

1 **CONDITIONS FOR RELEASE AFTER NOTICE**
2 **REGARDING ARREST FOR DOMESTIC**
3 **VIOLENCE**

4 2004 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Peggy Wallace**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Code of Criminal Procedure regarding arrest for domestic
11 violence.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ creates a section dealing specifically with notification requirements for an alleged
- 15 perpetrator of domestic violence; and
- 16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **77-36-2.5**, as last amended by Chapter 68, Laws of Utah 2003

24
25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **77-36-2.5** is amended to read:

27 **77-36-2.5. Conditions for release after arrest for domestic violence.**



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

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

36 (2) As a condition of release, the court may order the defendant to participate in an
37 electronic monitoring program and pay the costs associated with the program.

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

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

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

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

50 (ii) When a person is released pursuant to Subsection (1) based upon a court order, the
51 court shall transmit that order to the statewide domestic violence network described in Section
52 30-6-8.

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

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

58 (b) Any person who knowingly violates a court order or agreement executed pursuant

59 to Subsection (1) shall be guilty as follows:

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

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

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

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

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

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

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

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

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

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

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

82 (8) At the time an arrest for domestic violence is made, the arresting officer shall
83 provide the alleged perpetrator with written notice containing the following information:

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

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

88 (c) the date and time absent modification by a court or magistrate that the requirements
89 expire.

90 [~~(8)~~] (9) In addition to the provisions of Subsections (1) through (6), because of the
91 unique and highly emotional nature of domestic violence crimes, the high recidivism rate of
92 violent offenders, and the demonstrated increased risk of continued acts of violence subsequent
93 to the release of an offender who has been arrested for domestic violence, it is the finding of
94 the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for
95 which bail may be denied if there is substantial evidence to support the charge, and if the court
96 finds by clear and convincing evidence that the alleged perpetrator would constitute a
97 substantial danger to an alleged victim of domestic violence if released on bail. If bail is
98 denied under this Subsection [~~(8)~~] (9), it shall be under the terms and conditions described in
99 Subsections (1) through (6).

Legislative Review Note
as of 10-24-03 1:29 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0183****Conditions for Release After Notice Regarding Arrest for Domestic
Violence***19-Jan-04**10:01 AM*

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst