

Representative David Litvack proposes the following substitute bill:

1 **DOMESTIC VIOLENCE AND DATING**

2 **VIOLENCE AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Litvack**

6 Senate Sponsor: _____

7 Cosponsor: Jackie Biskupski

8
9 **LONG TITLE**

10 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines terms;
- 17 ▶ provides for the issuance, modification, and enforcement of protective orders
18 between parties who are, or have been, in a dating relationship when:
- 19 • the parties are emancipated or 16 years of age or older;
 - 20 • the parties are, or have been, in a dating relationship with each other; and
 - 21 • a party commits abuse or dating violence against the other party;
- 22 ▶ requires the Administrative Office of the Courts to develop and adopt uniform
23 forms for petitions and orders for protection relating to dating violence;
- 24 ▶ provides that a court may include in a protective order a restriction prohibiting a
25 respondent from being within a specified distance of the petitioner;



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

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

30 • in a protective order;
31 • in an order of probation for violation of a protective order relating to dating

32 violence; or

33 • as a condition of release prior to trial for violation of a protective order relating
34 to dating violence; and

35 ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill takes effect on September 1, 2006.

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **30-6-1**, as last amended by Chapter 68, Laws of Utah 2003

43 **30-6-2**, as last amended by Chapter 68, Laws of Utah 2003

44 **30-6-4**, as last amended by Chapter 10, Laws of Utah 1997

45 **30-6-4.2**, as last amended by Chapter 156, Laws of Utah 2005

46 **30-6-4.4**, as enacted by Chapter 300, Laws of Utah 1995

47 **30-6-4.5**, as last amended by Chapter 244, Laws of Utah 1996

48 **30-6-11**, as last amended by Chapter 318, Laws of Utah 1996

49 **62A-4a-101**, as last amended by Chapter 95, Laws of Utah 2005

50 **77-36-1**, as last amended by Chapter 81, Laws of Utah 2002

51 **77-36-2.7**, as last amended by Chapter 54, Laws of Utah 1999

52 **77-36-5.1**, as last amended by Chapter 244, Laws of Utah 1996



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

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

56 **30-6-1. Definitions.**

57 As used in this chapter:

58 (1) "Abuse" means intentionally or knowingly:

59 (a) causing or attempting to cause ~~[a cohabitant]~~ physical harm to a person; or
60 [intentionally or knowingly]

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

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

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

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

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

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

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

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

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

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

71 ~~[(g)]~~ (b) Notwithstanding Subsection (2)(a), "cohabitant" does not include:

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

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

75 ~~[(4)]~~ (3) "Court clerk" means a district court clerk.

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

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

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

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

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

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

83 (i) a casual relationship; or

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

86 (c) In determining, based on a totality of the circumstances, whether a dating
87 relationship exists:

- 88 (i) all relevant factors should be considered, including:
89 (A) whether the parties developed a minimal, social, interpersonal bonding, over and
90 above a mere casual fraternization;
91 (B) the length of the parties' relationship;
92 (C) the nature and frequency of the parties' interactions;
93 (D) the ongoing expectations of the parties, individually or jointly, with respect to the
94 relationship;
95 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
96 relationship before others; and
97 (F) whether other reasons exist that support or detract from a finding that a dating
98 relationship exists; and
99 (ii) it is not necessary that all, or a particular number, of the factors described in
100 Subsection (5)(c)(i) are found to support the existence of a dating relationship.
101 (6) "Dating violence" means:
102 (a) any criminal offense involving violence or physical harm or threat of violence or
103 physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense
104 involving violence or physical harm, when committed by one dating partner against another; or
105 (b) the commission or attempt to commit, any of the following offenses by one dating
106 partner against another:
107 (i) aggravated assault, as described in Section 76-5-103;
108 (ii) assault, as described in Section 76-5-102;
109 (iii) criminal homicide, as described in Section 76-5-201;
110 (iv) harassment, as described in Section 76-5-106;
111 (v) electronic communication harassment, as described in Section 76-9-201;
112 (vi) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
113 76-5-301, 76-5-301.1, and 76-5-302;
114 (vii) mayhem, as described in Section 76-5-105;
115 (viii) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
116 Title 76, Chapter 5a, Sexual Exploitation of Children;
117 (ix) stalking, as described in Section 76-5-106.5;
118 (x) unlawful detention, as described in Section 76-5-304;

119 (xi) violation of a protective order or ex parte protective order, as described in Section
120 76-5-108;

121 (xii) any offense against property described in Title 76, Chapter 6, Part 1, Property
122 Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;

123 (xiii) possession of a deadly weapon with intent to assault, as described in Section
124 76-10-507; or

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

127 [~~5~~] (7) "Domestic violence" [~~means the same as that term~~] is as defined in Section
128 77-36-1.

129 [~~6~~] (8) "Ex parte protective order" means an order issued without notice to the
130 defendant in accordance with this chapter.

131 [~~7~~] (9) "Foreign protective order" means a protective order issued by another state,
132 territory, or possession of the United States, tribal lands of the United States, the
133 Commonwealth of Puerto Rico, or the District of Columbia which shall be given full faith and
134 credit in Utah, if the protective order is similar to a protective order issued in compliance with
135 Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse
136 Procedures Act, and includes the following requirements:

137 (a) the requirements of due process were met by the issuing court, including subject
138 matter and personal jurisdiction;

139 (b) the respondent received reasonable notice; and

140 (c) the respondent had an opportunity for a hearing regarding the protective order.

141 [~~8~~] (10) "Law enforcement unit" or "law enforcement agency" means any public
142 agency having general police power and charged with making arrests in connection with
143 enforcement of the criminal statutes and ordinances of this state or any political subdivision.

144 [~~9~~] (11) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace
145 Officer Classifications.

146 [~~10~~] (12) "Protective order" means an order issued pursuant to this chapter
147 subsequent to a hearing on the petition, of which the petitioner and respondent have been given
148 notice in accordance with this chapter.

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

150 **30-6-2. Abuse or danger of abuse -- Protective orders.**

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

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

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

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

158 (b) A person may seek an order described in Subsection (1)(a), whether or not that
159 person;

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

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

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

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

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

167 **30-6-4. Forms for petitions and protective orders -- Assistance.**

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

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

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

177 (ii) a separate portion of the form for those provisions, the violation of which is a
178 criminal offense, and a separate portion for those provisions, the violation of which is a civil
179 violation, as provided in Subsection 30-6-4.2(5);

180 (iii) language in the criminal provision portion stating violation of any criminal

181 provision is a class A misdemeanor, and language in the civil portion stating violation of or
182 failure to comply with a civil provision is subject to contempt proceedings;

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

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

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

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

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

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

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

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

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

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

208 (f) written information regarding the procedure for transporting a jailed or imprisoned
209 respondent to the protective order hearing, including an explanation of the use of transportation
210 order forms when necessary.

211 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency

212 for:

213 (a) filing a petition under this chapter;

214 (b) obtaining an ex parte protective order;

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

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

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

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

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

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

223 "Respondent was afforded both notice and opportunity to be heard in the hearing that
224 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
225 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
226 Columbia, tribal lands, and United States territories."

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

228 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**
229 **-- Service of process -- Duties of the court.**

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

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

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

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

240 (a) enjoin the respondent from threatening to commit or committing domestic violence,
241 dating violence, or abuse against the petitioner and any designated family or household
242 member;

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

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

249 (d) prohibit the respondent from being within a specified distance of the petitioner;

250 [~~(d)~~] (e) upon finding that the respondent's use or possession of a weapon may pose a
251 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
252 possessing a firearm or other weapon specified by the court;

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

258 [~~(f)~~] (g) if the petitioner is a cohabitant of the other party, grant to the petitioner
259 temporary custody of any minor children of the parties;

260 [~~(g)~~] (h) order any further relief that the court considers necessary to provide for the
261 safety and welfare of the petitioner and any designated family or household member; and

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

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

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

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

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

274 (a) as soon as possible, deliver the order to the county sheriff for service of process;

275 (b) make reasonable efforts to ensure that the order for protection is understood by the
276 petitioner, and the respondent, if present;

277 (c) transmit, by the end of the next business day after the order is issued, a copy of the
278 order for protection to the local law enforcement agency or agencies designated by the
279 petitioner; and

280 (d) transmit a copy of the order to the statewide domestic violence network described
281 in Section 30-6-8.

282 (5) (a) Each protective order shall include two separate portions, one for provisions, the
283 violation of which are criminal offenses, and one for provisions, the violation of which are civil
284 violations, as follows:

285 (i) criminal offenses are those under Subsections (2)(a) through [~~(e)~~] (f), and under
286 Subsection (3)(a) as it refers to Subsections (2)(a) through [~~(e)~~] (f); and

287 (ii) civil offenses are those under Subsections (2)[~~(f)~~](g) through [~~(h)~~] (i), and
288 Subsection (3)(a) as it refers to Subsections (2)[~~(f)~~](g) through [~~(h)~~] (i).

289 (b) The criminal provision portion shall include a statement that violation of any
290 criminal provision is a class A misdemeanor.

291 (c) The civil provision portion shall include a notice that violation of or failure to
292 comply with a civil provision is subject to contempt proceedings.

293 (6) The protective order shall include:

294 (a) a designation of a specific date, determined by the court, when the civil portion of
295 the protective order either expires or is scheduled for review by the court, which date may not
296 exceed 150 days after the date the order is issued, unless the court indicates on the record the
297 reason for setting a date beyond 150 days;

298 (b) information the petitioner is able to provide to facilitate identification of the
299 respondent, such as Social Security number, driver license number, date of birth, address,
300 telephone number, and physical description; and

301 (c) except for a protective order described in Subsection (7)(a), a statement advising
302 the petitioner that:

303 (i) after two years from the date of issuance of the protective order, a hearing may be
304 held to dismiss the criminal portion of the protective order;

305 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
306 advise the court of the petitioner's current address for notice of any hearing; and

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

308 (7) (a) A protective order issued under this section between parties who are dating
309 partners, but are not cohabitants, shall expire 180 days after the day on which the order is
310 issued, unless, subject to Subsection (7)(b), the court indicates on the record the reason for
311 setting an expiration date that is more than 180 days after the day on which the order is issued.

312 (b) A court may not set an expiration date for a protective order described in
313 Subsection (7)(a) that is more than two years after the day on which the order is issued.

314 [~~7~~] (8) Child support and spouse support orders issued as part of a protective order
315 are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
316 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
317 IV-D Cases, except when the protective order is issued ex parte.

318 [~~8~~] (9) (a) The county sheriff that receives the order from the court, pursuant to
319 Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance
320 with this chapter, and shall transmit verification of service of process, when the order has been
321 served, to the statewide domestic violence network described in Section 30-6-8.

322 (b) This section does not prohibit any law enforcement agency from providing service
323 of process if that law enforcement agency:

324 (i) has contact with the respondent and service by that law enforcement agency is
325 possible; or

326 (ii) determines that under the circumstances, providing service of process on the
327 respondent is in the best interests of the petitioner.

328 [~~9~~] (10) (a) When an order is served on a respondent in a jail or other holding facility,
329 the law enforcement agency managing the facility shall make a reasonable effort to provide
330 notice to the petitioner at the time the respondent is released from incarceration.

331 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
332 provide notification, including mailing a copy of the notification to the last-known address of
333 the victim.

334 [~~10~~] (11) A court may modify or vacate an order of protection or any provisions in
335 the order after notice and hearing, except that the criminal provisions of a protective order may

336 not be vacated within two years of issuance unless the petitioner:

337 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
338 Rules of Civil Procedure, and the petitioner personally appears before the court and gives
339 specific consent to the vacation of the criminal provisions of the protective order; or

340 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
341 provisions of the protective order.

342 [~~(11)~~] (12) A protective order may be modified without a showing of substantial and
343 material change in circumstances.

344 [~~(12)~~] (13) Insofar as the provisions of this chapter are more specific than the Utah
345 Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

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

347 **30-6-4.4. No denial of relief solely because of lapse of time.**

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

351 Section 6. Section 30-6-4.5 is amended to read:

352 **30-6-4.5. Mutual protective orders prohibited -- Exceptions.**

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

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

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

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

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

363 Section 7. Section 30-6-11 is amended to read:

364 **30-6-11. Division of Child and Family Services -- Development and assistance of**
365 **volunteer network.**

366 (1) The Division of Child and Family Services within the Department of Human

367 Services shall, either directly or by contract:

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

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

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

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

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

379 Section 8. Section **62A-4a-101** is amended to read:

380 **62A-4a-101. Definitions.**

381 As used in this chapter:

382 (1) "Abuse" means:

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

384 (b) negligent treatment;

385 (c) sexual exploitation; or

386 (d) any sexual abuse.

387 (2) "Adoption services" means:

388 (a) placing children for adoption;

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

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

391 (d) conducting adoption studies;

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

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

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

397 (4) "Child" has the same meaning as "minor," as defined in this section.

398 (5) "Consumer" means a person who receives services offered by the division in
399 accordance with this chapter.

400 (6) "Chronic physical abuse" means repeated or patterned physical abuse.

401 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
402 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

403 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

404 (9) "Custody," with regard to the division, means the custody of a child in the division
405 as of the date of disposition.

406 (10) "Day-care services" means care of a child for a portion of the day which is less
407 than 24 hours:

408 (a) in the child's own home by a responsible person; or

409 (b) outside of the child's home in a:

410 (i) day-care center;

411 (ii) family group home; or

412 (iii) family child care home.

413 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who
414 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

415 (12) "Director" means the director of the Division of Child and Family Services.

416 (13) "Division" means the Division of Child and Family Services.

417 (14) (a) "Domestic violence services" means:

418 (i) temporary shelter, treatment, and related services to persons who are victims of
419 abuse by a cohabitant and their dependent children; and

420 (ii) treatment services for domestic violence perpetrators.

421 (b) As used in this Subsection (14):

422 (i) "abuse" [~~means the same as that term~~] is as defined in [~~Subsection~~] Section
423 30-6-1[(1)]; [~~and~~]

424 (ii) "cohabitant" is as defined in Section 30-6-1; and

425 [(1)] (iii) "domestic violence perpetrator" means a person who is alleged to have
426 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined
427 in [~~Subsection~~] Section 77-36-1[(2)].

428 (15) "Homemaking service" means the care of individuals in their domiciles, and help

429 given to individual caretaker relatives to achieve improved household and family management
430 through the services of a trained homemaker.

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

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

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

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

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

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

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

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

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

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

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

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

458 (ii) Nothing in Subsection (18)(d)(i) may prohibit a parent or guardian from exercising
459 the right to obtain a second health care opinion.

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

- 462 (a) the shelter hearing; or
- 463 (b) the child's return home.

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

- 465 (a) in response to evidence of neglect, abuse, or dependency of a minor;
- 466 (b) to a cohabitant who is neglecting or abusing a child, in order to:
 - 467 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
 - 468 causes of neglect or abuse; and

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

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

- 471 (i) to bring the situation to the attention of the appropriate juvenile court and law
- 472 enforcement agency;

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

- 475 (iii) to protect the child from the circumstances that endanger the child's welfare
- 476 including, when appropriate:

- 477 (A) removal from the child's home;

- 478 (B) placement in substitute care; and

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

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

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

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

486 (24) "State" means:

- 487 (a) a state of the United States;

- 488 (b) the District of Columbia;

- 489 (c) the Commonwealth of Puerto Rico;

- 490 (d) the Virgin Islands;

- 491 (e) Guam;
- 492 (f) the Commonwealth of the Northern Mariana Islands; or
- 493 (g) a territory or possession administered by the United States.
- 494 (25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause
- 495 serious harm to a minor.
- 496 (26) "Severe physical abuse" means physical abuse that causes or threatens to cause
- 497 serious harm to a minor.
- 498 (27) "State plan" means the written description of the programs for children, youth, and
- 499 family services administered by the division in accordance with federal law.
- 500 (28) "Status offense" means a violation of the law that would not be a violation but for
- 501 the age of the offender.
- 502 (29) "Substantiated" or "substantiation" means a judicial finding based on a
- 503 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
- 504 identified in a given case shall be considered separately in determining whether there should be
- 505 a finding of substantiated.
- 506 (30) "Substitute care" means:
- 507 (a) the placement of a minor in a family home, group care facility, or other placement
- 508 outside the minor's own home, either at the request of a parent or other responsible relative, or
- 509 upon court order, when it is determined that continuation of care in the child's own home
- 510 would be contrary to the child's welfare;
- 511 (b) services provided for a child awaiting placement; and
- 512 (c) the licensing and supervision of a substitute care facility.
- 513 (31) "Supported" means a finding by the division based on the evidence available at the
- 514 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
- 515 or dependency occurred. Each allegation made or identified during the course of the
- 516 investigation shall be considered separately in determining whether there should be a finding of
- 517 supported.
- 518 (32) "Temporary custody," with regard to the division, means the custody of a child in
- 519 the division from the date of the shelter hearing until disposition.
- 520 (33) "Transportation services" means travel assistance given to an individual with
- 521 escort service, if necessary, to and from community facilities and resources as part of a service

522 plan.

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

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

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

532 Section 9. Section **77-36-1** is amended to read:

533 **77-36-1. Definitions.**

534 As used in this chapter:

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

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

537 [~~2~~] (3) "Domestic violence" means any criminal offense involving violence or
538 physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation
539 to commit a criminal offense involving violence or physical harm, when committed by one
540 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
541 any of the following offenses by one cohabitant against another:

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

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

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

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

546 (e) [~~telephone~~] electronic communication harassment, as described in Section
547 76-9-201;

548 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
549 76-5-301, 76-5-301.1, and 76-5-302;

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

551 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter
552 5a;

- 553 (i) stalking, as described in Section 76-5-106.5;
- 554 (j) unlawful detention, as described in Section 76-5-304;
- 555 (k) violation of a protective order or ex parte protective order, as described in Section
- 556 76-5-108;

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

558 (m) possession of a deadly weapon with intent to assault, as described in Section

559 76-10-507;

560 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any

561 person, building, or vehicle, as described in Section 76-10-508;

562 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly

563 conduct is the result of a plea agreement in which the defendant was originally charged with

564 any of the domestic violence offenses otherwise described in this Subsection [~~(2)~~] (3).

565 Conviction of disorderly conduct as a domestic violence offense, in the manner described in

566 this Subsection [~~(2)~~] (3)(o), does not constitute a misdemeanor crime of domestic violence

567 under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18

568 U.S.C. Section 921 et seq.; or

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

570 [~~(3)~~] (4) "Victim" means:

571 (a) a cohabitant who has been subjected to domestic violence[-]; or

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

573 violence.

574 Section 10. Section 77-36-2.7 is amended to read:

575 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before**

576 **trial.**

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

578 actions:

579 (a) may not dismiss any charge or delay disposition because of concurrent divorce or

580 other civil proceedings;

581 (b) may not require proof that either party is seeking a dissolution of marriage before

582 instigation of criminal proceedings;

583 (c) shall waive any requirement that the victim's location be disclosed other than to the

584 defendant's attorney, upon a showing that there is any possibility of further violence, and order
585 the defendant's attorney not to disclose the victim's location to his client;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

627 (6) The court may not approve diversion for a perpetrator of domestic violence.
628 Section 11. Section **77-36-5.1** is amended to read:

629 **77-36-5.1. Conditions of probation for person convicted of domestic violence**
630 **offense.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

663 Section 12. **Effective date.**

664 This bill takes effect on September 1, 2006.

State Impact

This Legislation would require an appropriation of \$52,000 and \$62,400 in General Fund for FY 2007 and FY 2008 respectively. The Courts would require \$38,400 in FY 2007 and \$46,100 in FY 2008. DCFS would require \$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 bill will increase costs for local governments.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$47,900	\$57,500	\$0	\$0
Federal Funds	\$4,100	\$4,900	\$0	\$0
TOTAL	\$52,000	\$62,400	\$0	\$0

Individual and Business Impact

No fiscal impact.
