

1 **CRIMINAL PENALTY AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

5 AN ACT RELATING TO CRIMINAL CODE; ENHANCING THE PERIOD OF
6 INCARCERATION FOR CERTAIN CLASS A MISDEMEANORS TO 13 MONTHS; AND
7 MAKING CONFORMING AMENDMENTS.

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

9 AMENDS:

10 **58-37-8**, as last amended by Chapters 12 and 303, Laws of Utah 1999

11 **58-37a-5**, as enacted by Chapter 76, Laws of Utah 1981

12 **58-37c-19**, as enacted by Chapter 100, Laws of Utah 1998

13 **58-37c-20**, as enacted by Chapter 100, Laws of Utah 1998

14 **76-3-204**, as enacted by Chapter 196, Laws of Utah 1973

15 **76-3-208**, as last amended by Chapter 249, Laws of Utah 1995

16 **76-5-102**, as last amended by Chapter 140, Laws of Utah 1996

17 **76-5-102.3**, as enacted by Chapter 163, Laws of Utah 1992

18 **76-5-102.4**, as last amended by Chapter 172, Laws of Utah 1998

19 **76-5-102.6**, as last amended by Chapter 37, Laws of Utah 1994

20 **76-5-106.5**, as last amended by Chapter 96, Laws of Utah 1999

21 **76-5-109**, as last amended by Chapter 67, Laws of Utah 1999

22 **76-5-206**, as enacted by Chapter 196, Laws of Utah 1973

23 **76-5-401.1**, as enacted by Chapter 82, Laws of Utah 1998

24 **76-6-102**, as last amended by Chapter 291, Laws of Utah 1995

25 **76-6-204**, as enacted by Chapter 196, Laws of Utah 1973

26 **76-6-406**, as enacted by Chapter 196, Laws of Utah 1973

27 **76-8-311.3**, as last amended by Chapters 5, 97 and 197, Laws of Utah 1999

- 28 **76-9-702**, as last amended by Chapter 302, Laws of Utah 1999
- 29 **76-9-702.5**, as last amended by Chapter 302, Laws of Utah 1999
- 30 **76-10-503**, as last amended by Chapter 97, Laws of Utah 1999
- 31 **76-10-504**, as last amended by Chapter 289, Laws of Utah 1997
- 32 **76-10-506**, as last amended by Chapter 101, Laws of Utah 1992
- 33 **76-10-507**, as enacted by Chapter 196, Laws of Utah 1973
- 34 **77-36-2.5**, as renumbered and amended by Chapter 300, Laws of Utah 1995

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

36 Section 1. Section **58-37-8** is amended to read:

37 **58-37-8. Prohibited acts -- Penalties.**

38 (1) Prohibited acts A -- Penalties:

39 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and
40 intentionally:

41 (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture,
42 or dispense, a controlled or counterfeit substance;

43 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange
44 to distribute a controlled or counterfeit substance;

45 (iii) possess a controlled or counterfeit substance with intent to distribute; or

46 (iv) engage in a continuing criminal enterprise where:

47 (A) the person participates, directs, or engages in conduct which results in any violation
48 of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

49 (B) the violation is a part of a continuing series of two or more violations of Title 58,
50 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five
51 or more persons with respect to whom the person occupies a position of organizer, supervisor, or
52 any other position of management.

53 (b) Any person convicted of violating Subsection (1)(a) with respect to:

54 (i) a substance classified in Schedule I or II or a controlled substance analog is guilty of
55 a second degree felony and upon a second or subsequent conviction is guilty of a first degree
56 felony;

57 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree
58 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

59 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor punishable
60 by imprisonment for a term not exceeding 13 months and upon a second or subsequent conviction
61 is guilty of a third degree felony.

62 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may
63 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact
64 finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or
65 in his immediate possession during the commission or in furtherance of the offense, the court shall
66 additionally sentence the person convicted for a term of one year to run consecutively and not
67 concurrently; and the court may additionally sentence the person convicted for an indeterminate
68 term not to exceed five years to run consecutively and not concurrently.

69 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony
70 punishable by imprisonment for an indeterminate term of not less than seven years and which may
71 be for life. Imposition or execution of the sentence may not be suspended, and the person is not
72 eligible for probation.

73 (2) Prohibited acts B -- Penalties:

74 (a) It is unlawful:

75 (i) for any person knowingly and intentionally to possess or use a controlled substance,
76 unless it was obtained under a valid prescription or order, directly from a practitioner while acting
77 in the course of his professional practice, or as otherwise authorized by this chapter;

78 (ii) for any owner, tenant, licensee, or person in control of any building, room, tenement,
79 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
80 by persons unlawfully possessing, using, or distributing controlled substances in any of those
81 locations; or

82 (iii) for any person knowingly and intentionally to possess an altered or forged prescription
83 or written order for a controlled substance.

84 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

85 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

86 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
87 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree
88 felony; or

89 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of

90 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A
91 misdemeanor punishable by imprisonment for a term not exceeding 13 months.

92 (c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
93 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any
94 public jail or other place of confinement shall be sentenced to a penalty one degree greater than
95 provided in Subsection (2)(b).

96 (d) Upon a second or subsequent conviction of possession of any controlled substance by
97 a person, that person shall be sentenced to a one degree greater penalty than provided in this
98 Subsection (2).

99 (e) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
100 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of
101 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of
102 a class A misdemeanor punishable by imprisonment for a term not exceeding 13 months, and upon
103 a third or subsequent conviction the person is guilty of a third degree felony.

104 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

105 (i) on a first conviction, guilty of a class B misdemeanor;

106 (ii) on a second conviction, guilty of a class A misdemeanor punishable by imprisonment
107 for a term not exceeding 13 months; and

108 (iii) on a third or subsequent conviction, guilty of a third degree felony.

109 (3) Prohibited acts C -- Penalties:

110 (a) It is unlawful for any person knowingly and intentionally:

111 (i) to use in the course of the manufacture or distribution of a controlled substance a
112 license number which is fictitious, revoked, suspended, or issued to another person or, for the
113 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a
114 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

115 (ii) to acquire or obtain possession of, to procure or attempt to procure the administration
116 of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to
117 acquire or obtain possession of, or to procure the administration of any controlled substance by
118 misrepresentation or failure by the person to disclose his receiving any controlled substance from
119 another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order
120 for a controlled substance, or the use of a false name or address;

121 (iii) to make any false or forged prescription or written order for a controlled substance,
122 or to utter the same, or to alter any prescription or written order issued or written under the terms
123 of this chapter; or

124 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to
125 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
126 device of another or any likeness of any of the foregoing upon any drug or container or labeling
127 so as to render any drug a counterfeit controlled substance.

128 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

129 (4) Prohibited acts D -- Penalties:

130 (a) Notwithstanding other provisions of this section, a person not authorized under this
131 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
132 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act,
133 is upon conviction subject to the penalties and classifications under Subsection (4)(b) if the act is
134 committed:

135 (i) in a public or private elementary or secondary school or on the grounds of any of those
136 schools;

137 (ii) in a public or private vocational school or postsecondary institution or on the grounds
138 of any of those schools or institutions;

139 (iii) in those portions of any building, park, stadium, or other structure or grounds which
140 are, at the time of the act, being used for an activity sponsored by or through a school or institution
141 under Subsections (4)(a)(i) and (ii);

142 (iv) in or on the grounds of a preschool or child-care facility;

143 (v) in a public park, amusement park, arcade, or recreation center;

144 (vi) in a church or synagogue;

145 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse,
146 or parking lot or structure adjacent thereto;

147 (viii) in a public parking lot or structure;

148 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i)
149 through (viii); or

150 (x) in the immediate presence of a person younger than 18 years of age, regardless of where
151 the act occurs.

152 (b) A person convicted under this Subsection (4) is guilty of a first degree felony and shall
153 be imprisoned for a term of not less than five years if the penalty that would otherwise have been
154 established but for this subsection would have been a first degree felony. Imposition or execution
155 of the sentence may not be suspended, and the person is not eligible for probation.

156 (c) If the classification that would otherwise have been established would have been less
157 than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4)
158 is guilty of one degree more than the maximum penalty prescribed for that offense.

159 (d) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly
160 believed the individual to be 18 years of age or older at the time of the offense or was unaware of
161 the individual's true age; nor that the actor mistakenly believed that the location where the act
162 occurred was not as described in Subsection (4)(a) or was unaware that the location where the act
163 occurred was as described in Subsection (4)(a).

164 (5) Any violation of this chapter for which no penalty is specified is a class B
165 misdemeanor.

166 (6) (a) Any penalty imposed for violation of this section is in addition to, and not in lieu
167 of, any civil or administrative penalty or sanction authorized by law.

168 (b) Where violation of this chapter violates a federal law or the law of another state,
169 conviction or acquittal under federal law or the law of another state for the same act is a bar to
170 prosecution in this state.

171 (7) In any prosecution for a violation of this chapter, evidence or proof which shows a
172 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
173 substance or substances, is prima facie evidence that the person or persons did so with knowledge
174 of the character of the substance or substances.

175 (8) This section does not prohibit a veterinarian, in good faith and in the course of his
176 professional practice only and not for humans, from prescribing, dispensing, or administering
177 controlled substances or from causing the substances to be administered by an assistant or orderly
178 under his direction and supervision.

179 (9) Civil or criminal liability may not be imposed under this section on:

180 (a) any person registered under the Controlled Substances Act who manufactures,
181 distributes, or possesses an imitation controlled substance for use as a placebo or investigational
182 new drug by a registered practitioner in the ordinary course of professional practice or research;

183 or

184 (b) any law enforcement officer acting in the course and legitimate scope of his
185 employment.

186 (10) If any provision of this chapter, or the application of any provision to any person or
187 circumstances, is held invalid, the remainder of this chapter shall be given effect without the
188 invalid provision or application.

189 Section 2. Section **58-37a-5** is amended to read:

190 **58-37a-5. Unlawful acts.**

191 (1) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia
192 to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,
193 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise
194 introduce a controlled substance into the human body in violation of this chapter. Any person who
195 violates this Subsection (1) is guilty of a class B misdemeanor.

196 (2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture
197 with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used
198 to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,
199 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise
200 introduce a controlled substance into the human body in violation of this act. Any person who
201 violates this Subsection (2) is guilty of a class A misdemeanor punishable by imprisonment for a
202 term not exceeding 13 months.

203 (3) Any person 18 years of age or over who delivers drug paraphernalia to a person under
204 18 years of age who is three years or more younger than the person making the delivery is guilty
205 of a third degree felony.

206 (4) It is unlawful for any person to place in this state in any newspaper, magazine, handbill,
207 or other publication any advertisement, knowing that the purpose of the advertisement is to
208 promote the sale of drug paraphernalia. Any person who violates this Subsection (4) is guilty of
209 a class B misdemeanor.

210 Section 3. Section **58-37c-19** is amended to read:

211 **58-37c-19. Possession or sale of crystal iodine.**

212 (1) Any person licensed to engage in a regulated transaction is guilty of a class B
213 misdemeanor who, under circumstances not amounting to a violation of Subsection

214 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to another
215 person who is:

216 (a) not licensed as a regulated purchaser of crystal iodine;

217 (b) not excepted from licensure; or

218 (c) not excepted under Subsection (3).

219 (2) Any person who is not licensed to engage in regulated transactions and not excepted
220 from licensure is guilty of a class A misdemeanor punishable by imprisonment for a term not

221 exceeding 13 months who, under circumstances not amounting to a violation of Subsection

222 58-37c-3[~~(10)~~](12)(k) or Subsection 58-37d-4(1)(a):

223 (a) possesses more than two ounces of crystal iodine; or

224 (b) offers to sell, sells, or distributes crystal iodine to another.

225 (3) Subsection (2)(a) does not apply to:

226 (a) a chemistry laboratory maintained by:

227 (i) a public or private regularly established secondary school; or

228 (ii) a public or private institution of higher education that is accredited by a regional or
229 national accrediting agency recognized by the United States Department of Education;

230 (b) a veterinarian licensed to practice under Title 58, Chapter 28, [~~Veterinarians~~]
231 Veterinary Practice Act; or

232 (c) a general acute hospital.

233 Section 4. Section **58-37c-20** is amended to read:

234 **58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.**

235 (1) Any person who is not licensed to engage in regulated transactions and not excepted
236 from licensure who, under circumstances not amounting to a violation of Subsection

237 58-37c-3[~~(10)~~](12)(k) or Subsection 58-37d-4(1)(a), possesses more than 12 grams of ephedrine

238 or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these

239 substances, is guilty of a class A misdemeanor punishable by imprisonment for a term not
240 exceeding 13 months.

241 (2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in
242 possession of ephedrine or pseudoephedrine, or a combination of these two substances:

243 (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman,
244 or common carrier, or an agent of any of these persons; and

245 (ii) possesses the substances in the regular course of lawful business activities.

246 (b) (i) The defendant shall provide written notice of intent to claim an affirmative defense
247 under this section as soon as practicable, but not later than ten days prior to trial. The court may
248 waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is
249 not unfairly prejudiced by the lack of timely notice.

250 (ii) The notice shall include the specifics of the asserted defense.

251 (iii) The defendant shall establish the affirmative defense by a preponderance of the
252 evidence. If the defense is established, it is a complete defense to the charges.

253 (3) This section does not apply to dietary supplements, herbs, or other natural products,
254 including concentrates or extracts, which:

255 (a) are not otherwise prohibited by law; and

256 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine,
257 or their salts, isomers, or salts of isomers, or a combination of these substances, that:

258 (i) are contained in a matrix of organic material; and

259 (ii) do not exceed 15% of the total weight of the natural product.

260 Section 5. Section **76-3-204** is amended to read:

261 **76-3-204. Misdemeanor conviction -- Term of imprisonment.**

262 A person who has been convicted of a misdemeanor may be sentenced to imprisonment
263 as follows:

264 (1) In the case of a class A misdemeanor, for a term not exceeding:

265 (a) one year; or

266 (b) 13 months if:

267 (i) specifically provided; or

268 (ii) the offense is an attempt, conspiracy, or solicitation to commit a felony.

269 (2) In the case of a class B misdemeanor, for a term not exceeding six months[;].

270 (3) In the case of a class C misdemeanor, for a term not exceeding [ninety] 90 days.

271 (4) Any class A misdemeanor which is punishable by a term of imprisonment for 13

272 months is also subject to all other provisions of this code regarding class A misdemeanors

273 including those pertaining to fines, surcharges, enhancements, probation, expungement, and

274 custodial authorities.

275 Section 6. Section **76-3-208** is amended to read:

276 **76-3-208. Imprisonment -- Custodial authorities.**

277 (1) Persons sentenced to imprisonment shall be committed to the following custodial
278 authorities:

279 (a) felony commitments shall be to the Utah State Prison;

280 (b) (i) class A misdemeanor commitments shall be to the jail, or other facility designated
281 by the town, city, or county where the defendant was convicted, unless the defendant consents to
282 commitment to the Utah State Prison for an indeterminate term not to exceed one year or, if
283 otherwise provided, for 13 months;

284 (ii) if the defendant consents to commitment to the Utah State Prison for an indeterminate
285 term not to exceed one year or, if otherwise provided, for 13 months, the court may impose the
286 sentence. The court may not order the imprisonment of a defendant to the Utah State Prison for
287 a fixed term or other term that is inconsistent with this section and Section 77-18-4;

288 (c) all other misdemeanor commitments shall be to the jail or other facility designated by
289 the town, city or county where the defendant was convicted.

290 (2) Custodial authorities may place a prisoner in a facility other than the one to which he
291 was committed when:

292 (a) it does not have space to accommodate him; or

293 (b) the security of the institution or inmate requires it.

294 Section 7. Section **76-5-102** is amended to read:

295 **76-5-102. Assault.**

296 (1) Assault is:

297 (a) an attempt, with unlawful force or violence, to do bodily injury to another;

298 (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury
299 to another; or

300 (c) an act, committed with unlawful force or violence, that causes or creates a substantial
301 risk of bodily injury to another.

302 (2) Assault is a class B misdemeanor.

303 (3) Assault is a class A misdemeanor punishable by imprisonment for a term not exceeding
304 13 months if the person causes substantial bodily injury to another.

305 (4) It is not a defense against assault, that the accused caused serious bodily injury to
306 another.

307 Section 8. Section **76-5-102.3** is amended to read:

308 **76-5-102.3. Assault against school employees.**

309 (1) Any person who assaults an employee of a public or private school, with knowledge
310 that the individual is an employee, and when the employee is acting within the scope of his
311 authority as an employee, is guilty of a class A misdemeanor punishable by imprisonment for a
312 term not exceeding 13 months.

313 (2) As used in this section, "employee" includes a volunteer.

314 Section 9. Section **76-5-102.4** is amended to read:

315 **76-5-102.4. Assault against peace officer -- Penalty.**

316 (1) Any person who assaults a peace officer, with knowledge that he is a peace officer, and
317 when the peace officer is acting within the scope of his authority as a peace officer, is guilty of a
318 class A misdemeanor punishable by imprisonment for a term not exceeding 13 months.

319 (2) A person who violates this section shall serve, in jail or another correctional facility,
320 a minimum of:

321 (a) 90 consecutive days for a second offense; and

322 (b) 180 consecutive days for each subsequent offense.

323 (3) The court may suspend the imposition or execution of the sentence required under
324 Subsection (2) if the court finds that the interests of justice would be best served and makes
325 specific findings concerning the disposition in writing or on the record.

326 Section 10. Section **76-5-102.6** is amended to read:

327 **76-5-102.6. Assault on a correctional officer.**

328 Any prisoner who throws or otherwise propels fecal material or any other substance or
329 object at a peace or correctional officer is guilty of a class A misdemeanor punishable by
330 imprisonment for a term not exceeding 13 months.

331 Section 11. Section **76-5-106.5** is amended to read:

332 **76-5-106.5. Definitions -- Stalking -- Injunction -- Hearing.**

333 (1) As used in this section:

334 (a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to
335 a person or repeatedly conveying verbal or written threats or threats implied by conduct or a
336 combination thereof directed at or toward a person.

337 (b) "Immediate family" means a spouse, parent, child, sibling, or any other person who

338 regularly resides in the household or who regularly resided in the household within the prior six
339 months.

340 (c) "Repeatedly" means on two or more occasions.

341 (2) A person is guilty of stalking who:

342 (a) intentionally or knowingly engages in a course of conduct directed at a specific person
343 that would cause a reasonable person:

344 (i) to fear bodily injury to himself or a member of his immediate family; or

345 (ii) to suffer emotional distress to himself or a member of his immediate family;

346 (b) has knowledge or should have knowledge that the specific person:

347 (i) will be placed in reasonable fear of bodily injury to himself or a member of his
348 immediate family; or

349 (ii) will suffer emotional distress or a member of his immediate family will suffer
350 emotional distress; and

351 (c) whose conduct:

352 (i) induces fear in the specific person of bodily injury to himself or a member of his
353 immediate family; or

354 (ii) causes emotional distress in the specific person or a member of his immediate family.

355 (3) A person is also guilty of stalking who intentionally or knowingly violates a stalking
356 injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or intentionally or
357 knowingly violates a permanent criminal stalking injunction issued pursuant to this section.

358 (4) Stalking is a class A misdemeanor punishable by imprisonment for a term not
359 exceeding 13 months:

360 (a) upon the offender's first violation of Subsection (2); or

361 (b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a,
362 Stalking Injunction.

363 (5) Stalking is a third degree felony if the offender:

364 (a) has been previously convicted of an offense of stalking;

365 (b) has been convicted in another jurisdiction of an offense that is substantially similar to
366 the offense of stalking;

367 (c) has been previously convicted of any felony offense in Utah or of any crime in another
368 jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or

369 a member of the victim's immediate family was also a victim of the previous felony offense; or

370 (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).

371 (6) Stalking is a felony of the second degree if the offender:

372 (a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force

373 likely to produce death or serious bodily injury, in the commission of the crime of stalking;

374 (b) has been previously convicted two or more times of the offense of stalking;

375 (c) has been convicted two or more times in another jurisdiction or jurisdictions of

376 offenses that are substantially similar to the offense of stalking;

377 (d) has been convicted two or more times, in any combination, of offenses under

378 Subsection (5); or

379 (e) has been previously convicted two or more times of felony offenses in Utah or of

380 crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in

381 which the victim of the stalking was also a victim of the previous felony offenses.

382 (7) A conviction for stalking or a plea accepted by the court and held in abeyance for a

383 period of time shall operate as an application for a permanent criminal stalking injunction limiting

384 the contact of the defendant and the victim.

385 (a) A permanent criminal stalking injunction shall be issued without a hearing unless the

386 defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and

387 mentally ill, plea of no contest, or acceptance of plea in abeyance. The court shall give the

388 defendant notice of his right to request a hearing.

389 (i) If the defendant requests a hearing, it shall be held at the time of the verdict, finding,

390 or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance

391 unless the victim requests otherwise, or for good cause.

392 (ii) If the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or

393 acceptance of plea in abeyance was entered in a justice court, a certified copy of the judgment and

394 conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the

395 victim in the district court as an application and request for hearing for a permanent criminal

396 stalking injunction.

397 (b) A permanent criminal stalking injunction may grant the following relief:

398 (i) an order restraining the defendant from entering the residence, property, school, or place

399 of employment of the victim and requiring the defendant to stay away from the victim and

400 members of the victim's immediate family or household and to stay away from any specified place
401 that is named in the order and is frequented regularly by the victim; and

402 (ii) an order restraining the defendant from making contact with the victim, including an
403 order forbidding the defendant from personally or through an agent initiating any communication
404 likely to cause annoyance or alarm, including personal, written, or telephone contact with the
405 victim, the victim's employers, employees, fellow workers, or others with whom communication
406 would be likely to cause annoyance or alarm to the victim.

407 (c) A permanent criminal stalking injunction may be dissolved upon application of the
408 victim to the court which granted the order.

409 (d) Notice of permanent criminal stalking injunctions issued pursuant to this section shall
410 be sent by the court to the statewide warrants network or similar system.

411 (e) A permanent criminal stalking injunction issued pursuant to this section shall be
412 effective statewide.

413 (f) Violation of an injunction issued pursuant to this section shall constitute an offense of
414 stalking. Violations may be enforced in a civil action initiated by the stalking victim, a criminal
415 action initiated by a prosecuting attorney, or both.

416 (g) Nothing in this section shall preclude the filing of a criminal information for stalking
417 based on the same act which is the basis for the violation of the stalking injunction issued pursuant
418 to Title 77, Chapter 3a, Stalking Injunctions, or permanent criminal stalking injunction.

419 Section 12. Section **76-5-109** is amended to read:

420 **76-5-109. Child abuse.**

421 (1) As used in this section:

422 (a) "Child" means a human being who is 17 years of age or less.

423 (b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section
424 76-5-109.1.

425 (c) "Physical injury" means an injury to or condition of a child which impairs the physical
426 condition of the child, including:

427 (i) a bruise or other contusion of the skin;

428 (ii) a minor laceration or abrasion;

429 (iii) failure to thrive or malnutrition; or

430 (iv) any other condition which imperils the child's health or welfare and which is not a

431 serious physical injury as defined in Subsection (1)(d).

432 (d) "Serious physical injury" means any physical injury or set of injuries which seriously
433 impairs the child's health, or which involves physical torture or causes serious emotional harm to
434 the child, or which involves a substantial risk of death to the child, including:

435 (i) fracture of any bone or bones;

436 (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
437 shaking, or causing the child's head to impact with an object or surface;

438 (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot
439 object upon the skin or body of the child;

440 (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

441 (v) any combination of two or more physical injuries inflicted by the same person, either
442 at the same time or on different occasions;

443 (vi) any damage to internal organs of the body;

444 (vii) any conduct toward a child which results in severe emotional harm, severe
445 developmental delay or retardation, or severe impairment of the child's ability to function;

446 (viii) any injury which creates a permanent disfigurement or protracted loss or impairment
447 of the function of a bodily member, limb, or organ;

448 (ix) any conduct which causes a child to cease breathing, even if resuscitation is successful
449 following the conduct; or

450 (x) any conduct which results in starvation or failure to thrive or malnutrition that
451 jeopardizes the child's life.

452 (2) Any person who inflicts upon a child serious physical injury or, having the care or
453 custody of such child, causes or permits another to inflict serious physical injury upon a child is
454 guilty of an offense as follows:

455 (a) if done intentionally or knowingly, the offense is a felony of the second degree;

456 (b) if done recklessly, the offense is a felony of the third degree; or

457 (c) if done with criminal negligence, the offense is a class A misdemeanor punishable by
458 imprisonment for a term not exceeding 13 months.

459 (3) Any person who inflicts upon a child physical injury or, having the care or custody of
460 such child, causes or permits another to inflict physical injury upon a child is guilty of an offense
461 as follows:

- 462 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- 463 (b) if done recklessly, the offense is a class B misdemeanor; or
- 464 (c) if done with criminal negligence, the offense is a class C misdemeanor.
- 465 (4) A parent or legal guardian who provides a child with treatment by spiritual means
- 466 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of
- 467 an established church or religious denomination of which the parent or legal guardian is a member
- 468 or adherent shall not, for that reason alone, be [~~deemed~~] considered to have committed an offense
- 469 under this section.

470 Section 13. Section **76-5-206** is amended to read:

471 **76-5-206. Negligent homicide.**

472 (1) Criminal homicide constitutes negligent homicide if the actor, acting with criminal

473 negligence, causes the death of another.

474 (2) Negligent homicide is a class A misdemeanor punishable by imprisonment for a term

475 not exceeding 13 months.

476 Section 14. Section **76-5-401.1** is amended to read:

477 **76-5-401.1. Sexual abuse of a minor.**

478 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but

479 younger than 16 years of age, at the time the sexual activity described in this section occurred.

480 (2) A person commits sexual abuse of a minor if the person is seven years or more older

481 than the minor and, under circumstances not amounting to rape, in violation of Section 76-5-402,

482 object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403,

483 aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor,

484 in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches

485 the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor,

486 or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties

487 with the actor or another person, with the intent to cause substantial emotional or bodily pain to

488 any person or with the intent to arouse or gratify the sexual desire of any person regardless of the

489 sex of any participant.

490 (3) A violation of this section is a class A misdemeanor punishable by imprisonment for

491 a term not exceeding 13 months.

492 Section 15. Section **76-6-102** is amended to read:

493 **76-6-102. Arson.**

494 (1) A person is guilty of arson if under circumstances not amounting to aggravated arson,
495 by means of fire or explosives, the person unlawfully and intentionally damages:

496 (a) any property with intention of defrauding an insurer; or

497 (b) the property of another.

498 (2) A violation of Subsection (1)(a) is a second degree felony.

499 (3) A violation of Subsection (1)(b) is:

500 (a) a second degree felony if the damage caused is or exceeds \$5,000 in value;

501 (b) a third degree felony if the damage caused is or exceeds \$1,000 but is less than \$5,000
502 in value;

503 (c) a class A misdemeanor punishable by imprisonment for a term not exceeding 13
504 months if the damage caused is or exceeds \$300 but is less than \$1,000 in value; and

505 (d) a class B misdemeanor if the damage caused is less than \$300.

506 Section 16. Section **76-6-204** is amended to read:

507 **76-6-204. Burglary of a vehicle -- Charge of other offense.**

508 (1) Any person who unlawfully enters any vehicle with intent to commit a felony or theft
509 is guilty of a burglary of a vehicle.

510 (2) Burglary of a vehicle is a class A misdemeanor punishable by imprisonment for a term
511 not exceeding 13 months.

512 (3) A charge against any person for a violation of Subsection (1) shall not preclude a
513 charge for a commission of any other offense.

514 Section 17. Section **76-6-406** is amended to read:

515 **76-6-406. Theft by extortion -- Penalty.**

516 (1) A person is guilty of theft if he obtains or exercises control over the property of another
517 by extortion and with a purpose to deprive him thereof.

518 (2) As used in this section, extortion occurs when a person threatens to:

519 (a) cause physical harm in the future to the person threatened or to any other person or to
520 property at any time; or

521 (b) subject the person threatened or any other person to physical confinement or restraint;

522 or

523 (c) engage in other conduct constituting a crime; or

524 (d) accuse any person of a crime or expose him to hatred, contempt, or ridicule; or

525 (e) reveal any information sought to be concealed by the person threatened; or

526 (f) testify or provide information or withhold testimony or information with respect to
527 another's legal claim or defense; or

528 (g) take action as an official against anyone or anything, or withhold official action, or
529 cause such action or withholding; or

530 (h) bring about or continue a strike, boycott, or other similar collective action to obtain
531 property which is not demanded or received for the benefit of the group which the actor purports
532 to represent; or

533 (i) do any other act which would not in itself substantially benefit him but which would
534 harm substantially any other person with respect to that person's health, safety, business, calling,
535 career, financial condition, reputation, or personal relationships.

536 (3) Notwithstanding Section 76-6-412, a violation of this section in which the value of the
537 property stolen is or exceeds \$300 but is less than \$1,000 is a class A misdemeanor punishable by
538 imprisonment for a term not exceeding 13 months.

539 Section 18. Section **76-8-311.3** is amended to read:

540 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

541 (1) As used in this section:

542 (a) "Contraband" means any item not specifically prohibited for possession by offenders
543 under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

544 (b) "Controlled substance" means any substance defined as a controlled substance under
545 Title 58, Chapter 37, Utah Controlled Substances Act.

546 (c) "Correctional facility" means:

547 (i) any facility operated by or contracting with the Department of Corrections to house
548 offenders in either a secure or nonsecure setting;

549 (ii) any facility operated by a municipality or a county to house or detain criminal
550 offenders;

551 (iii) any juvenile detention facility; and

552 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
553 municipality, or county for use as a correctional facility.

554 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy

555 Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37,
556 Utah Controlled Substances Act.

557 (e) "Mental health facility" has the same meaning as defined in Section 62A-12-202.

558 (f) "Offender" means a person in custody at a correctional facility.

559 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

560 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide
561 by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive,
562 controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

563 (a) transported to or upon a correctional or mental health facility;

564 (b) sold or given away at any correctional or mental health facility;

565 (c) given to or used by any offender at a correctional or mental health facility; or

566 (d) knowingly or intentionally possessed at a correctional or mental health facility.

567 (3) It is a defense to any prosecution under this section if the accused in committing the
568 act made criminal by this section:

569 (a) with respect to a correctional facility operated by the Department of Corrections, acted
570 in conformity with departmental rule or policy;

571 (b) with respect to a correctional facility operated by a municipality, acted in conformity
572 with the policy of the municipality;

573 (c) with respect to a correctional facility operated by a county, acted in conformity with
574 the policy of the county; or

575 (d) with respect to a mental health facility, acted in conformity with the policy of the
576 mental health facility.

577 (4) (a) Any person who transports to or upon a correctional facility, or into a secure area
578 of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape
579 with intent to provide or sell it to any offender, is guilty of a second degree felony.

580 (b) Any person who provides or sells to any offender at a correctional facility, or any
581 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon,
582 or implement of escape is guilty of a second degree felony.

583 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
584 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
585 implement of escape is guilty of a second degree felony.

586 (d) Any person who, without the permission of the authority operating the correctional
587 facility or the secure area of a mental health facility, knowingly possesses at a correctional facility
588 or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or
589 implement of escape is guilty of a third degree felony.

590 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,
591 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

592 (5) (a) A person is guilty of a third degree felony who, without the permission of the
593 authority operating the correctional facility or secure area of a mental health facility, knowingly
594 transports to or upon a correctional facility or into a secure area of a mental health facility any:

595 (i) spirituous or fermented liquor;

596 (ii) medicine, whether or not lawfully prescribed for the offender; or

597 (iii) poison in any quantity.

598 (b) A person is guilty of a third degree felony who knowingly violates correctional or
599 mental health facility policy or rule by providing or selling to any offender at a correctional facility
600 or detainee within a secure area of a mental health facility any:

601 (i) spirituous or fermented liquor;

602 (ii) medicine, whether or not lawfully prescribed for the offender; or

603 (iii) poison in any quantity.

604 (c) An inmate is guilty of a third degree felony who, in violation of correctional or mental
605 health facility policy or rule, possesses at a correctional facility or in a secure area of a mental
606 health facility any:

607 (i) spirituous or fermented liquor;

608 (ii) medicine, other than medicine provided by the facility's health care providers in
609 compliance with facility policy; or

610 (iii) poison in any quantity.

611 (d) A person is guilty of a class A misdemeanor punishable by imprisonment for a term not
612 exceeding 13 months who, without the permission of the authority operating the correctional or
613 mental health facility, fails to declare or knowingly possesses at a correctional facility or in a
614 secure area of a mental health facility any:

615 (i) spirituous or fermented liquor;

616 (ii) medicine; or

617 (iii) poison in any quantity.

618 (e) A person is guilty of a class B misdemeanor who, without the permission of the
619 authority operating the facility, knowingly engages in any activity that would facilitate the
620 possession of any contraband by an offender in a correctional facility.

621 (f) Exemptions may be granted for worship for Native American inmates pursuant to
622 Section 64-13-40.

623 (6) The possession, distribution, or use of a controlled substance at a correctional facility
624 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,
625 Chapter 37, Utah Controlled Substances Act.

626 Section 19. Section **76-9-702** is amended to read:

627 **76-9-702. Lewdness -- Sexual battery -- Public urination.**

628 (1) A person is guilty of lewdness if the person under circumstances not amounting to rape,
629 object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to
630 commit any of these offenses, performs any of the following acts under circumstances which the
631 person should know will likely cause affront or alarm to, on, or in the presence of another who is
632 14 years of age or older:

633 (a) an act of sexual intercourse or sodomy;

634 (b) exposes his or her genitals, the female breast below the top of the areola, the buttocks,
635 the anus, or the pubic area;

636 (c) masturbates;

637 (d) engages in trespassory voyeurism; or

638 (e) any other act of lewdness.

639 (2) Lewdness is a class B misdemeanor.

640 (3) A person is guilty of sexual battery if the person under circumstances not amounting
641 to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child,
642 forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated
643 sexual assault, or an attempt to commit any of these offenses intentionally touches, whether or not
644 through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of
645 a female, and the actor's conduct is under circumstances the actor knows or should know will likely
646 cause affront or alarm to the person touched.

647 (4) Sexual battery is a class A misdemeanor punishable by imprisonment for a term not

648 exceeding 13 months.

649 (5) A person is guilty of public urination if the person urinates or defecates:

650 (a) in a public place, other than a public rest room; and

651 (b) under circumstances which the person should know will likely cause affront or alarm

652 to another.

653 (6) Public urination is a class C misdemeanor.

654 (7) A woman's breast feeding, including breast feeding in any location where the woman

655 otherwise may rightfully be, does not under any circumstance constitute a lewd or grossly lewd act,

656 irrespective of whether or not the breast is covered during or incidental to feeding.

657 Section 20. Section **76-9-702.5** is amended to read:

658 **76-9-702.5. Lewdness involving child.**

659 (1) A person is guilty of lewdness involving a child if the person under circumstances not

660 amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child,

661 aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally

662 or knowingly does any of the following to, or in the presence of a child who is under 14 years of

663 age:

664 (a) performs an act of sexual intercourse or sodomy;

665 (b) exposes his or her genitals, the female breast below the top of the areola, the buttocks,

666 the anus, or the pubic area:

667 (i) in a public place; or

668 (ii) in a private place:

669 (A) under circumstances the person should know will likely cause affront or alarm; or

670 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;

671 (c) masturbates;

672 (d) engages in trespassory voyeurism;

673 (e) under circumstances not amounting to sexual exploitation of a child under Section

674 76-5a-3, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if

675 female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child;

676 or

677 (f) performs any other act of lewdness.

678 (2) Lewdness involving a child is a class A misdemeanor punishable by imprisonment for

679 a term not exceeding 13 months.

680 Section 21. Section **76-10-503** is amended to read:

681 **76-10-503. Purchase or possession of dangerous weapon, firearm, or explosive --**
682 **Persons not permitted to have -- Penalties.**

683 (1) (a) Any person who has been convicted of any crime of violence under the laws of the
684 United States, this state, or any other state, government, or country, or who is addicted to the use
685 of any narcotic drug, or who has been declared mentally incompetent may not own or have in his
686 possession or under his custody or control any dangerous weapon as defined in Section 76-10-501.

687 (b) Any person who violates this Subsection (1) is guilty of a class A misdemeanor
688 punishable by imprisonment for a term not exceeding 13 months, and if the dangerous weapon is
689 a firearm or sawed-off shotgun, he is guilty of a third degree felony.

690 (2) (a) Any person who is on parole or probation for a felony may not have in his
691 possession or under his custody or control any explosive, chemical, or incendiary device as those
692 terms are defined in Section 76-10-306 or dangerous weapon as defined in Section 76-10-501.

693 (b) Any person who violates this Subsection (2) is guilty of a third degree felony, but if
694 the dangerous weapon is a firearm or an explosive, chemical, or incendiary device he is guilty of
695 a second degree felony.

696 (3) (a) A person may not purchase, possess, or transfer any handgun described in this part
697 who:

698 (i) has been convicted of any felony offense under the laws of the United States, this state,
699 or any other state;

700 (ii) is under indictment;

701 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

702 (iv) is a drug dependent person as defined in Section 58-37-2;

703 (v) has been adjudicated as mentally defective, as provided in the Brady Handgun Violence
704 Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental
705 institution;

706 (vi) is an alien who is illegally or unlawfully in the United States;

707 (vii) has been discharged from the Armed Forces under dishonorable conditions; or

708 (viii) is a person who, having been a citizen of the United States, has renounced such
709 citizenship.

710 (b) Any person who violates this Subsection (3) is guilty of a third degree felony.

711 Section 22. Section **76-10-504** is amended to read:

712 **76-10-504. Carrying concealed dangerous weapon -- Penalties.**

713 (1) Except as provided in Section 76-10-503 and in Subsections (2) and (3):

714 (a) a person who carries a concealed dangerous weapon, as defined in Section 76-10-501,
715 which is not a firearm on his person or one that is readily accessible for immediate use which is
716 not securely encased, as defined in this part, in a place other than his residence, property, or
717 business under his control is guilty of a class B misdemeanor; and

718 (b) a person without a valid concealed firearm permit who carries a concealed dangerous
719 weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor,
720 but if the firearm contains ammunition the person is guilty of a class A misdemeanor punishable
721 by imprisonment for a term not exceeding 13 months.

722 (2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of
723 a second degree felony.

724 (3) If the concealed firearm is used in the commission of a crime of violence as defined
725 in Section 76-10-501, and the person is a party to the offense, the person is guilty of a second
726 degree felony.

727 (4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of
728 protected or unprotected wildlife as defined in Title 23, [~~Fish and Game~~] Wildlife Resources Code
729 of Utah, from carrying a concealed weapon or a concealed firearm with a barrel length of four
730 inches or greater as long as the taking of wildlife does not occur:

731 (a) within the limits of a municipality in violation of that municipality's ordinances; or

732 (b) upon the highways of the state as defined in Section 41-6-1.

733 Section 23. Section **76-10-506** is amended to read:

734 **76-10-506. Threatening with or using dangerous weapon in fight or quarrel.**

735 Every person, except those persons described in Section 76-10-503, who, not in necessary
736 self defense in the presence of two or more persons, draws or exhibits any dangerous weapon in
737 an angry and threatening manner or unlawfully uses the same in any fight or quarrel is guilty of a
738 class A misdemeanor punishable by imprisonment for a term not exceeding 13 months.

739 Section 24. Section **76-10-507** is amended to read:

740 **76-10-507. Possession of deadly weapon with intent to assault.**

741 Every person having upon his person any dangerous weapon with intent to unlawfully
742 assault another is guilty of a class A misdemeanor punishable by imprisonment for a term not
743 exceeding 13 months.

744 Section 25. Section **77-36-2.5** is amended to read:

745 **77-36-2.5. Conditions for release after arrest for domestic violence.**

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

750 (a) have no personal contact with the alleged victim;

751 (b) not threaten or harass the alleged victim; and

752 (c) not knowingly enter onto the premises of the alleged victim's residence or any premises
753 temporarily occupied by the alleged victim.

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

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

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

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

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

769 (ii) When a person is released pursuant to Subsection (1) based upon a court order, the
770 court shall transmit that order to the statewide domestic violence network described in Section
771 30-6-8.

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

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

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

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

781 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class A
782 misdemeanor punishable by imprisonment for a term not exceeding 13 months.

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

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

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

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

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

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

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

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

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

801 (8) In addition to the provisions of Subsections (1) through (6), because of the unique and
802 highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders,

803 and the demonstrated increased risk of continued acts of violence subsequent to the release of an
804 offender who has been arrested for domestic violence, it is the finding of the Legislature that
805 domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied
806 if there is substantial evidence to support the charge, and if the court finds by clear and convincing
807 evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of
808 domestic violence if released on bail. If bail is denied under this Subsection (8), it shall be under
809 the terms and conditions described in Subsections (1) through (6).

Legislative Review Note
as of 1-25-00 7:18 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel