The provisions of this section do]~~

290 (13) This section does not apply if the [person] individual arrested for the qualifying  
291 offense is a minor, unless the qualifying offense is domestic violence.

292 Section 3. Section 77-36-1 is amended to read:

293 **77-36-1. Definitions.**

294 As used in this chapter:

- 295 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.
- 296 (2) "Department" means the Department of Public Safety.
- 297 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
298 3, Divorce.
- 299 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
300 involving violence or physical harm or threat of violence or physical harm, or any attempt,  
301 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
302 when committed by one cohabitant against another. "Domestic violence" or "domestic  
303 violence offense" ~~[also means]~~ includes commission or attempt to commit, any of the  
304 following offenses by one cohabitant against another:
  - 305 (a) aggravated assault, as described in Section 76-5-103;
  - 306 (b) assault, as described in Section 76-5-102;

- 307 (c) criminal homicide, as described in Section 76-5-201;
- 308 (d) harassment, as described in Section 76-5-106;
- 309 (e) electronic communication harassment, as described in Section 76-9-201;
- 310 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
- 311 76-5-301, 76-5-301.1, and 76-5-302;
- 312 (g) mayhem, as described in Section 76-5-105;
- 313 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 314 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 315 (i) stalking, as described in Section 76-5-106.5;
- 316 (j) unlawful detention or unlawful detention of a minor, as described in Section
- 317 76-5-304;
- 318 (k) violation of a protective order or ex parte protective order, as described in Section
- 319 76-5-108;
- 320 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
- 321 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
- 322 Part 3, Robbery;
- 323 (m) possession of a deadly weapon with criminal intent, as described in Section
- 324 76-10-507;
- 325 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 326 person, building, or vehicle, as described in Section 76-10-508;
- 327 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
- 328 conduct is the result of a plea agreement in which the defendant was originally charged with a
- 329 domestic violence offense otherwise described in this Subsection (4), except that a conviction
- 330 of disorderly conduct as a domestic violence offense, in the manner described in this
- 331 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
- 332 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
- 333 (p) child abuse, as described in Section 76-5-109.1;
- 334 (q) threatening use of a dangerous weapon, as described in Section 76-10-506;
- 335 (r) threatening violence, as described in Section 76-5-107;
- 336 (s) tampering with a witness, as described in Section 76-8-508;
- 337 (t) retaliation against a witness or victim, as described in Section 76-8-508.3;

- 338 (u) unlawful distribution of an intimate image, as described in Section 76-5b-203;
- 339 (v) sexual battery, as described in Section 76-9-702.1;
- 340 (w) voyeurism, as described in Section 76-9-702.7;
- 341 (x) damage to or interruption of a communication device, as described in Section
- 342 76-6-108; or
- 343 (y) an offense described in Section 77-20-3.5.

344 (5) "Jail release agreement" means the same as that term is defined in Section

345 77-20-3.5.

346 (6) "Jail release court order" means the same as that term is defined in Section

347 77-20-3.5.

348 (7) "Marital status" means married and living together, divorced, separated, or not

349 married.

350 (8) "Married and living together" means a couple whose marriage was solemnized

351 under Section 30-1-4 or 30-1-6 and who are living in the same residence.

352 (9) "Not married" means any living arrangement other than married and living together,

353 divorced, or separated.

354 (10) "Protective order" includes an order issued under Subsection 77-36-5.1(6).

355 (11) "Pretrial protective order" means a written order:

356 (a) specifying and limiting the contact a person who has been charged with a domestic

357 violence offense may have with an alleged victim or other specified individuals; and

358 (b) specifying other conditions of release pursuant to [~~Subsection 77-20-3.5(3)~~] Section

359 77-20-3.5, Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

360 (12) "Sentencing protective order" means a written order of the court as part of

361 sentencing in a domestic violence case that limits the contact a person who has been convicted

362 of a domestic violence offense may have with a victim or other specified individuals pursuant

363 to Sections 77-36-5 and 77-36-5.1.

364 (13) "Separated" means a couple who have had their marriage solemnized under

365 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

366 (14) "Victim" means a cohabitant who has been subjected to domestic violence.

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

368 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial**

369 **protective order pending trial.**

370 (1) Because of the serious nature of domestic violence, the court, in domestic violence  
371 actions:

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

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

376 (c) shall waive any requirement that the victim's location be disclosed other than to the  
377 defendant's attorney and order the defendant's attorney not to disclose the victim's location to  
378 the client;

379 (d) shall identify, on the docket sheets, the criminal actions arising from acts of  
380 domestic violence; and

381 ~~[(e) may dismiss a charge on stipulation of the prosecutor and the victim; and]~~

382 ~~[(f)]~~ (e) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a,  
383 Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of  
384 that status.

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

390 (3) (a) Because of the likelihood of repeated violence directed at those who have been  
391 victims of domestic violence in the past and the vulnerability of victims of other qualifying  
392 offenses, as defined in Section 77-20-3.5, when any defendant is charged with a crime  
393 involving ~~[domestic violence]~~ a qualifying offense, the court may, during any court hearing  
394 where the defendant is present, issue a pretrial protective order, pending trial:

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

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

399 (iii) removing and excluding the defendant from the victim's residence and the

400 premises of the residence;

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

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

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

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

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

411 (c) (i) The court shall provide the victim with a certified copy of any pretrial protective  
412 order that has been issued if the victim can be located with reasonable effort.

413 (ii) If the court is unable to locate the victim, the court shall provide the victim's  
414 certified copy to the prosecutor.

415 [~~(ii)~~] (iii) The court shall [~~also~~] transmit the pretrial protective order to the statewide  
416 domestic violence network.

417 (d) Issuance of a pretrial or sentencing protective order [~~supercedes~~] supersedes a jail  
418 release agreement or jail release court order.

419 (e) If the alleged victim and the defendant share custody of one or more minor children,  
420 the court may include in a pretrial protective order provisions for indirect or limited contact to  
421 temporarily facilitate parent visitation with a minor child.

422 (f) In a pretrial protective order the court shall determine whether to allow provisions  
423 for transfer of personal property to decrease the need for contact between the parties.

424 (4) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss  
425 charges against a defendant accused of a domestic violence offense, the specific reasons for  
426 dismissal shall be recorded in the court file and made a part of any related order or agreement  
427 on the statewide domestic violence network described in Section 78B-7-113.

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

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

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

435            [~~(6)~~ (5) The court may not approve diversion for a perpetrator of domestic violence.