

Senator Millie M. Peterson proposes to substitute the following bill:

COHABITANT ABUSE PROCEDURES ACT AMENDMENT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Millie M. Peterson

AN ACT RELATING TO THE COHABITANT ABUSE PROCEDURES ACT; CLARIFYING PUNISHMENTS FOR VIOLATIONS OF ORDERS; DEFINING "CRIMINAL PROTECTIVE ORDER"; REQUIRING ALL ORDERS TO BE IN WRITING; DESCRIBING CONDITIONS FOR VIOLATION OF ORDER; REQUIRING TRANSMISSION OF ORDERS TO STATEWIDE DOMESTIC VIOLENCE NETWORK; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

76-5-108, as last amended by Chapter 246, Laws of Utah 1999

77-36-1, as last amended by Chapter 229, Laws of Utah 1999

77-36-2.1, as last amended by Chapter 13, Laws of Utah 1998

77-36-2.4, as last amended by Chapter 246, Laws of Utah 1999

77-36-2.5, as renumbered and amended by Chapter 300, Laws of Utah 1995

77-36-2.6, as last amended by Chapter 244, Laws of Utah 1996

77-36-2.7, as last amended by Chapter 54, Laws of Utah 1999

77-36-5, as last amended by Chapter 318, Laws of Utah 1996

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

77-36-6, as last amended by Chapter 300, Laws of Utah 1995

ENACTS:

77-36-5.5, Utah Code Annotated 1953

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

Section 1. Section **76-5-108** is amended to read:

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order ~~§ [or ex parte protective order]~~ § issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Court Act of 1996, a criminal protective order issued pursuant to Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protective order as described in Section 30-6-12, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act. **§ VIOLATION OF A CIVIL PROTECTIVE ORDER AT THE VOLUNTARY INVITATION OF THE PETITIONER MAY BE ASSERTED AS A DEFENSE BY THE RESPONDENT OR DEFENDANT.** §

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

Section 2. Section **77-36-1** is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" has the same meaning as in Section 30-6-1.

(2) "Criminal protective order" means an order issued by the court pursuant to the provisions of this chapter, and any agreement issued pursuant to Section 77-36-2.5.

~~[(2)]~~ (3) "Domestic violence" 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" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

(d) harassment, as described in Section 76-5-106;

(e) telephone harassment, as described in Section 76-9-201;

(f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(g) mayhem, as described in Section 76-5-105;

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;

(i) stalking, as described in Section 76-5-106.5;

(j) unlawful detention, as described in Section 76-5-304;

(k) violation of a protective order ~~[or]~~, ex parte protective order, foreign protective order, or criminal protective order as described in Section 76-5-108;

(l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508; or

(o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with any of the domestic violence offenses otherwise described in this Subsection ~~[(2)]~~ (3). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection ~~[(2)]~~ (3)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.

(4) "Ex parte protective order" means the same as that term is defined in Section 30-6-1.

(5) "Foreign protective order" means the same as that term is defined in Section 30-6-1.

(6) "Protective order" means the same as that term is defined in Section 30-6-1.

~~[(3)]~~ (7) "Victim" means a cohabitant who has been subjected to domestic violence.

Section 3. Section **77-36-2.1** is amended to read:

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection for the victim while he or she removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment;

and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the

rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available to her under this chapter and Title 30, Chapter 6, Cohabitant Abuse Act.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an ~~[order for protection]~~ ex parte protective order or a protective order are available from the district court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with Subsection 77-36-2.5(7).

Section 4. Section **77-36-2.4** is amended to read:

77-36-2.4. Violation of protective orders -- Mandatory arrest.

(1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever he has probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order ~~[or]~~, protective order, criminal protective order, or foreign protective order.

(2) ~~[(a) Intentional]~~ Unless a greater penalty is provided pursuant to the terms of this chapter:

(a) intentional or knowing violation of any ex parte protective order [or], protective order, criminal protective order, or foreign protective order is a class A misdemeanor, in accordance with Section 76-5-108, and is a domestic violence offense, pursuant to Section 77-36-1[-]; and

(b) second or subsequent violations of ex parte protective orders [or], protective orders, criminal protective orders, or foreign protective orders carry increased penalties, in accordance with Section 77-36-1.1.

~~[(3) As used in this section, "ex parte protective order" or "protective order" includes any foreign protective order enforceable under Section 30-6-12.]~~

Section 5. Section **77-36-2.5** is amended to read:

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

(1) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release he is ordered by the court or agrees in writing that, until the expiration of that time, he will be subject to a criminal protective order providing that he will:

(a) have no personal contact with the alleged victim;
(b) not threaten or harass the alleged victim; and
(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(2) As a condition of release, the court may order the defendant to participate in an electronic monitoring program described in Section 30-6-4.8, and pay the costs associated with the program.

(3) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the requirements described in Subsection (1). Upon waiver, those requirements shall not apply to the alleged perpetrator.

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

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

(b) (i) When a person is released pursuant to Subsection (1) based on a written agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 30-6-8.

(ii) When a person is released pursuant to Subsection (1) based upon a court order, the court shall transmit that order to the statewide domestic violence network described in Section 30-6-8.

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

(5) (a) If a law enforcement officer has probable cause to believe that a person has violated a court order or agreement executed pursuant to Subsection (1) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a court order or agreement executed pursuant to Subsection (1) shall be guilty as follows:

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

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

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

(6) An individual who was originally arrested for a felony under this chapter and released pursuant to this section, may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(7) At the time an arrest for domestic violence is made, the arresting officer shall provide both the alleged victim and the alleged perpetrator with written notice containing the following information:

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

(b) notification of the penalties for violation of the court order or any agreement executed under Subsection (1);

(c) the date and time, absent modification by a court or magistrate, that the requirements expire;

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

(e) the availability and effect of any waiver of the requirements; and

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

(8) In addition to the provisions of Subsections (1) through (6), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of

domestic violence if released on bail. If bail is denied under this subsection, it shall be under the terms and conditions described in Subsections (1) through (6).

Section 6. Section **77-36-2.6** is amended to read:

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

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

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

(3) At the time of an appearance under Subsection (1) or (2), the court shall determine the necessity of imposing a criminal protective order or other condition of pretrial release including, but not limited to, ~~[participating]~~ the conditions described in Subsections 77-36-2.5(1)(a), (b), and (c), and participation in an electronic monitoring program described in Section 30-6-4.8, in accordance with the provisions of that section~~[-and]~~. The court shall state its findings and determination in writing.

(4) A criminal protective order or any other order issued pursuant to this section is punishable in accordance with the provisions of Subsection 77-36-2.7(3)(b).

~~[(4)]~~ (5) Appearances required by this section are mandatory and may not be waived.

Section 7. Section **77-36-2.7** is amended to read:

77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before trial -- Provisions regarding violations of orders.

(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 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]~~ a criminal protective 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]~~ a criminal protective order or any other order issued pursuant to this section or Section 77-36-2.6 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 or Section 77-36-2.6 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.

(7) The court shall transmit a criminal protective order and any other order issued pursuant to this section, Section 77-36-2.6, or Section 77-36-5 to the statewide domestic violence network described in Section 30-6-8.

Section 8. Section **77-36-5** is amended to read:

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

(1) When a defendant is found guilty of [~~a crime and a condition of the sentence restricts the defendant's contact with the victim, an~~] domestic violence, or has pled guilty or no contest to a charge of domestic violence, including circumstances where a plea is held in abeyance, a criminal protective order may be issued or, if one has already been issued, it may be extended for the length of [the defendant's probation] time determined appropriate by the court. The criminal protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim[-], if the victim can be located with reasonable effort. Violation of a criminal protective order issued pursuant to this Subsection (1) shall be prosecuted as a class A misdemeanor in accordance with the provisions of Section 76-5-108.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in:

(a) an electronic monitoring program, as described in Section 30-6-4.8, in accordance with the provisions of that section; and

(b) treatment or therapy in a domestic violence treatment program, as defined in Section

62A-2-101, licensed by the Department of Human Services.

(3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim, as well as the costs for defendant's own counseling.

(4) The court shall assess against the defendant, as restitution, any costs for services or treatment provided to the abused spouse by the Division of Child and Family Services under Section 62A-4a-106. The court shall order those costs to be paid directly to the division or its contracted provider.

Section 9. Section **77-36-5.1** is amended to read:

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

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

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

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

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

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

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

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

(f) directing the perpetrator to surrender any weapons that he owns or possesses;

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

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

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

(3) The perpetrator is responsible for the costs of any condition of probation, according to his ability to pay.

(4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any threat of harm made by the perpetrator.

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

Section 10. Section **77-36-5.5** is enacted to read:

77-36-5.5. Forms for criminal protective orders.

No later than September 1, 2000, the Administrative Office of the Courts shall:

(1) develop and adopt uniform forms for criminal protective orders in accordance with the provisions of this chapter, and provide the forms to each justice and district court; and

(2) develop and adopt uniform forms for agreements and court orders issued in accordance with Section 77-36-2.5, and provide the forms to all jails and to each justice and district court.

Section 11. Section **77-36-6** is amended to read:

77-36-6. Enforcement of orders.

Each law enforcement agency in this state shall enforce all criminal protective orders and all other orders of the court and agreements issued pursuant to the requirements and procedures described in this chapter, and shall enforce all protective orders ~~[and]~~, ex parte protective orders, and foreign protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act. The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.