

**DOMESTIC VIOLENCE AND DATING
VIOLENCE AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Litvack

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides for the issuance, modification, and enforcement of protective orders between certain individuals who are, or have been, in a dating relationship, and for the provision of services to victims of dating violence.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for the issuance, modification, and enforcement of protective orders between parties who are, or have been, in a dating relationship when:
 - the parties are emancipated or 16 years of age or older;
 - the parties are, or have been, in a dating relationship with each other; and
 - a party commits abuse or dating violence against the other party;
- ▶ requires the Administrative Office of the Courts to develop and adopt uniform forms for petitions and orders for protection relating to dating violence;
- ▶ requires law enforcement officers responding to incidents of dating violence to take protective action on behalf of the victim and provide certain information to the victim;
- ▶ integrates dating violence protective orders into the statewide domestic violence network;



28 ▶ requires the Division of Child and Family Services, within the Department of
29 Human Services, to provide certain services to victims of dating violence;

30 ▶ describes the conditions that may be placed on an alleged perpetrator of dating
31 violence:

- 32 • in a protective order;
- 33 • in an order of probation for violation of a protective order relating to dating

34 violence; or

- 35 • as a condition of release prior to trial for violation of a protective order relating
36 to dating violence; and

37 ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 This bill takes effect on September 1, 2006.

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **30-6-1**, as last amended by Chapter 68, Laws of Utah 2003

45 **30-6-2**, as last amended by Chapter 68, Laws of Utah 2003

46 **30-6-4**, as last amended by Chapter 10, Laws of Utah 1997

47 **30-6-4.2**, as last amended by Chapter 156, Laws of Utah 2005

48 **30-6-4.4**, as enacted by Chapter 300, Laws of Utah 1995

49 **30-6-4.5**, as last amended by Chapter 244, Laws of Utah 1996

50 **30-6-8**, as last amended by Chapter 263, Laws of Utah 1998

51 **30-6-11**, as last amended by Chapter 318, Laws of Utah 1996

52 **62A-4a-101**, as last amended by Chapter 95, Laws of Utah 2005

53 **77-36-1**, as last amended by Chapter 81, Laws of Utah 2002

54 **77-36-2.1**, as last amended by Chapter 68, Laws of Utah 2003

55 **77-36-2.7**, as last amended by Chapter 54, Laws of Utah 1999

56 **77-36-5.1**, as last amended by Chapter 244, Laws of Utah 1996



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

59 Section 1. Section **30-6-1** is amended to read:

60 **30-6-1. Definitions.**

61 As used in this chapter:

62 (1) "Abuse" means intentionally or knowingly;

63 (a) causing or attempting to cause [a cohabitant] physical harm to a person; or
64 [intentionally or knowingly]

65 (b) placing a [cohabitant] person in reasonable fear of imminent physical harm.

66 (2) (a) "Cohabitant" means a person who:

67 (i) (A) is an emancipated person pursuant to Section 15-2-1; or [a person who is]

68 (B) 16 years of age or older [who:]; and

69 [(a)] (ii) (A) is or was a spouse of the other party;

70 [(b)] (B) is or was living as if a spouse of the other party;

71 [(c)] (C) is related by blood or marriage to the other party;

72 [(d)] (D) has one or more children in common with the other party;

73 [(e)] (E) is the biological parent of the other party's unborn child; or

74 [(f)] (F) resides or has resided in the same residence as the other party.

75 [(3)] (b) Notwithstanding Subsection (2)(a), "cohabitant" does not include:

76 [(a)] (i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

77 [(b)] (ii) the relationship between natural, adoptive, step, or foster siblings who are
78 under 18 years of age.

79 [(4)] (3) "Court clerk" means a district court clerk.

80 (4) "Dating Partner" means a person who:

81 (a) (i) is an emancipated person pursuant to Section 15-2-1; or

82 (ii) is 16 years of age or older; and

83 (b) is, or has been, in a dating relationship with the other party.

84 (5) (a) "Dating relationship" means a social relationship of a romantic or intimate
85 nature, regardless of whether the relationship involves sexual intimacy.

86 (b) "Dating relationship" does not include:

87 (i) a casual relationship; or

88 (ii) casual fraternization between two individuals in a business, educational, or social
89 context.

90 (c) In determining, based on a totality of the circumstances, whether a dating
91 relationship exists:
92 (i) all relevant factors should be considered, including:
93 (A) whether the parties developed a minimal, social, interpersonal bonding, over and
94 above a mere casual fraternization;
95 (B) the length of the parties' relationship;
96 (C) the nature and frequency of the parties' interactions;
97 (D) the ongoing expectations of the parties, individually or jointly, with respect to the
98 relationship;
99 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
100 relationship before others; and
101 (F) whether other reasons exist that support or detract from a finding that a dating
102 relationship exists; and
103 (ii) it is not necessary that all, or a particular number, of the factors described in
104 Subsection (5)(c)(i) are found to support the existence of a dating relationship.
105 (6) "Dating violence" means:
106 (a) any criminal offense involving violence or physical harm or threat of violence or
107 physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense
108 involving violence or physical harm, when committed by one dating partner against another; or
109 (b) the commission or attempt to commit, any of the following offenses by one dating
110 partner against another:
111 (i) aggravated assault, as described in Section 76-5-103;
112 (ii) assault, as described in Section 76-5-102;
113 (iii) criminal homicide, as described in Section 76-5-201;
114 (iv) harassment, as described in Section 76-5-106;
115 (v) electronic communication harassment, as described in Section 76-9-201;
116 (vi) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
117 76-5-301, 76-5-301.1, and 76-5-302;
118 (vii) mayhem, as described in Section 76-5-105;
119 (viii) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
120 Title 76, Chapter 5a, Sexual Exploitation of Children;

121 (ix) stalking, as described in Section 76-5-106.5;
122 (x) unlawful detention, as described in Section 76-5-304;
123 (xi) violation of a protective order or ex parte protective order, as described in Section
124 76-5-108;
125 (xii) any offense against property described in Title 76, Chapter 6, Part 1, Property
126 Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;
127 (xiii) possession of a deadly weapon with intent to assault, as described in Section
128 76-10-507; or
129 (xiv) discharge of a firearm from a vehicle, near a highway, or in the direction of any
130 person, building, or vehicle, as described in Section 76-10-508.
131 ~~[(5)]~~ (7) "Domestic violence" ~~[means the same as that term]~~ is as defined in Section
132 77-36-1.
133 ~~[(6)]~~ (8) "Ex parte protective order" means an order issued without notice to the
134 defendant in accordance with this chapter.
135 ~~[(7)]~~ (9) "Foreign protective order" means a protective order issued by another state,
136 territory, or possession of the United States, tribal lands of the United States, the
137 Commonwealth of Puerto Rico, or the District of Columbia which shall be given full faith and
138 credit in Utah, if the protective order is similar to a protective order issued in compliance with
139 Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse
140 Procedures Act, and includes the following requirements:
141 (a) the requirements of due process were met by the issuing court, including subject
142 matter and personal jurisdiction;
143 (b) the respondent received reasonable notice; and
144 (c) the respondent had an opportunity for a hearing regarding the protective order.
145 ~~[(8)]~~ (10) "Law enforcement unit" or "law enforcement agency" means any public
146 agency having general police power and charged with making arrests in connection with
147 enforcement of the criminal statutes and ordinances of this state or any political subdivision.
148 ~~[(9)]~~ (11) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace
149 Officer Classifications.
150 ~~[(10)]~~ (12) "Protective order" means an order issued pursuant to this chapter
151 subsequent to a hearing on the petition, of which the petitioner and respondent have been given

152 notice in accordance with this chapter.

153 Section 2. Section **30-6-2** is amended to read:

154 **30-6-2. Abuse or danger of abuse -- Protective orders.**

155 (1) (a) Any [cohabitant who has been subjected to abuse or domestic violence, or to
156 whom there is a substantial likelihood of abuse or domestic violence,] person may seek an ex
157 parte protective order or a protective order in accordance with this chapter, if the person is
158 subjected to, or there is a substantial likelihood that the person will be subjected to:

159 (i) abuse by a cohabitant or a dating partner of the person;

160 (ii) domestic violence by a cohabitant of the person; or

161 (iii) dating violence by a dating partner of the person.

162 (b) A person may seek an order described in Subsection (1)(a), whether or not that
163 person:

164 (i) has left the residence or the premises in an effort to avoid further abuse[-]; or

165 (ii) taken other action to end the relationship.

166 (2) A petition for a protective order may be filed under this chapter regardless of
167 whether an action for divorce between the parties is pending.

168 (3) A petition seeking a protective order may not be withdrawn without approval of the
169 court.

170 Section 3. Section **30-6-4** is amended to read:

171 **30-6-4. Forms for petitions and protective orders -- Assistance.**

172 (1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to
173 persons seeking to proceed under this chapter.

174 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for
175 petitions and orders for protection in accordance with the provisions of this chapter on or
176 before September 1, [1995] 2006. That office shall provide the forms to the clerk of each court
177 authorized to issue protective orders. The forms shall include:

178 (i) a statement notifying the petitioner for an ex parte protective order that knowing
179 falsification of any statement or information provided for the purpose of obtaining a protective
180 order may subject the petitioner to felony prosecution;

181 (ii) a separate portion of the form for those provisions, the violation of which is a
182 criminal offense, and a separate portion for those provisions, the violation of which is a civil

183 violation, as provided in Subsection 30-6-4.2(5);

184 (iii) language in the criminal provision portion stating violation of any criminal
185 provision is a class A misdemeanor, and language in the civil portion stating violation of or
186 failure to comply with a civil provision is subject to contempt proceedings;

187 (iv) a space for information the petitioner is able to provide to facilitate identification
188 of the respondent, such as social security number, driver license number, date of birth, address,
189 telephone number, and physical description;

190 (v) a space for the petitioner to request a specific period of time for the civil provisions
191 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for
192 the requested extension of the length of time beyond 150 days;

193 (vi) a statement advising the petitioner that when a minor child is included in an ex
194 parte protective order or a protective order, as part of either the criminal or the civil portion of
195 the order, the petitioner may provide a copy of the order to the principal of the school where the
196 child attends; and

197 (vii) a statement advising the petitioner that if the respondent fails to return custody of
198 a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from
199 the court a writ of assistance.

200 (2) If the person seeking to proceed under this chapter is not represented by an
201 attorney, it is the responsibility of the court clerk's office to provide:

202 (a) the forms adopted pursuant to Subsection (1);

203 (b) all other forms required to petition for an order for protection including, but not
204 limited to, forms for service;

205 (c) clerical assistance in filling out the forms and filing the petition, in accordance with
206 Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to
207 provide that service, but the court clerk's office is responsible to see that the service is
208 provided;

209 (d) information regarding the means available for the service of process;

210 (e) a list of legal service organizations that may represent the petitioner in an action
211 brought under this chapter, together with the telephone numbers of those organizations; and

212 (f) written information regarding the procedure for transporting a jailed or imprisoned
213 respondent to the protective order hearing, including an explanation of the use of transportation

214 order forms when necessary.

215 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency
216 for:

217 (a) filing a petition under this chapter;

218 (b) obtaining an ex parte protective order;

219 (c) obtaining copies, either certified or not certified, necessary for service or delivery to
220 law enforcement officials; or

221 (d) fees for service of a petition, ex parte protective order, or protective order.

222 (4) A petition for an order of protection shall be in writing and verified.

223 (5) (a) All orders for protection shall be issued in the form adopted by the

224 Administrative Office of the Courts pursuant to Subsection (1).

225 (b) Each protective order issued, except orders issued ex parte, shall include the
226 following language:

227 "Respondent was afforded both notice and opportunity to be heard in the hearing that
228 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
229 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
230 Columbia, tribal lands, and United States territories."

231 Section 4. Section **30-6-4.2** is amended to read:

232 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**
233 **-- Service of process -- Duties of the court.**

234 (1) If it appears from a petition for an order for protection or a petition to modify an
235 order for protection that domestic violence, dating violence, or abuse has occurred or a
236 modification of an order for protection is required, a court may:

237 (a) without notice, immediately issue an order for protection ex parte or modify an
238 order for protection ex parte as [it] the court considers necessary to protect the petitioner and
239 all parties named to be protected in the petition; or

240 (b) upon notice, issue an order for protection or modify an order after a hearing,
241 whether or not the respondent appears.

242 (2) A court may grant the following relief without notice in an order for protection or a
243 modification issued ex parte:

244 (a) enjoin the respondent from threatening to commit or committing domestic violence,

245 dating violence, or abuse against the petitioner and any designated family or household
246 member;

247 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
248 communicating with the petitioner, directly or indirectly;

249 (c) order that the respondent is excluded from the petitioner's residence and its
250 premises, and order the respondent to stay away from the residence, school, or place of
251 employment of the petitioner, and the premises of any of these, or any specified place
252 frequented by the petitioner and any designated family or household member;

253 (d) upon finding that the respondent's use or possession of a weapon may pose a
254 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
255 possessing a firearm or other weapon specified by the court;

256 (e) order possession and use of an automobile and other essential personal effects, and
257 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
258 the parties to ensure that the petitioner is safely restored to possession of the residence,
259 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
260 removal of personal belongings;

261 (f) if the petitioner is a cohabitant of the other party, grant to the petitioner temporary
262 custody of any minor children of the parties;

263 (g) order any further relief that the court considers necessary to provide for the safety
264 and welfare of the petitioner and any designated family or household member; and

265 (h) if ~~the~~ a petition by a cohabitant requests child support or spousal support, at the
266 hearing on the petition order both parties to provide verification of current income, including
267 year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as
268 specified by the court, and complete copies of tax returns from at least the most recent year.

269 (3) A court may grant the following relief in an order for protection or a modification
270 of an order after notice and hearing, whether or not the respondent appears:

271 (a) grant the relief described in Subsection (2); and

272 (b) if the petitioner is a cohabitant of the other party, specify arrangements for
273 parent-time of any minor child by the respondent and require supervision of that parent-time by
274 a third party or deny parent-time if necessary to protect the safety of the petitioner or child.

275 (4) Following the protective order hearing, the court shall:

- 276 (a) as soon as possible, deliver the order to the county sheriff for service of process;
- 277 (b) make reasonable efforts to ensure that the order for protection is understood by the
- 278 petitioner, and the respondent, if present;
- 279 (c) transmit, by the end of the next business day after the order is issued, a copy of the
- 280 order for protection to the local law enforcement agency or agencies designated by the
- 281 petitioner; and
- 282 (d) transmit a copy of the order to the statewide domestic violence network described
- 283 in Section 30-6-8.
- 284 (5) (a) Each protective order shall include two separate portions, one for provisions, the
- 285 violation of which are criminal offenses, and one for provisions, the violation of which are civil
- 286 violations, as follows:
 - 287 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
 - 288 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and
 - 289 (ii) civil offenses are those under Subsections (2)(f) through (h), and Subsection (3)(a)
 - 290 as it refers to Subsections (2)(f) through (h).
- 291 (b) The criminal provision portion shall include a statement that violation of any
- 292 criminal provision is a class A misdemeanor.
- 293 (c) The civil provision portion shall include a notice that violation of or failure to
- 294 comply with a civil provision is subject to contempt proceedings.
- 295 (6) The protective order shall include:
 - 296 (a) a designation of a specific date, determined by the court, when the civil portion of
 - 297 the protective order either expires or is scheduled for review by the court, which date may not
 - 298 exceed 150 days after the date the order is issued, unless the court indicates on the record the
 - 299 reason for setting a date beyond 150 days;
 - 300 (b) information the petitioner is able to provide to facilitate identification of the
 - 301 respondent, such as Social Security number, driver license number, date of birth, address,
 - 302 telephone number, and physical description; and
 - 303 (c) a statement advising the petitioner that:
 - 304 (i) after two years from the date of issuance of the protective order, a hearing may be
 - 305 held to dismiss the criminal portion of the protective order;
 - 306 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,

307 advise the court of the petitioner's current address for notice of any hearing; and

308 (iii) the address provided by the petitioner will not be made available to the respondent.

309 (7) Child support and spouse support orders issued as part of a protective order are

310 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income

311 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non

312 IV-D Cases, except when the protective order is issued ex parte.

313 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection

314 (5)(a), shall provide expedited service for orders for protection issued in accordance with this

315 chapter, and shall transmit verification of service of process, when the order has been served, to

316 the statewide domestic violence network described in Section 30-6-8.

317 (b) This section does not prohibit any law enforcement agency from providing service

318 of process if that law enforcement agency:

319 (i) has contact with the respondent and service by that law enforcement agency is

320 possible; or

321 (ii) determines that under the circumstances, providing service of process on the

322 respondent is in the best interests of the petitioner.

323 (9) (a) When an order is served on a respondent in a jail or other holding facility, the

324 law enforcement agency managing the facility shall make a reasonable effort to provide notice

325 to the petitioner at the time the respondent is released from incarceration.

326 (b) Notification of the petitioner shall consist of a good faith reasonable effort to

327 provide notification, including mailing a copy of the notification to the last-known address of

328 the victim.

329 (10) A court may modify or vacate an order of protection or any provisions in the order

330 after notice and hearing, except that the criminal provisions of a protective order may not be

331 vacated within two years of issuance unless the petitioner:

332 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah

333 Rules of Civil Procedure, and the petitioner personally appears before the court and gives

334 specific consent to the vacation of the criminal provisions of the protective order; or

335 (b) submits a verified affidavit, stating agreement to the vacation of the criminal

336 provisions of the protective order.

337 (11) A protective order may be modified without a showing of substantial and material

338 change in circumstances.

339 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
340 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

341 Section 5. Section **30-6-4.4** is amended to read:

342 **30-6-4.4. No denial of relief solely because of lapse of time.**

343 The court may not deny a petitioner relief requested pursuant to this chapter solely
344 because of a lapse of time between an act of domestic violence, dating violence, or abuse and
345 the filing of the petition for an order of protection.

346 Section 6. Section **30-6-4.5** is amended to read:

347 **30-6-4.5. Mutual protective orders prohibited -- Exceptions.**

348 (1) A court may not grant a mutual order or mutual orders for protection to opposing
349 parties, unless each party:

350 (a) has filed an independent petition against the other for a protective order, and both
351 petitions have been served;

352 (b) makes a showing at a due process protective order hearing of [~~abuse or~~] domestic
353 violence, dating violence, or abuse committed by the other party; and

354 (c) demonstrates that the [~~abuse or~~] domestic violence, dating violence, or abuse did
355 not occur in self-defense.

356 (2) If the court issues mutual protective orders, the circumstances justifying those
357 orders shall be documented in the case file.

358 Section 7. Section **30-6-8** is amended to read:

359 **30-6-8. Statewide domestic violence network -- Peace officers' duties --**
360 **Prevention of abuse in absence of order -- Limitation of liability.**

361 (1) (a) On or before January 1, 1996, law enforcement units, the Department of Public
362 Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure
363 that peace officers at the scene of an alleged violation of a protective order have immediate
364 access to information necessary to verify the existence and terms of that order, and other orders
365 of the court required to be made available on the network by the provisions of this chapter or
366 Title 77, Chapter 36, Cohabitant Abuse Procedures Act. Those officers shall use every
367 reasonable means to enforce the court's order, in accordance with the requirements and
368 procedures of this chapter and Title 77, Chapter 36.

369 (b) The Administrative Office of the Courts, in cooperation with the Department of
370 Public Safety and the Criminal Investigations and Technical Services Division, established in
371 Section 53-10-103, shall provide for a single, statewide network containing:

372 (i) all orders for protection issued by a court of this state; and

373 (ii) all other court orders or reports of court action that are required to be available on
374 the network under this chapter and Title 77, Chapter 36.

375 (c) The entities described in Subsection (1)(b) may utilize the same mechanism as the
376 statewide warrant system, described in Section 53-10-208.

377 (d) All orders and reports required to be available on the network shall be available
378 within 24 hours after court action. If the court that issued the order is not part of the state court
379 computer system, the orders and reports shall be available on the network within 72 hours.

380 (e) The information contained in the network shall be available to a court, law
381 enforcement officer, or agency upon request.

382 (2) When any peace officer has reason to believe a cohabitant, dating partner, or child
383 of a cohabitant or dating partner is being abused, or that there is a substantial likelihood of
384 immediate danger of abuse, although no protective order has been issued, that officer shall use
385 all reasonable means to prevent the abuse, including:

386 (a) remaining on the scene as long as it reasonably appears there would otherwise be
387 danger of abuse;

388 (b) making arrangements for the victim to obtain emergency medical treatment;

389 (c) making arrangements for the victim to obtain emergency housing or shelter care;

390 (d) explaining to the victim his or her rights in these matters;

391 (e) asking the victim to sign a written statement describing the incident of abuse; or

392 (f) arresting and taking into physical custody the abuser in accordance with the
393 provisions of Title 77, Chapter 36.

394 (3) No person or institution may be held criminally or civilly liable for the performance
395 of, or failure to perform, any duty established by this chapter, so long as that person acted in
396 good faith and without malice.

397 Section 8. Section **30-6-11** is amended to read:

398 **30-6-11. Division of Child and Family Services -- Development and assistance of**
399 **volunteer network.**

400 (1) The Division of Child and Family Services within the Department of Human
401 Services shall, either directly or by contract:

402 (a) develop a statewide network of volunteers and community resources to support,
403 assist, and advocate on behalf of victims of domestic violence and dating violence;

404 (b) train volunteers to provide clerical assistance to persons seeking orders for
405 protection under this chapter;

406 (c) coordinate the provision of volunteer services with Utah Legal Services and the
407 Legal Aid Society; and

408 (d) assist local government officials in establishing community based support systems
409 for victims of domestic violence and dating violence.

410 (2) Volunteers shall provide additional nonlegal assistance to victims of domestic
411 violence and dating violence, including providing information on the location and availability
412 of shelters and other community resources.

413 Section 9. Section ~~62A-4a-101~~ is amended to read:

414 **62A-4a-101. Definitions.**

415 As used in this chapter:

416 (1) "Abuse" means:

417 (a) actual or threatened nonaccidental physical or mental harm;

418 (b) negligent treatment;

419 (c) sexual exploitation; or

420 (d) any sexual abuse.

421 (2) "Adoption services" means:

422 (a) placing children for adoption;

423 (b) subsidizing adoptions under Section 62A-4a-105;

424 (c) supervising adoption placements until the adoption is finalized by the court;

425 (d) conducting adoption studies;

426 (e) preparing adoption reports upon request of the court; and

427 (f) providing postadoptive placement services, upon request of a family, for the
428 purpose of stabilizing a possible disruptive placement.

429 (3) "Board" means the Board of Child and Family Services established in accordance
430 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

- 431 (4) "Child" has the same meaning as "minor," as defined in this section.
- 432 (5) "Consumer" means a person who receives services offered by the division in
433 accordance with this chapter.
- 434 (6) "Chronic physical abuse" means repeated or patterned physical abuse.
- 435 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
436 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.
- 437 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.
- 438 (9) "Custody," with regard to the division, means the custody of a child in the division
439 as of the date of disposition.
- 440 (10) "Day-care services" means care of a child for a portion of the day which is less
441 than 24 hours:
- 442 (a) in the child's own home by a responsible person; or
- 443 (b) outside of the child's home in a:
- 444 (i) day-care center;
- 445 (ii) family group home; or
- 446 (iii) family child care home.
- 447 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who
448 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- 449 (12) "Director" means the director of the Division of Child and Family Services.
- 450 (13) "Division" means the Division of Child and Family Services.
- 451 (14) (a) "Domestic violence services" means:
- 452 (i) temporary shelter, treatment, and related services to persons who are victims of
453 abuse by a cohabitant and their dependent children; and
- 454 (ii) treatment services for domestic violence perpetrators.
- 455 (b) As used in this Subsection (14):
- 456 (i) "abuse" [~~means the same as that term~~] is as defined in [~~Subsection~~] Section
457 30-6-1[(1)]; [~~and~~]
- 458 (ii) "cohabitant" is as defined in Section 30-6-1; and
- 459 [~~(ii)~~] (iii) "domestic violence perpetrator" means a person who is alleged to have
460 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined
461 in [~~Subsection~~] Section 77-36-1[(2)].

462 (15) "Homemaking service" means the care of individuals in their domiciles, and help
463 given to individual caretaker relatives to achieve improved household and family management
464 through the services of a trained homemaker.

465 (16) (a) "Minor" means a person under 18 years of age.

466 (b) "Minor" may also include a person under 21 years of age for whom the division has
467 been specifically ordered by the juvenile court to provide services.

468 (17) "Natural parent" means a minor's biological or adoptive parent, and includes a
469 minor's noncustodial parent.

470 (18) (a) "Neglect" means:

471 (i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a
472 Newborn Child;

473 (ii) subjecting a child to mistreatment or abuse;

474 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian,
475 or custodian;

476 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
477 subsistence, education, or medical care, including surgery or psychiatric services when
478 required, or any other care necessary for the child's health, safety, morals, or well-being; or

479 (v) a child at risk of being neglected or abused because another child in the same home
480 is neglected or abused.

481 (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),
482 means that, after receiving notice that a child has been frequently absent from school without
483 good cause, or that the child has failed to cooperate with school authorities in a reasonable
484 manner, a parent or guardian fails to make a good faith effort to ensure that the child receives
485 an appropriate education.

486 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
487 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

488 (d) (i) Notwithstanding Subsection (18)(a), a health care decision made for a child by
489 the child's parent or guardian does not constitute neglect unless the state or other party to the
490 proceeding shows, by clear and convincing evidence, that the health care decision is not
491 reasonable and informed.

492 (ii) Nothing in Subsection (18)(d)(i) may prohibit a parent or guardian from exercising

493 the right to obtain a second health care opinion.

494 (19) "Protective custody," with regard to the division, means the shelter of a child by
495 the division from the time the child is removed from the child's home until the earlier of:

496 (a) the shelter hearing; or

497 (b) the child's return home.

498 (20) "Protective services" means expedited services that are provided:

499 (a) in response to evidence of neglect, abuse, or dependency of a minor;

500 (b) to a cohabitant who is neglecting or abusing a child, in order to:

501 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
502 causes of neglect or abuse; and

503 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

504 (c) in cases where the child's welfare is endangered:

505 (i) to bring the situation to the attention of the appropriate juvenile court and law
506 enforcement agency;

507 (ii) to cause a protective order to be issued for the protection of the minor, when
508 appropriate; and

509 (iii) to protect the child from the circumstances that endanger the child's welfare
510 including, when appropriate:

511 (A) removal from the child's home;

512 (B) placement in substitute care; and

513 (C) petitioning the court for termination of parental rights.

514 (21) "Services to unwed parents" means social, educational, and medical services
515 arranged for or provided to unwed parents to help them plan for themselves and the unborn
516 child.

517 (22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
518 minor.

519 (23) "Shelter care" means the temporary care of minors in nonsecure facilities.

520 (24) "State" means:

521 (a) a state of the United States;

522 (b) the District of Columbia;

523 (c) the Commonwealth of Puerto Rico;

524 (d) the Virgin Islands;

525 (e) Guam;

526 (f) the Commonwealth of the Northern Mariana Islands; or

527 (g) a territory or possession administered by the United States.

528 (25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause
529 serious harm to a minor.

530 (26) "Severe physical abuse" means physical abuse that causes or threatens to cause
531 serious harm to a minor.

532 (27) "State plan" means the written description of the programs for children, youth, and
533 family services administered by the division in accordance with federal law.

534 (28) "Status offense" means a violation of the law that would not be a violation but for
535 the age of the offender.

536 (29) "Substantiated" or "substantiation" means a judicial finding based on a
537 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
538 identified in a given case shall be considered separately in determining whether there should be
539 a finding of substantiated.

540 (30) "Substitute care" means:

541 (a) the placement of a minor in a family home, group care facility, or other placement
542 outside the minor's own home, either at the request of a parent or other responsible relative, or
543 upon court order, when it is determined that continuation of care in the child's own home
544 would be contrary to the child's welfare;

545 (b) services provided for a child awaiting placement; and

546 (c) the licensing and supervision of a substitute care facility.

547 (31) "Supported" means a finding by the division based on the evidence available at the
548 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
549 or dependency occurred. Each allegation made or identified during the course of the
550 investigation shall be considered separately in determining whether there should be a finding of
551 supported.

552 (32) "Temporary custody," with regard to the division, means the custody of a child in
553 the division from the date of the shelter hearing until disposition.

554 (33) "Transportation services" means travel assistance given to an individual with

555 escort service, if necessary, to and from community facilities and resources as part of a service
556 plan.

557 (34) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
558 conclude that abuse or neglect occurred.

559 (35) "Unsupported" means a finding at the completion of an investigation that there is
560 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a
561 finding of unsupported means also that the division worker did not conclude that the allegation
562 was without merit.

563 (36) "Without merit" means a finding at the completion of an investigation by the
564 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or
565 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

566 Section 10. Section **77-36-1** is amended to read:

567 **77-36-1. Definitions.**

568 As used in this chapter:

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

570 (2) "Dating violence" is as defined in Section 30-6-1.

571 [~~(2)~~] (3) "Domestic violence" means any criminal offense involving violence or
572 physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation
573 to commit a criminal offense involving violence or physical harm, when committed by one
574 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
575 any of the following offenses by one cohabitant against another:

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

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

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

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

580 (e) [~~telephone~~] electronic communication harassment, as described in Section
581 76-9-201;

582 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
583 76-5-301, 76-5-301.1, and 76-5-302;

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

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

586 5a;

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

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

589 (k) violation of a protective order or ex parte protective order, as described in Section
590 76-5-108;

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

592 (m) possession of a deadly weapon with intent to assault, as described in Section
593 76-10-507;

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

596 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
597 conduct is the result of a plea agreement in which the defendant was originally charged with
598 any of the domestic violence offenses otherwise described in this Subsection [~~(2)~~] (3).

599 Conviction of disorderly conduct as a domestic violence offense, in the manner described in
600 this Subsection [~~(2)~~] (3)(o), does not constitute a misdemeanor crime of domestic violence
601 under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18
602 U.S.C. Section 921 et seq.; or

603 (p) child abuse as described in Section 76-5-109.1.

604 [~~(3)~~] (4) "Victim" means:

605 (a) a cohabitant who has been subjected to domestic violence[?]; or

606 (b) a dating partner, as defined in Section 30-6-1, who has been subjected to dating
607 violence.

608 Section 11. Section **77-36-2.1** is amended to read:

609 **77-36-2.1. Duties of law enforcement officers -- Notice to victims.**

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

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

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

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

619 (d) providing protection while the victim removes essential personal effects;

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

622 (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the
623 rights of victims and of the remedies and services available to victims of domestic violence or
624 dating violence, in accordance with Subsection (2).

625 (2) (a) A law enforcement officer shall give written notice to the victim in simple
626 language, describing the rights and remedies available under this chapter, Title 30, Chapter 6,
627 Cohabitant Abuse Act, and Title 78, Chapter 3h, Child Protective Orders.

628 (b) The written notice shall also include:

629 (i) a statement that the forms needed in order to obtain an order for protection are
630 available from the court clerk's office in the judicial district where the victim resides or is
631 temporarily domiciled;

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

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

636 Section 12. Section **77-36-2.7** is amended to read:

637 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before**
638 **trial.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

690 Section 13. Section **77-36-5.1** is amended to read:

691 **77-36-5.1. Conditions of probation for person convicted of domestic violence**
692 **offense.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

725 Section 14. **Effective date.**

726 This bill takes effect on September 1, 2006.

Legislative Review Note
as of 12-21-05 10:08 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-21-05 10:14 AM

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

AMENDED NOTE

State Impact

This Legislation would require an appropriation of \$134,200 and \$161,000 in General Fund for FY 2007 and FY 2008 respectively. The Courts would receive \$120,100 in FY 2007 and \$144,700 in FY 2008. DCFS would receive \$9,500 in General Funds and \$4,100 in Federal Funds in FY 2007; plus \$11,400 in General Funds and \$4,900 in Federal Funds in FY 2008. Passage of this will increase costs for local governments.

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$130,100	\$156,100	\$0	\$0
Federal Funds	\$4,100	\$4,900	\$0	\$0
TOTAL	\$134,200	\$161,000	\$0	\$0

Individual and Business Impact

No fiscal impact.
