



Domestic Violence & Protective Orders

Bagels & Briefings

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Bagels & Briefing: Domestic Violence and Protective Orders

- **Domestic violence**
 - Understanding the problem
 - What is domestic violence?
 - Legislative history
- **Utah's response to domestic violence**
 - Overview of Utah's domestic violence legislation
 - Services
 - Funding
- **Protective orders**
 - Overview of Utah's protective orders



Understanding the Problem

- **Domestic violence is the problem/crime**
- **We address domestic violence two different ways:**
 - **Victim Services**
 - **Legal System**
- **Protective orders are one of the main tools to address domestic violence**



Domestic Violence Rates

UNDERSTANDING DOMESTIC VIOLENCE DATA

Four main sources for data:

National Crime Victimization Survey

- Incidents deemed criminal, 3.6 per 1,000 (2010)

National Family Violence Survey

- Family conflict

National Violence Against Women Survey

- Combination of the two

Local crime data

- Issues of reporting, resources, etc.



**THESE
APPROACHES
PRODUCE VERY
DIFFERENT
STATISTICS**



Domestic Violence Rates

It is estimated that only

40%

of crime victims report their victimization to the police

Domestic Violence in Utah



#Utah1in3

udvc.org

37% of Utah women experience
domestic violence



Domestic Violence in Utah



Utah has one of the lowest homicide rates in the country.



44% of homicides were domestic-violence related.



Domestic Violence in Utah



WHEN A GUN IS PRESENT IN A DOMESTIC VIOLENCE SITUATION, **THE WOMEN IS FIVE TIMES MORE LIKELY TO BE KILLED**



In 2017, **61%** of domestic violence-related homicides in Utah involved a firearm

Domestic Violence in Utah

Domestic violence is an intergenerational issue



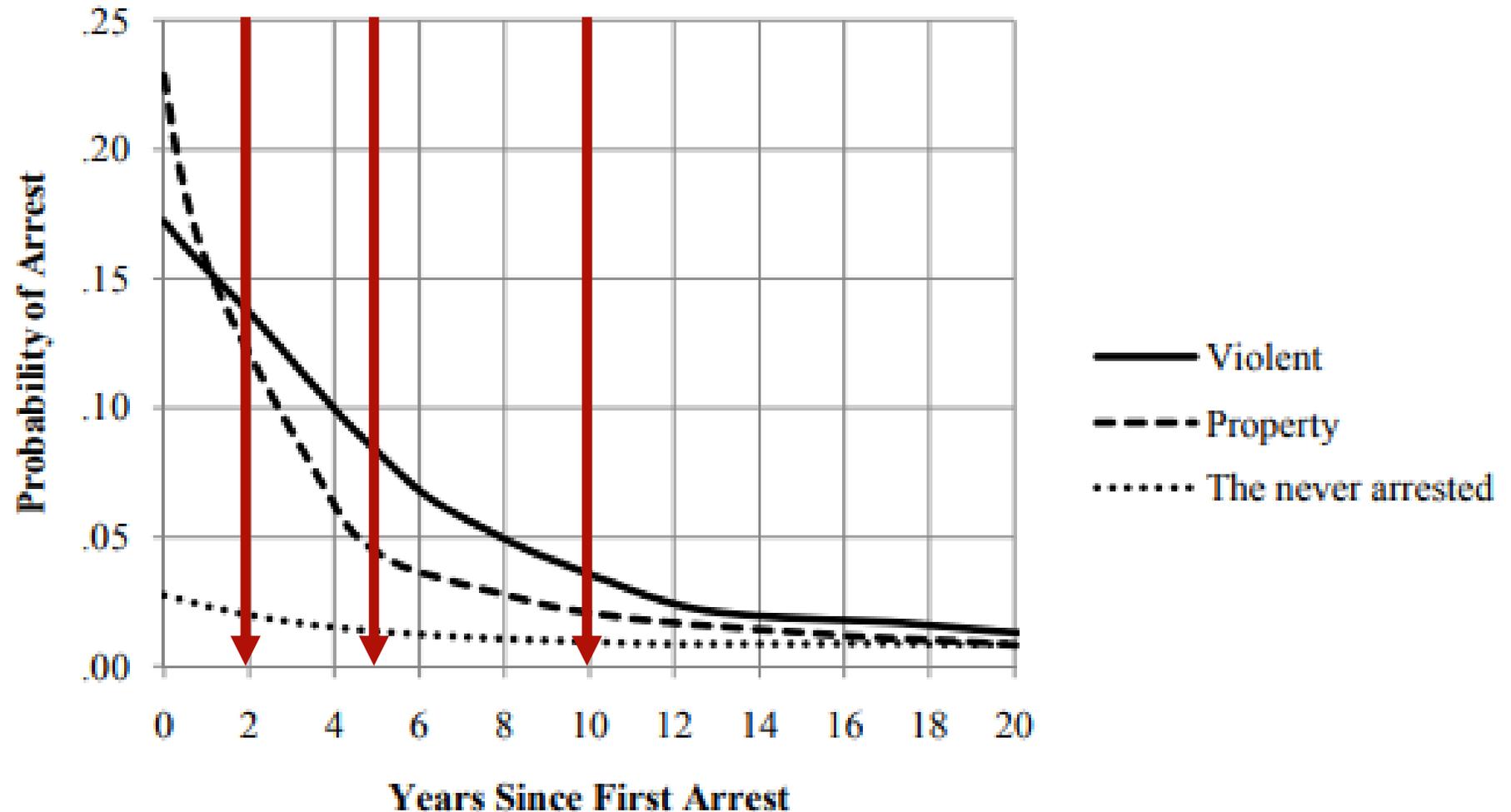
More than 15 million children in the United States live in homes in which domestic violence has happened at least once.

These children are at greater risk for entering abusive relationships or becoming abusers themselves



Domestic Violence in Utah

Domestic violence offenders will most likely reoffend





What Is Domestic Violence?

TWO BASIC APPROACHES TO DEFINING THE PROBLEM:

1. **SOCIOLOGICAL:** Patterns of behavior, methods of control
2. **LEGAL:** Typically focused on physical abuse

FEDERAL DEFINITIONS

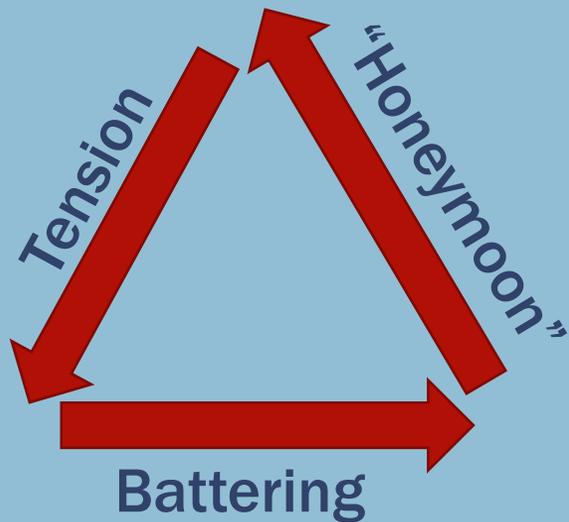
- **DOJ:** “A pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”
- **18 U.S. Code § 921:** “has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

What Is Domestic Violence?

1970s & 1980s

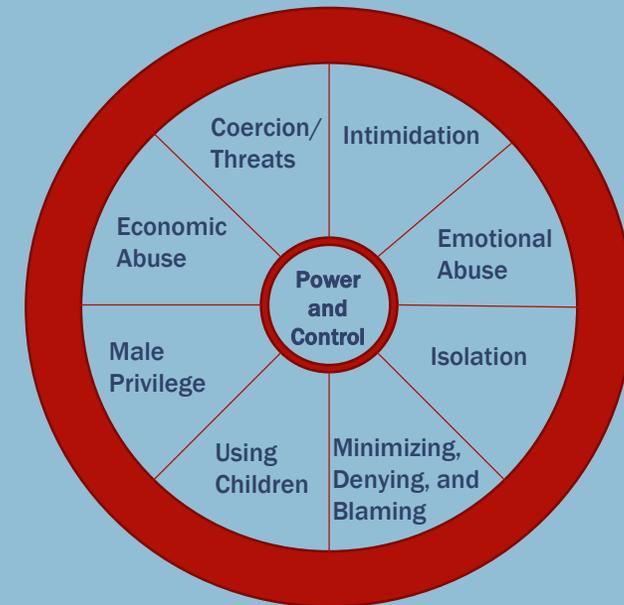
Legal definitions relied primarily on social science theories of abuse:

Cycle of Violence



- Developed by social theorists
- Prioritized physical abuse
- Integrated into laws
- Commonly referred to by expert witnesses

Power and Control Wheel





Federal Law

Family Violence Prevention and Services Act

- **Title III of the Child Abuse Amendments of 1984**
- **Public awareness/education and training**
- **Establishes the National Domestic Violence Hotline**
- **The Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA)**
- **Funding for shelters and support programs**

“The primary federal funding stream dedicated to the support of emergency shelter and related assistance for victims of domestic violence and their children.”



Federal Law

Violence Against Women Act

- **Title IV Violent Crime Control and Law Enforcement Act of 1994**
- **Establishes the Office on Violence Against Women within the Department of Justice.**
- **Federal Rape Shield Law**
- **Funding for services (Particularly STOP)**



“Right now, if you assault a stranger, you go to jail. If you assault your spouse, you get therapy. The Violence Against Women Act brings an end to this backward system.”
Rep. Carolyn Maloney (D-NY)



Federal Law

Domestic Violence Offender Gun Ban



- “Restrictions On The Possession Of Firearms By Individuals Convicted Of A Misdemeanor Crime Of Domestic Violence” – 1996
- Extends the firearms ban to anyone convicted of a "misdemeanor crime of domestic violence."
- Prevent those individuals who have demonstrated a propensity for domestic violence from obtaining a firearm
- A tool for the removal of firearms from certain explosive domestic situations thus decreasing the possibility of deadly violence
- A federal prosecution tool in certain situations where alternatives have failed

What Is Domestic Violence?

Utah's definition

“Domestic violence” or “domestic violence offense” 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” or “domestic violence offense” also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

- Aggravated assault
- Assault
- Criminal homicide
- Harassment
- Electronic communication harassment
- Kidnapping, child kidnapping, or aggravated kidnapping
- Mayhem
- Sexual offenses
- Sexual exploitation of a minor—offenses
- Stalking
- Unlawful detention or unlawful detention of a minor
- Violation of a protective order or ex parte protective order
- Offense against property
- Possession of a deadly weapon with criminal intent
- Discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle
- Disorderly conduct
- Child abuse
- Threatening use of a dangerous weapon
- Threatening violence
- Tampering with a witness
- Retaliation against a witness or victim
- Unlawful distribution of an intimate image
- Sexual battery
- Voyeurism
- Damage to or interruption of a communication device

What Is Dating Violence?



“Dating violence” means:

(a) any criminal offense involving violence or physical harm, or threat of violence or physical harm, when committed by a person against a dating partner of the person; or

(b) any attempt, conspiracy, or solicitation by a person to commit a criminal offense involving violence or physical harm against a dating partner of the person.

Who Is Covered?



Cohabitant

- “Cohabitant” means an emancipated person pursuant to [Section 15-2-1](#) or a person who is 16 years of age or older who:
- is or was a spouse of the other party;
- is or was living as if a spouse of the other party;
- is related by blood or marriage to the other party as the person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree;
- has or had one or more children in common with the other party;
- is the biological parent of the other party's unborn child;
- resides or has resided in the same residence as the other party; or
- is or was in a consensual sexual relationship with the other party.
- Notwithstanding Subsection (2), “cohabitant” does not include:
- the relationship of natural parent, adoptive parent, or step-parent to a minor; or
- the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.



Dating partner

- is an emancipated person under [Section 15-2-1](#) or Title 78A, Chapter 6, Part 8, Emancipation; or
- is 18 years of age or older; and
- is, or has been, in a dating relationship with the other party.

“Dating relationship”

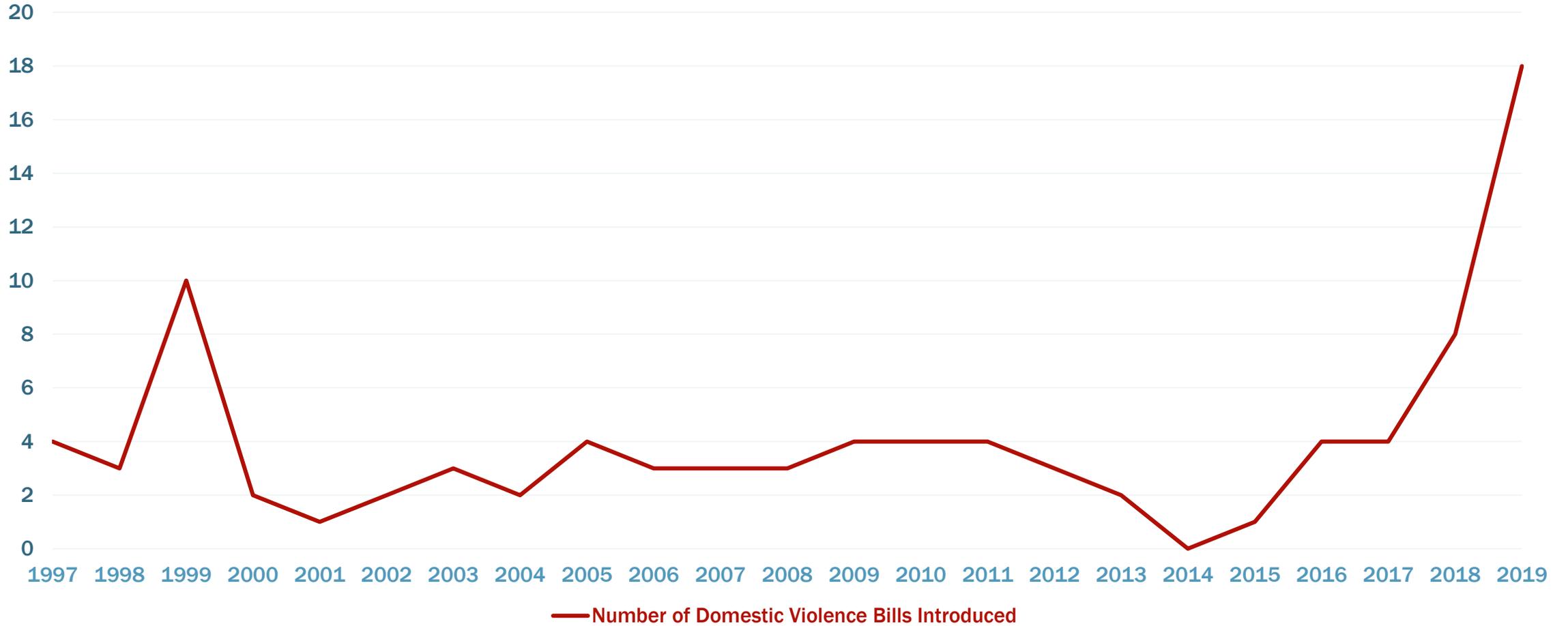
- means a social relationship of a romantic or intimate nature, or a relationship which has romance or intimacy as a goal by one or both parties, regardless of whether the relationship involves sexual intimacy.
- “Dating relationship” does not mean casual fraternization in a business, educational, or social context.

Utah's Response to Domestic Violence





Number of Domestic Violence Bills Introduced in Utah: 1997-2019



Cohabitant Abuse Act

- **Defines “cohabitant”**
- **Establishes civil protective orders**
 - Ex-parte protective orders
 - Mutual protective orders
- **Creates statewide domestic violence network**
- **Gives authority to prosecute**
- **Outlines the duty of law enforcement to act**



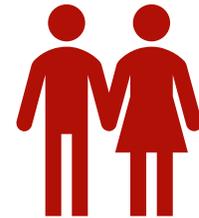


Cohabitant Abuse Procedures Act

- **Defines “domestic violence”**
- **Creates enhancements for reoffending**
- **Outlines duties and powers of law enforcement**
- **Creates penalties for violation of protective orders**
- **Establishes criminal protective orders**
 - Pretrial protective orders
 - Sentencing orders
 - Continuous protective orders
- **Explains enforcement of protective orders**

Dating Violence Protection Act

- **Defines “dating violence”, “dating partner”, and “dating relationship”**
- **Creates dating violence protective orders**
- **Establishes penalties for violation of a dating violence protective order**





Domestic Violence & Protective Orders

PROTECTIVE ORDERS



Protective Orders

Criminal Protective

Jail Release Agreement or Jail Release Court Order

- Probable cause the defendant committed a qualifying offense

Pretrial Protective Order

- Defendant charged with a qualifying offense.

Sentencing Protective Order

- Convicted of a qualifying offense

Continuous Protective Order

- Convicted of a qualifying offense

Civil Protective Orders

Cohabitants

- Substantial likelihood domestic violence or abuse has occurred/will occur
- Ex parte

Child Protective Order

- Appears from petition that the child is being abused or in imminent danger of abuse
- Ex parte

Dating Protective Order

- Subjected to or substantial likelihood will be subject to abuse

Stalking

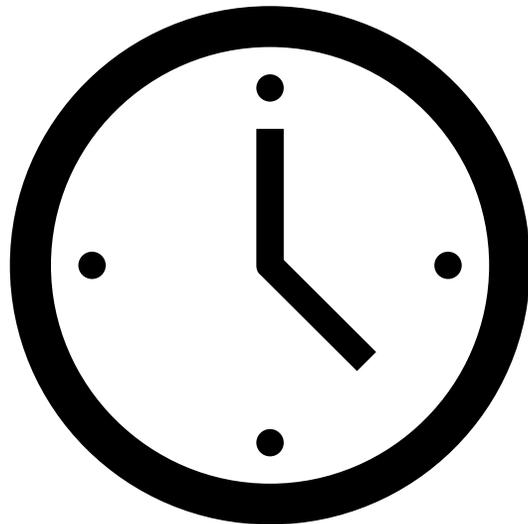
- Reason to believe the offense of stalking has occurred

Protective Orders

EX PARTE

Temporary Protective Order

last until a hearing is held to determine whether a “permanent” protective order is necessary



PERMANENT

Cohabitant Protective Order:

150 days, review hearing after 2 years;
automatic expiration after 10 years.

Child Protective Order:

150 days, unless a different date set by the
court; automatic expiration when the child
reaches age 18.

Dating Protective Order:

180 days.



Protective Orders

Who Can Petition?



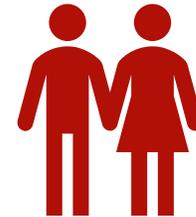
Cohabitant Protective Order

Alleged victim against a cohabitant



Child Protective Order

Any interested person after first making a referral to the Division of Child and Family Services



Dating Protective Order

Alleged victim against a dating partner

Protective Orders: Burden of Proof



Cohabitant Protective Order

Domestic violence or abuse has occurred or there is a “substantial likelihood” domestic violence or



Child Protective Order

A child is being abused or is in “imminent danger” of being abused



Dating Protective Order

A person has been subjected to or there is a “substantial likelihood” the person will be subjected to dating violence or abuse by a dating partner



Protective Orders

Protective Orders that may Impact Firearm Possession

Sentencing Protective Order



Sentenced to probation for a domestic violence offense

Continuous Protective Order



Convicted of a qualifying offense – same as Sentencing

Cohabitant Protective Order



Ex parte petition may prohibit without notice to respondent

Child Protective Order



Ex parte petition may prohibit without notice to respondent

Dating Protective Order



After a petition for a protective order and notice to respondent



Protective Orders in Utah

ERPO/GVRO	UTAH PO
<p>PETITIONERS</p> <p>Spouse/Cohabitant Law Enforcement Family Members Others (DA, AG, Mental Health Provider)</p>	<p>✓ ✓ (Cohabitants) ✓ (Interested person)</p>
<p>TYPES</p> <p>Ex Parte (Preliminary) Permanent</p>	<p>✓ ✓</p>
<p>DURATION</p> <p>Ex Parte: Up to 3 Weeks Permanent: 6 mos-1 year *extension possible</p>	<p>✓ (20 days) ✓ (Depends on type) ✓</p>
<p>BURDEN OF PROOF</p> <p>Ex Parte (or Preliminary) Reasonable Grounds Immediate Danger Reasonable Cause Probable Cause Permanent Clear and Convincing Preponderance of the Evidence</p>	<p>✓ (Imminent Danger)</p>
<p>REASONS</p> <p>Imminent Danger or Threat to Self or Others</p>	<p>Substantial Likelihood Imminent Danger (child)</p>



Protective Orders

BENEFITS

- Flexibility/options
- Preventative (somewhat)
- Clarity for law enforcement
- Relatively quick relief from violence
- Clarity for prosecutors

DISADVANTAGES

- Questions of constitutional rights (due process)
- Initiated by the victim
- Serious violent offenders are the most likely to ignore protective orders

Utah's Response to Domestic Violence





Recidivism

**Domestic violence
perpetrators have a high
rate of recidivism**



Legislative response

1. Enhanced Penalties

- 5 years

2. Criminal Protective Orders

- Sentencing protective order
- Continuous protective order





60% of domestic violence homicides in Utah are gun-related



Legislative Response

Concealed Firearm Permit (Utah Law)

BCI may deny, suspend, or revoke a concealed firearm permit if the applicant or permit holder is convicted of an offense involving domestic violence



Must meet Utah's definition of domestic violence (lower threshold)

Possession or Purchase (Federal Law)

It is unlawful for any person who has been convicted of a misdemeanor crime of domestic violence – or who are under a protective order – to purchase or possess a firearm



Must have element of attempted or threat of use of force (higher threshold)



**Children who witness
domestic violence are more
likely to abuse or be abused
as adults**



Legislative Response

- **Commission of domestic violence in the presence of a child**
 - Charge is separate and in addition to a charge of domestic violence
- **Child custody**
 - The state prefers joint custody except when there is domestic violence in the home or in the presence of a child

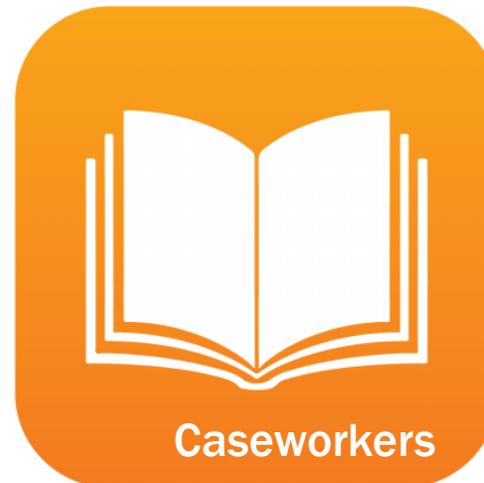


**Staying at a shelter
reduces the likelihood that
a woman will be abused
again.**



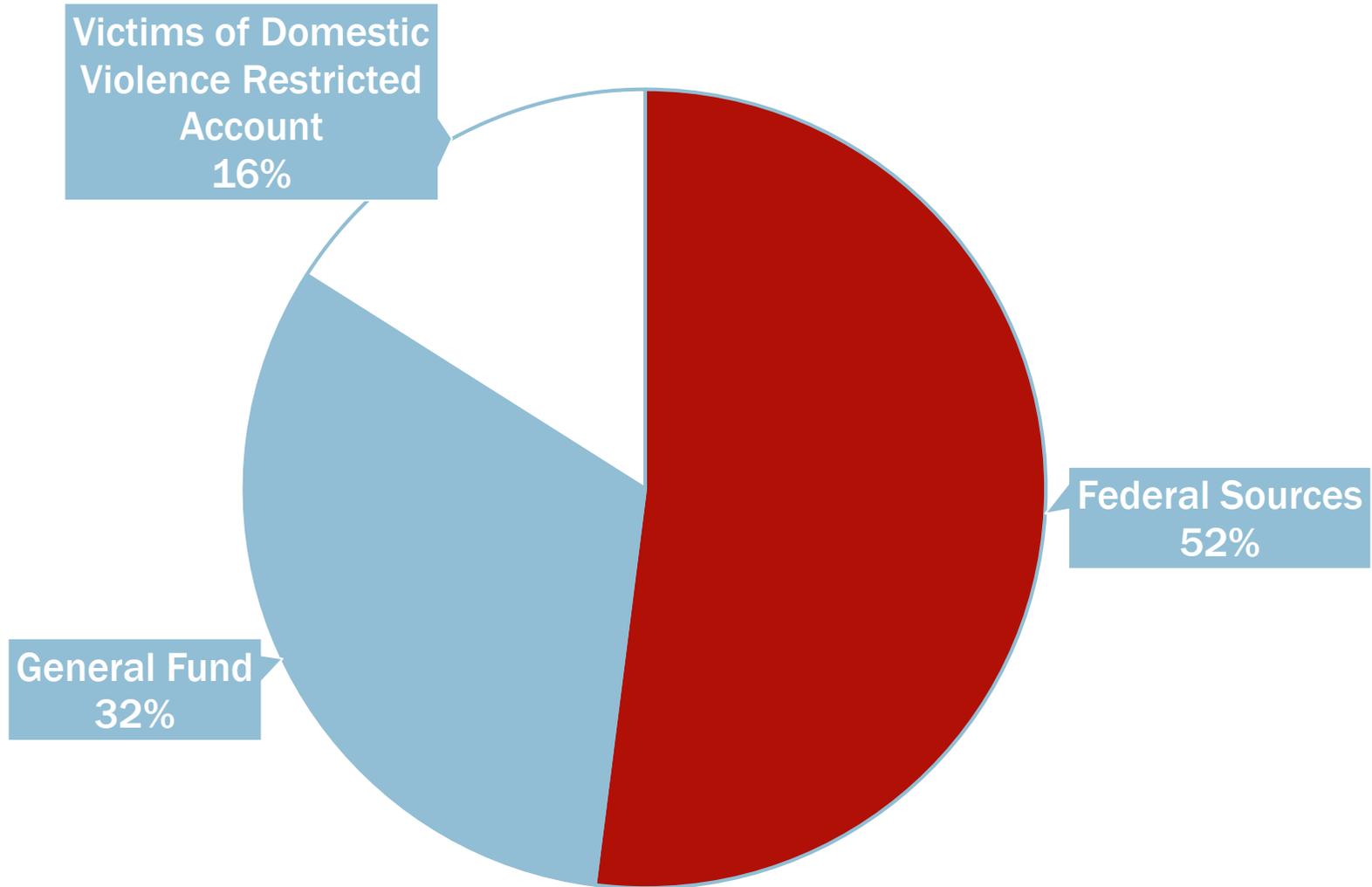
Domestic Violence Shelters & Other Services

Division of Child & Family Services provides the following services:





Domestic Violence Funding in Utah



Questions and Considerations

- **When considering policy in this area:**
 - Constitutional protections for offenders
 - Focus on services vs. legal system
 - How should the definition of domestic violence evolve and determine outcomes?





Questions?

“In one field after another, we are learning that so much of the most promising work in addressing the most intractable social problems is complex, multifaceted, and evolving.”

(Schorr & Farrow)