

**DOMESTIC VIOLENCE AND DATING  
VIOLENCE AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Litvack**

Senate Sponsor: Scott D. McCoy

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**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;
- ▶ describes the restrictions that a court may include in a protective order;
- ▶ requires the Division of Child and Family Services, within the Department of Human Services, to provide certain services to victims of dating violence;
- ▶ describes the conditions that may be placed on an alleged perpetrator of dating violence:



- 28           • in a protective order;
- 29           • in an order of probation for violation of a protective order relating to dating
- 30 violence; or
- 31           • as a condition of release prior to trial for violation of a protective order relating
- 32 to dating violence; and
- 33           ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35           None

36 **Other Special Clauses:**

37           This bill takes effect on September 1, 2007.

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40           **30-6-1**, as last amended by Chapter 157, Laws of Utah 2006
- 41           **30-6-2**, as last amended by Chapter 68, Laws of Utah 2003
- 42           **30-6-4**, as last amended by Chapter 157, Laws of Utah 2006
- 43           **30-6-4.2**, as last amended by Chapter 156, Laws of Utah 2005
- 44           **30-6-4.4**, as enacted by Chapter 300, Laws of Utah 1995
- 45           **30-6-4.5**, as last amended by Chapter 244, Laws of Utah 1996
- 46           **30-6-11**, as last amended by Chapter 318, Laws of Utah 1996
- 47           **62A-4a-101**, as last amended by Chapters 75 and 281, Laws of Utah 2006
- 48           **77-36-1**, as last amended by Chapter 46, Laws of Utah 2006
- 49           **77-36-2.7**, as last amended by Chapter 54, Laws of Utah 1999
- 50           **77-36-5.1**, as last amended by Chapter 244, Laws of Utah 1996



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

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

54           **30-6-1. Definitions.**

55           As used in this chapter:

- 56           (1) "Abuse" means intentionally or knowingly:
- 57           (a) causing or attempting to cause [~~a cohabitant~~] physical harm to a person; or
- 58 [~~intentionally or knowingly~~]

59 (b) placing a ~~cohabitant~~ person in reasonable fear of imminent physical harm.  
60 (2) (a) "Cohabitant" means a person who:  
61 (i) (A) is an emancipated person pursuant to Section 15-2-1; or ~~a person who~~  
62 (B) is 16 years of age or older ~~who~~; and  
63 ~~(a)~~ (ii) (A) is or was a spouse of the other party;  
64 ~~(b)~~ (B) is or was living as if a spouse of the other party;  
65 ~~(c)~~ (C) is related by blood or marriage to the other party;  
66 ~~(d)~~ (D) has one or more children in common with the other party;  
67 ~~(e)~~ (E) is the biological parent of the other party's unborn child; or  
68 ~~(f)~~ (F) resides or has resided in the same residence as the other party.  
69 (3) (b) Notwithstanding Subsection (2)(a), "cohabitant" does not include:  
70 ~~(a)~~ (i) the relationship of ~~natural~~ biological parent, adoptive parent, or step-parent to  
71 a minor; or  
72 ~~(b)~~ (ii) the relationship between ~~natural~~ biological, adoptive, step, or foster siblings  
73 who are under 18 years of age.  
74 ~~(4)~~ (3) "Court clerk" means a district court clerk.  
75 (4) "Dating partner" means a person who:  
76 (a) (i) is an emancipated person pursuant to Section 15-2-1; or  
77 (ii) is 16 years of age or older; and  
78 (b) is, or has been, in a dating relationship with the other party.  
79 (5) (a) "Dating relationship" means a social relationship of a romantic or intimate  
80 nature, regardless of whether the relationship involves sexual intimacy.  
81 (b) "Dating relationship" does not include:  
82 (i) a casual relationship; or  
83 (ii) casual fraternization between two individuals in a business, educational, or social  
84 context.  
85 (c) In determining, based on a totality of the circumstances, whether a dating  
86 relationship exists:  
87 (i) all relevant factors should be considered, including:  
88 (A) whether the parties developed a minimal social, interpersonal bonding, over and  
89 above a mere casual fraternization;

- 90 (B) the length of the parties' relationship;
- 91 (C) the nature and frequency of the parties' interactions;
- 92 (D) the ongoing expectations of the parties, individually or jointly, with respect to the
- 93 relationship;
- 94 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
- 95 relationship before others; and
- 96 (F) whether other reasons exist that support or detract from a finding that a dating
- 97 relationship exists; and
- 98 (ii) it is not necessary that all, or a particular number, of the factors described in
- 99 Subsection (5)(c)(i) are found to support the existence of a dating relationship.
- 100 (6) "Dating violence" means:
- 101 (a) any criminal offense involving violence or physical harm or threat of violence or
- 102 physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense
- 103 involving violence or physical harm, when committed by one dating partner against another; or
- 104 (b) the commission or attempt to commit, any of the following offenses by one dating
- 105 partner against another:
- 106 (i) aggravated assault, as described in Section 76-5-103;
- 107 (ii) assault, as described in Section 76-5-102;
- 108 (iii) criminal homicide, as described in Section 76-5-201;
- 109 (iv) harassment, as described in Section 76-5-106;
- 110 (v) electronic communication harassment, as described in Section 76-9-201;
- 111 (vi) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 112 76-5-301, 76-5-301.1, and 76-5-302;
- 113 (vii) mayhem, as described in Section 76-5-105;
- 114 (viii) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
- 115 Title 76, Chapter 5a, Sexual Exploitation of Children;
- 116 (ix) stalking, as described in Section 76-5-106.5;
- 117 (x) unlawful detention, as described in Section 76-5-304;
- 118 (xi) violation of a protective order or ex parte protective order, as described in Section
- 119 76-5-108;
- 120 (xii) any offense against property described in Title 76, Chapter 6, Part 1, Property

121 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

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

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

126 ~~[(5)]~~ (7) "Domestic violence" ~~[means the same as that term]~~ is as defined in Section  
127 77-36-1.

128 ~~[(6)]~~ (8) "Ex parte protective order" means an order issued without notice to the  
129 defendant in accordance with this chapter.

130 ~~[(7)]~~ (9) "Foreign protection order" is as defined in Section 30-6a-102.

131 ~~[(8)]~~ (10) "Law enforcement unit" or "law enforcement agency" means any public  
132 agency having general police power and charged with making arrests in connection with  
133 enforcement of the criminal statutes and ordinances of this state or any political subdivision.

134 ~~[(9)]~~ (11) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace  
135 Officer Classifications.

136 ~~[(10)]~~ (12) "Protective order" means an order issued pursuant to this chapter  
137 subsequent to a hearing on the petition, of which the petitioner and respondent have been given  
138 notice in accordance with this chapter.

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

140 **30-6-2. Abuse or danger of abuse -- Protective orders.**

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

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

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

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

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

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

151 (ii) has taken other action to end the relationship.

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

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

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

157 **30-6-4. Forms for petitions and protective orders -- Assistance.**

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

160 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for  
161 petitions and orders for protection in accordance with the provisions of this chapter on or  
162 before September 1, [~~1995~~] 2007. That office shall provide the forms to the clerk of each court  
163 authorized to issue protective orders. The forms shall include:

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

167 (ii) a separate portion of the form for those provisions, the violation of which is a  
168 criminal offense, and a separate portion for those provisions, the violation of which is a civil  
169 violation, as provided in Subsection 30-6-4.2[~~(5)~~](6);

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

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

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

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

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

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

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

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

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

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

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

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

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

203 (a) filing a petition under this chapter;

204 (b) obtaining an ex parte protective order;

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

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

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

209 (5) (a) All orders for protection shall be issued in the form adopted by the  
210 Administrative Office of the Courts pursuant to Subsection (1).

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

213 "Respondent was afforded both notice and opportunity to be heard in the hearing that

214 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,  
215 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of  
216 Columbia, tribal lands, and United States territories. This order complies with the Uniform  
217 Interstate Enforcement of Domestic Violence Protection Orders Act."

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

219 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**  
220 **-- Service of process -- Duties of the court.**

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

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

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

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

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

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

236 (c) order that the respondent;

237 (i) is excluded and must stay away from the petitioner's residence and its premises[;  
238 ~~and order the respondent to~~];

239 (ii) except as provided in Subsection (4), stay away from the [residence,] petitioner's:

240 (A) school[~~; or~~] and its premises; and

241 (B) place of employment [~~of the petitioner, and the premises of any of these, or~~] and its  
242 premises; and

243 (iii) stay away from any specified place frequented by the petitioner [~~and~~] or any  
244 designated family or household member;



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

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

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

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

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

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

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

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

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

269 (4) If the petitioner is a dating partner, and not a cohabitant, of the respondent, a court:

270 (a) may not enter an order under Subsection (2)(c)(ii) that:

271 (i) excludes the respondent from the petitioner's school if the respondent attends the  
272 same school as the petitioner; or

273 (ii) excludes the respondent from the petitioner's place of employment if the  
274 respondent is employed at the same location as the petitioner; and

275 (b) may enter an order governing the respondent's conduct at a location described in

276 Subsection (4)(a).

277 [~~(4)~~] (5) Following the protective order hearing, the court shall:

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

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

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

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

286 [~~(5)~~] (6) (a) Each protective order shall include two separate portions, one for  
287 provisions, the violation of which are criminal offenses, and one for provisions, the violation of  
288 which are civil violations, as follows:

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

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

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

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

297 [~~(6)~~] (7) The protective order shall include:

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

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

305 (c) except for a protective order described in Subsection (8)(a), a statement advising  
306 the petitioner that:

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

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

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

312 (8) (a) A protective order issued under this section between parties who are dating  
313 partners, but are not cohabitants, shall expire 180 days after the day on which the order is  
314 issued, unless, subject to Subsection (8)(b), the court indicates on the record the reason for  
315 setting an expiration date that is more than 180 days after the day on which the order is issued.

316 (b) A court may not set an expiration date for a protective order described in  
317 Subsection (8)(a) that is more than two years after the day on which the order is issued.

318 [~~7~~] (9) Child support and spouse support orders issued as part of a protective order  
319 are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income  
320 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non  
321 IV-D Cases, except when the protective order is issued ex parte.

322 [~~8~~] (10) (a) The county sheriff that receives the order from the court, pursuant to  
323 Subsection [~~5~~] (6)(a), shall provide expedited service for orders for protection issued in  
324 accordance with this chapter, and shall transmit verification of service of process, when the  
325 order has been served, to the statewide domestic violence network described in Section 30-6-8.

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

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

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

332 [~~9~~] (11) (a) When an order is served on a respondent in a jail or other holding facility,  
333 the law enforcement agency managing the facility shall make a reasonable effort to provide  
334 notice to the petitioner at the time the respondent is released from incarceration.

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

338            [~~(10)~~] (12) A court may modify or vacate an order of protection or any provisions in  
339 the order after notice and hearing, except that the criminal provisions of a protective order may  
340 not be vacated within two years of issuance unless the petitioner:

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

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

346            [~~(11)~~] (13) A protective order may be modified without a showing of substantial and  
347 material change in circumstances.

348            [~~(12)~~] (14) Insofar as the provisions of this chapter are more specific than the Utah  
349 Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

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

351            **30-6-4.4. No denial of relief solely because of lapse of time.**

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

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

356            **30-6-4.5. Mutual protective orders prohibited.**

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

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

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

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

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

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

368            **30-6-11. Division of Child and Family Services -- Development and assistance of**

369 **volunteer network.**

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

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

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

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

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

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

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

384 **62A-4a-101. Definitions.**

385 As used in this chapter:

386 (1) (a) "Abuse" means:

387 (i) actual or threatened nonaccidental physical or mental harm;

388 (ii) negligent treatment;

389 (iii) sexual exploitation; or

390 (iv) any sexual abuse.

391 (b) "Abuse" does not include:

392 (i) reasonable discipline or management of a child, including withholding privileges;

393 (ii) conduct described in Section 76-2-401; or

394 (iii) the use of reasonable and necessary physical restraint or force on a child:

395 (A) in self-defense;

396 (B) in defense of others;

397 (C) to protect the child; or

398 (D) to remove a weapon in the possession of a child for any of the reasons described in

399 Subsections (1)(b)(iii)(A) through (C).

- 400 (2) "Adoption services" means:
- 401 (a) placing children for adoption;
- 402 (b) subsidizing adoptions under Section 62A-4a-105;
- 403 (c) supervising adoption placements until the adoption is finalized by the court;
- 404 (d) conducting adoption studies;
- 405 (e) preparing adoption reports upon request of the court; and
- 406 (f) providing postadoptive placement services, upon request of a family, for the
- 407 purpose of stabilizing a possible disruptive placement.
- 408 (3) "Board" means the Board of Child and Family Services established in accordance
- 409 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.
- 410 (4) "Child" means, except as provided in Part 7, Interstate Compact on Placement of
- 411 Children, a person under 18 years of age.
- 412 (5) "Consumer" means a person who receives services offered by the division in
- 413 accordance with this chapter.
- 414 (6) "Chronic physical abuse" means repeated or patterned physical abuse.
- 415 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
- 416 guardian, or custodian to provide necessary care for a child's safety, morals, or well-being.
- 417 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.
- 418 (9) "Custody," with regard to the division, means the custody of a minor in the division
- 419 as of the date of disposition.
- 420 (10) "Day-care services" means care of a child for a portion of the day which is less
- 421 than 24 hours:
- 422 (a) in the child's own home by a responsible person; or
- 423 (b) outside of the child's home in a:
- 424 (i) day-care center;
- 425 (ii) family group home; or
- 426 (iii) family child care home.
- 427 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who
- 428 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- 429 (12) "Director" means the director of the Division of Child and Family Services.
- 430 (13) "Division" means the Division of Child and Family Services.

- 431 (14) (a) "Domestic violence services" means:
- 432 (i) temporary shelter, treatment, and related services to persons who are victims of
- 433 abuse by a cohabitant and their dependent children; and
- 434 (ii) treatment services for domestic violence perpetrators.
- 435 (b) As used in this Subsection (14):
- 436 (i) "abuse" [~~means the same as that term~~] is as defined in Section 30-6-1; [~~and~~]
- 437 (ii) "cohabitant" is as defined in Section 30-6-1; and
- 438 [~~(iii)~~] (iii) "domestic violence perpetrator" means a person who is alleged to have
- 439 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined
- 440 in Section 77-36-1.
- 441 (15) "Homemaking service" means the care of individuals in their domiciles, and help
- 442 given to individual caretaker relatives to achieve improved household and family management
- 443 through the services of a trained homemaker.
- 444 (16) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of
- 445 Children:
- 446 (a) a child; or
- 447 (b) a person:
- 448 (i) who is at least 18 years of age and younger than 21 years of age; and
- 449 (ii) for whom the division has been specifically ordered by the juvenile court to provide
- 450 services.
- 451 (17) "Natural parent" means a minor's biological or adoptive parent, and includes a
- 452 minor's noncustodial parent.
- 453 (18) (a) "Neglect" means:
- 454 (i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a
- 455 Newborn Child;
- 456 (ii) subjecting a child to mistreatment or abuse;
- 457 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian,
- 458 or custodian;
- 459 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
- 460 subsistence, education, or medical care, including surgery or psychiatric services when
- 461 required, or any other care necessary for the child's health, safety, morals, or well-being; or

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

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

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

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

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

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

479 (a) the shelter hearing; or

480 (b) the child's return home.

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

482 (a) in response to evidence of neglect, abuse, or dependency of a child;

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

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

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

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

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

490 (ii) to cause a protective order to be issued for the protection of the child, when  
491 appropriate; and

492 (iii) to protect the child from the circumstances that endanger the child's welfare



493 including, when appropriate:

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

495 (B) placement in substitute care; and

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

497 (21) "Severe neglect" means neglect that causes or threatens to cause serious harm to a  
498 child.

499 (22) "Shelter care" means the temporary care of a minor in a nonsecure facility.

500 (23) "State" means:

501 (a) a state of the United States;

502 (b) the District of Columbia;

503 (c) the Commonwealth of Puerto Rico;

504 (d) the Virgin Islands;

505 (e) Guam;

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

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

508 (24) "Severe emotional abuse" means emotional abuse that causes or threatens to cause  
509 serious harm to a child.

510 (25) "Severe physical abuse" means physical abuse that causes or threatens to cause  
511 serious harm to a child.

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

514 (27) "Status offense" means a violation of the law that would not be a violation but for  
515 the age of the offender.

516 (28) "Substantiated" or "substantiation" means a judicial finding based on a  
517 preponderance of the evidence that abuse or neglect occurred. Each allegation made or  
518 identified in a given case shall be considered separately in determining whether there should be  
519 a finding of substantiated.

520 (29) "Substitute care" means:

521 (a) the placement of a minor in a family home, group care facility, or other placement  
522 outside the minor's own home, either at the request of a parent or other responsible relative, or  
523 upon court order, when it is determined that continuation of care in the minor's own home

524 would be contrary to the minor's welfare;

525 (b) services provided for a minor awaiting placement; and

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

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

532 (31) "Temporary custody," with regard to the division, means the custody of a child in  
533 the division from the date of the shelter hearing until disposition.

534 (32) "Transportation services" means travel assistance given to an individual with  
535 escort service, if necessary, to and from community facilities and resources as part of a service  
536 plan.

537 (33) "Unsubstantiated" means a judicial finding that there is insufficient evidence to  
538 conclude that abuse or neglect occurred.

539 (34) "Unsupported" means a finding at the completion of an investigation that there is  
540 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a  
541 finding of unsupported means also that the division worker did not conclude that the allegation  
542 was without merit.

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

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

547 **77-36-1. Definitions.**

548 As used in this chapter:

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

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

551 [~~2~~] (3) "Domestic violence" means any criminal offense involving violence or  
552 physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation  
553 to commit a criminal offense involving violence or physical harm, when committed by one  
554 cohabitant against another. "Domestic violence" also means commission or attempt to commit,

555 any of the following offenses by one cohabitant against another:

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

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

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

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

560 (e) electronic communication harassment, as described in Section 76-9-201;

561 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections

562 76-5-301, 76-5-301.1, and 76-5-302;

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

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

565 Title 76, Chapter 5a, Sexual Exploitation of Children;

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

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

568 (k) violation of a protective order or ex parte protective order, as described in Section

569 76-5-108;

570 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property

571 Destruction, 2, Burglary and Criminal Trespass, or 3, Robbery;

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

573 76-10-507;

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

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

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

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

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

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

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

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

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

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

584 [~~(3)~~] (4) "Victim" means:

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

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

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

589           **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before**  
590 **trial.**

591           (1) Because of the serious nature of domestic violence, the court, in domestic violence  
592 actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

642 Section 11. Section **77-36-5.1** is amended to read:

643 **77-36-5.1. Conditions of probation for person convicted of domestic violence**  
644 **offense.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

677 Section 12. **Effective date.**

678 This bill takes effect on September 1, 2007.

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**Legislative Review Note**  
as of 11-15-06 11:27 AM

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of 12-13-06 7:32 AM

The Judiciary Interim Committee recommended this bill.

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**H.B. 28 - Domestic Violence and Dating Violence Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

This Legislation, if enacted, would require an ongoing appropriation of \$121,500 in General Fund. The Courts would receive \$98,200 and The Division of Child and Family Services within the Department of Human Services would receive \$23,300.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$121,500	\$121,500	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$121,500</b>	<b>\$121,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local law enforcement officials expect a statewide cost of approximately \$10,000 annually.