

1 **DOMESTIC VIOLENCE AND DATING**
2 **VIOLENCE AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Litvack**

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill provides for the issuance, modification, and enforcement of protective orders
11 between certain individuals who are, or have been, in a dating relationship.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ provides for the issuance, modification, and enforcement of protective orders
16 between parties who are, or have been, in a dating relationship when:
- 17 • the parties are emancipated or 16 years of age or older;
 - 18 • the parties are, or have been, in a dating relationship with each other; and
 - 19 • a party commits abuse or dating violence against the other party;
- 20 ▶ requires the Administrative Office of the Courts to develop and adopt uniform
21 forms for petitions and orders for protection relating to dating violence;
- 22 ▶ describes the restrictions that a court may include in a protective order;
- 23 ▶ describes the conditions that may be placed on an alleged perpetrator of dating
24 violence:
- 25 • in a protective order;
 - 26 • in an order of probation for violation of a protective order relating to dating
27 violence; or



- 28 • as a condition of release prior to trial for violation of a protective order relating
- 29 to dating violence; and
- 30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill takes effect on September 1, 2008.

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **30-6-1**, as last amended by Laws of Utah 2006, Chapter 157
- 38 **30-6-2**, as last amended by Laws of Utah 2003, Chapter 68
- 39 **30-6-4**, as last amended by Laws of Utah 2006, Chapter 157
- 40 **30-6-4.2**, as last amended by Laws of Utah 2005, Chapter 156
- 41 **30-6-4.3**, as last amended by Laws of Utah 2001, Chapter 247
- 42 **30-6-4.4**, as enacted by Laws of Utah 1995, Chapter 300
- 43 **30-6-4.5**, as last amended by Laws of Utah 1996, Chapter 244
- 44 **62A-4a-101**, as last amended by Laws of Utah 2006, Chapters 75, and 281
- 45 **77-36-1**, as last amended by Laws of Utah 2006, Chapter 46
- 46 **77-36-2.7**, as last amended by Laws of Utah 1999, Chapter 54
- 47 **77-36-5.1**, as last amended by Laws of Utah 1996, Chapter 244



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

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

51 **30-6-1. Definitions.**

52 As used in this chapter:

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

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

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

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

58 (i) (A) is an emancipated person pursuant to Section 15-2-1 or [a person who] Title 78,

59 Chapter 3a, Part 10, Emancipation; or
60 (B) is 16 years of age or older [~~who~~]; and
61 [~~(a)~~] (ii) (A) is or was a spouse of the other party;
62 [~~(b)~~] (B) is or was living as if a spouse of the other party;
63 [~~(c)~~] (C) is related by blood or marriage to the other party;
64 [~~(d)~~] (D) has one or more children in common with the other party;
65 [~~(e)~~] (E) is the biological parent of the other party's unborn child; or
66 [~~(f)~~] (F) resides or has resided in the same residence as the other party.
67 [~~(3)~~] (b) Notwithstanding Subsection (2)(a), "cohabitant" does not include:
68 [~~(a)~~] (i) the relationship of [~~natural~~] biological parent, adoptive parent, or step-parent to
69 a minor; or
70 [~~(b)~~] (ii) the relationship between [~~natural~~] biological, adoptive, step, or foster siblings
71 who are under 18 years of age.
72 [~~(4)~~] (3) "Court clerk" means a district court clerk.
73 (4) "Dating partner" means a person who:
74 (a) (i) is an emancipated person pursuant to Section 15-2-1 or Title 78, Chapter 3a, Part
75 10, Emancipation; or
76 (ii) is 16 years of age or older; and
77 (b) is, or has been, in a dating relationship with the other party.
78 (5) (a) "Dating relationship" means a social relationship of a romantic or intimate
79 nature, regardless of whether the relationship involves sexual intimacy.
80 (b) "Dating relationship" does not include:
81 (i) a casual relationship; or
82 (ii) casual fraternization between two individuals in a business, educational, or social
83 context.
84 (c) In determining, based on a totality of the circumstances, whether a dating
85 relationship exists:
86 (i) all relevant factors should be considered, including:
87 (A) whether the parties developed a minimal social, interpersonal bonding, over and
88 above a mere casual fraternization;
89 (B) the length of the parties' relationship;

- 90 (C) the nature and frequency of the parties' interactions;
91 (D) the ongoing expectations of the parties, individually or jointly, with respect to the
92 relationship;
93 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their
94 relationship before others; and
95 (F) whether other reasons exist that support or detract from a finding that a dating
96 relationship exists; and
97 (ii) it is not necessary that all, or a particular number, of the factors described in
98 Subsection (5)(c)(i) are found to support the existence of a dating relationship.
99 (6) "Dating violence" means:
100 (a) any criminal offense involving violence or physical harm or threat of violence or
101 physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense
102 involving violence or physical harm, when committed by one dating partner against another; or
103 (b) the commission or attempt to commit, any of the following offenses by one dating
104 partner against another:
105 (i) aggravated assault, as described in Section 76-5-103;
106 (ii) assault, as described in Section 76-5-102;
107 (iii) criminal homicide, as described in Section 76-5-201;
108 (iv) harassment, as described in Section 76-5-106;
109 (v) electronic communication harassment, as described in Section 76-9-201;
110 (vi) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
111 76-5-301, 76-5-301.1, and 76-5-302;
112 (vii) mayhem, as described in Section 76-5-105;
113 (viii) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
114 Title 76, Chapter 5a, Sexual Exploitation of Children;
115 (ix) stalking, as described in Section 76-5-106.5;
116 (x) unlawful detention, as described in Section 76-5-304;
117 (xi) violation of a protective order or ex parte protective order, as described in Section
118 76-5-108;
119 (xii) any offense against property described in Title 76, Chapter 6, Part 1, Property
120 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

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

123 (xiv) a felony offense under Section 76-10-508, discharge of a firearm from a vehicle,
 124 near a highway, or in the direction of any person, building, or vehicle.

125 ~~[(5)]~~ (7) "Domestic violence" ~~[means the same as that term]~~ is as defined in Section
 126 77-36-1.

127 ~~[(6)]~~ (8) "Ex parte protective order" means an order issued without notice to the
 128 defendant in accordance with this chapter.

129 ~~[(7)]~~ (9) "Foreign protection order" is as defined in Section 30-6a-102.

130 ~~[(8)]~~ (10) "Law enforcement unit" or "law enforcement agency" means any public
 131 agency having general police power and charged with making arrests in connection with
 132 enforcement of the criminal statutes and ordinances of this state or any political subdivision.

133 ~~[(9)]~~ (11) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace
 134 Officer Classifications.

135 ~~[(10)]~~ (12) "Protective order" means an order issued pursuant to this chapter
 136 subsequent to a hearing on the petition, of which the petitioner and respondent have been given
 137 notice in accordance with this chapter.

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

139 **30-6-2. Abuse or danger of abuse -- Protective orders.**

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

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

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

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

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

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

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

151 (2) A petition for a protective order may be filed under this chapter regardless of

152 whether an action for divorce between the parties is pending.

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

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

156 **30-6-4. Forms for petitions and protective orders -- Assistance.**

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

159 (b) The Administrative Office of the Courts shall develop and adopt uniform forms for
160 petitions and orders for protection in accordance with the provisions of this chapter on or
161 before September 1, [~~1995~~] 2008. That office shall provide the forms to the clerk of each court
162 authorized to issue protective orders. The forms shall include:

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

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

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

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

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

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

182 (vii) a statement advising the petitioner that if the respondent fails to return custody of

183 a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from
184 the court a writ of assistance.

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

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

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

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

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

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

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

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

202 (a) filing a petition under this chapter;

203 (b) obtaining an ex parte protective order;

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

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

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

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

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

212 "Respondent was afforded both notice and opportunity to be heard in the hearing that
213 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,

214 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
 215 Columbia, tribal lands, and United States territories. This order complies with the Uniform
 216 Interstate Enforcement of Domestic Violence Protection Orders Act."

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

218 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**
 219 **-- Service of process -- Duties of the court.**

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

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

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

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

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

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

235 (c) order that the respondent:

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

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

239 (A) school[; or] and the school's premises; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

274 (b) may enter an order governing the respondent's conduct at a location described in
275 Subsection (4)(a).

276 ~~[(4)]~~ (5) Following the protective order hearing, the court shall:
277 (a) clearly distinguish whether the order relates to cohabitants or dating partners;
278 ~~[(a)]~~ (b) as soon as possible, deliver the order to the county sheriff for service of
279 process;
280 ~~[(b)]~~ (c) make reasonable efforts to ensure that the order for protection is understood by
281 the petitioner, and the respondent, if present;
282 ~~[(c)]~~ (d) transmit, by the end of the next business day after the order is issued, a copy of
283 the order for protection to the local law enforcement agency or agencies designated by the
284 petitioner; and
285 ~~[(d)]~~ (e) transmit a copy of the order to the statewide domestic violence network
286 described in Section 30-6-8.
287 ~~[(5)]~~ (6) (a) Each protective order shall include two separate portions, one for
288 provisions, the violation of which are criminal offenses, and one for provisions, the violation of
289 which are civil violations, as follows:
290 (i) criminal offenses are those under Subsections (2)(a) through ~~[(c)]~~ (f), and under
291 Subsection (3)(a) as it refers to Subsections (2)(a) through ~~[(c)]~~ (f); and
292 (ii) civil offenses are those under Subsections (2)~~[(f)]~~(g) through ~~[(h)]~~ (i), and
293 Subsection (3)(a) as it refers to Subsections (2)~~[(f)]~~(g) through ~~[(h)]~~ (i).
294 (b) The criminal provision portion shall include a statement that violation of any
295 criminal provision is a class A misdemeanor.
296 (c) The civil provision portion shall include a notice that violation of or failure to
297 comply with a civil provision is subject to contempt proceedings.
298 ~~[(6)]~~ (7) The protective order shall include:
299 (a) a designation of a specific date, determined by the court, when the civil portion of
300 the protective order either expires or is scheduled for review by the court, which date may not
301 exceed 150 days after the date the order is issued, unless the court indicates on the record the
302 reason for setting a date beyond 150 days;
303 (b) information the petitioner is able to provide to facilitate identification of the
304 respondent, such as Social Security number, driver license number, date of birth, address,
305 telephone number, and physical description; and
306 (c) except for a protection order described in Subsection (8)(a), a statement advising

307 the petitioner that:

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

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

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

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

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

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

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

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

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

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

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

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

338 the victim.

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

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

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

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

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

351 Section 5. Section **30-6-4.3** is amended to read:

352 **30-6-4.3. Hearings on ex parte orders.**

353 (1) (a) When a court issues an ex parte protective order the court shall set a date for a
354 hearing on the petition within 20 days after the ex parte order is issued.

355 (b) If at ~~[that]~~ the hearing described in Subsection (1)(a) the court does not issue a
356 protective order, the ex parte protective order shall expire, unless it is otherwise extended by
357 the court.

358 (c) If at ~~[that]~~ the hearing described in Subsection (1)(a) the court issues a protective
359 order, the ex parte protective order remains in effect until service of process of the protective
360 order is completed.

361 (d) A protective order issued after notice and a hearing is effective until further order of
362 the court.

363 (e) If the hearing on the petition is heard by a commissioner, either the petitioner or
364 respondent may file an objection within ten days of the entry of the recommended order and the
365 assigned judge shall hold a hearing within 20 days of the filing of the objection.

366 (2) Upon a hearing under this section, the court may grant any of the relief described in
367 Section 30-6-4.2.

368 (3) When a court denies a petition for an ex parte protective order or a petition to

369 modify an order for protection ex parte, the court shall set the matter for hearing upon notice to
370 the respondent.

371 (4) (a) A respondent who has been served with an ex parte protective order may seek to
372 vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a)
373 by filing a verified motion to vacate.

374 (b) The [~~respondent's verified~~] motion [~~to vacate~~] described in Subsection (4)(a) and a
375 notice of hearing on that motion shall be personally served on the petitioner at least two days
376 prior to the hearing on the motion to vacate.

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

378 **30-6-4.4. No denial of relief solely because of lapse of time.**

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

382 Section 7. Section **30-6-4.5** is amended to read:

383 **30-6-4.5. Mutual protective orders prohibited.**

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

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

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

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

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

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

395 **62A-4a-101. Definitions.**

396 As used in this chapter:

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

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

399 (ii) negligent treatment;

- 400 (iii) sexual exploitation; or
- 401 (iv) any sexual abuse.
- 402 (b) "Abuse" does not include:
- 403 (i) reasonable discipline or management of a child, including withholding privileges;
- 404 (ii) conduct described in Section 76-2-401; or
- 405 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 406 (A) in self-defense;
- 407 (B) in defense of others;
- 408 (C) to protect the child; or
- 409 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 410 Subsections (1)(b)(iii)(A) through (C).
- 411 (2) "Adoption services" means:
- 412 (a) placing children for adoption;
- 413 (b) subsidizing adoptions under Section 62A-4a-105;
- 414 (c) supervising adoption placements until the adoption is finalized by the court;
- 415 (d) conducting adoption studies;
- 416 (e) preparing adoption reports upon request of the court; and
- 417 (f) providing postadoptive placement services, upon request of a family, for the
- 418 purpose of stabilizing a possible disruptive placement.
- 419 (3) "Board" means the Board of Child and Family Services established in accordance
- 420 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.
- 421 (4) "Child" means, except as provided in Part 7, Interstate Compact on Placement of
- 422 Children, a person under 18 years of age.
- 423 (5) "Consumer" means a person who receives services offered by the division in
- 424 accordance with this chapter.
- 425 (6) "Chronic physical abuse" means repeated or patterned physical abuse.
- 426 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
- 427 guardian, or custodian to provide necessary care for a child's safety, morals, or well-being.
- 428 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.
- 429 (9) "Custody," with regard to the division, means the custody of a minor in the division
- 430 as of the date of disposition.

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

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

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

435 (i) day-care center;

436 (ii) family group home; or

437 (iii) family child care home.

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

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

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

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

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

445 (ii) treatment services for domestic violence perpetrators.

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

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

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

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

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

455 (16) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of
456 Children:

457 (a) a child; or

458 (b) a person:

459 (i) who is at least 18 years of age and younger than 21 years of age; and

460 (ii) for whom the division has been specifically ordered by the juvenile court to provide
461 services.

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

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

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

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

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

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

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

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

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

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

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

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

490 (a) the shelter hearing; or

491 (b) the child's return home.

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

- 493 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 494 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 495 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
- 496 causes of neglect or abuse; and
- 497 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 498 (c) in cases where the child's welfare is endangered:
- 499 (i) to bring the situation to the attention of the appropriate juvenile court and law
- 500 enforcement agency;
- 501 (ii) to cause a protective order to be issued for the protection of the child, when
- 502 appropriate; and
- 503 (iii) to protect the child from the circumstances that endanger the child's welfare
- 504 including, when appropriate:
- 505 (A) removal from the child's home;
- 506 (B) placement in substitute care; and
- 507 (C) petitioning the court for termination of parental rights.
- 508 (21) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
- 509 child.
- 510 (22) "Shelter care" means the temporary care of a minor in a nonsecure facility.
- 511 (23) "State" means:
- 512 (a) a state of the United States;
- 513 (b) the District of Columbia;
- 514 (c) the Commonwealth of Puerto Rico;
- 515 (d) the Virgin Islands;
- 516 (e) Guam;
- 517 (f) the Commonwealth of the Northern Mariana Islands; or
- 518 (g) a territory or possession administered by the United States.
- 519 (24) "Severe emotional abuse" means emotional abuse that causes or threatens to cause
- 520 serious harm to a child.
- 521 (25) "Severe physical abuse" means physical abuse that causes or threatens to cause
- 522 serious harm to a child.
- 523 (26) "State plan" means the written description of the programs for children, youth, and

524 family services administered by the division in accordance with federal law.

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

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

531 (29) "Substitute care" means:

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

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

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

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

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

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

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

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

554 (35) "Without merit" means a finding at the completion of an investigation by the

555 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or
556 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

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

558 **77-36-1. Definitions.**

559 As used in this chapter:

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

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

562 [~~2~~] (3) "Domestic violence" means any criminal offense involving violence or
563 physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation
564 to commit a criminal offense involving violence or physical harm, when committed by one
565 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
566 any of the following offenses by one cohabitant against another:

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

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

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

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

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

572 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
573 76-5-301, 76-5-301.1, and 76-5-302;

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

575 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
576 Title 76, Chapter 5a, Sexual Exploitation of Children;

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

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

579 (k) violation of a protective order or ex parte protective order, as described in Section
580 76-5-108;

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

583 (m) possession of a deadly weapon with intent to assault, as described in Section
584 76-10-507;

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

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

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

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

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

595 [~~(3)~~] (4) "Victim" means:

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

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

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

600 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before**
601 **trial.**

602 (1) Because of the serious nature of domestic violence, the court, in domestic violence
603 actions:

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

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

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

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

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

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

616 (2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the

617 case against a perpetrator of domestic violence may be dismissed only if the perpetrator
618 successfully completes all conditions imposed by the court. If the defendant fails to complete
619 any condition imposed by the court under Subsection (1)(f), the court may accept the
620 defendant's plea.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

654 **77-36-5.1. Conditions of probation for person convicted of domestic violence**
655 **offense.**

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

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

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

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

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

669 (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled
670 substances;

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

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

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

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

678 (i) imposing any other condition necessary to protect the victim and any other

679 designated family or household member or to rehabilitate the perpetrator.

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

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

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

688 Section 12. **Effective date.**

689 This bill takes effect on September 1, 2008.

Legislative Review Note

as of 10-10-07 2:32 PM

Office of Legislative Research and General Counsel

H.B. 247 - Domestic Violence and Dating Violence Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

It is estimated that the Courts will require one-time General Funds appropriation of 90,400 in FY 2009 and ongoing General Funds of \$108,500 beginning in FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$108,500	\$108,500	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$18,100)	\$0	\$0	\$0	\$0
Total	\$0	\$90,400	\$108,500	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals and businesses. Local law enforcement may be impacted.