

DOMESTIC VIOLENCE DISMISSAL AMENDMENT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

Jackie Biskupski

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AN ACT RELATING TO THE COHABITANT ABUSE PROCEDURES ACT; ELIMINATING ABILITY OF COURTS TO DISMISS DOMESTIC VIOLENCE CHARGES SOLELY AT THE REQUEST OF THE VICTIM.

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

AMENDS:

77-36-2.7, as last amended by Chapter 244, Laws of Utah 1996

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

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

77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before trial.

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

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

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

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

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

~~[(e) may not dismiss a charge involving domestic violence at the request of the victim unless the court has reasonable cause to believe that the dismissal would benefit the victim; and]~~

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

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

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

(3) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant charged with a crime involving domestic violence is released from custody before trial, the court authorizing the release may issue an order:

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

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

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

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

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

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

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

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

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

(4) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of the statewide domestic violence network described in Section 30-6-8.

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

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