

COHABITANT ABUSE ACT AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Patricia B. Larson

AN ACT RELATING TO THE COHABITANT ABUSE ACT; CHANGING THE TERM "PRIMARY" AGGRESSOR TO "PREDOMINANT" AGGRESSOR.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-36-2.2, as enacted by Chapter 300, Laws of Utah 1995

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

Section 1. Section **77-36-2.2** is amended to read:

77-36-2.2. Powers and duties of law enforcement officers to arrest.

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

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

(b) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section. For purposes of this section "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.

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

(3) If a law enforcement officer receives complaints of domestic violence from two or

more opposing persons, the officer shall evaluate each complaint separately to determine who the [primary] predominant aggressor was. If the officer determines that one person was the [primary] predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the [primary] predominant aggressor was, the officer shall consider:

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

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

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

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

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

(b) That report shall be made available to the victim, upon request, at no cost.

(c) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.

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