

**COHABITANT ABUSE PROCEDURES ACT
AMENDMENTS**

2009 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Brent H. Goodfellow

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill amends provisions of the Cohabitant Abuse Procedures Act relating to an order issued to a defendant pending trial.

Highlighted Provisions:

This bill:

- ▶ permits a court to issue an order to a person awaiting trial on a crime of domestic violence ~~§~~→ [at the time that the charge is filed] during any court hearing where the defendant is present, ←~~§~~ instead of at the time that the person is released from custody; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-36-2.7, as last amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **77-36-2.7** is amended to read:



28 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Order pending**
 29 **trial.**

30 (1) Because of the serious nature of domestic violence, the court, in domestic violence
 31 actions:

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

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

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

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

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

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

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

50 (3) (a) Because of the likelihood of repeated violence directed at those who have been
 51 victims of domestic violence in the past, when any defendant is charged with a crime involving
 52 domestic violence [~~is released from custody before trial~~], the court [~~authorizing the release~~]
 53 may **§→ , during any court hearing where the defendant is present, ←§** issue an order, pending trial:

54 (i) enjoining the defendant from threatening to commit or committing acts of domestic
 55 violence or abuse against the victim and any designated family or household member;

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

58 (iii) removing and excluding the defendant from the victim's residence and the

59 premises of the residence;

60 (iv) ordering the defendant to stay away from the residence, school, place of

61 employment of the victim, and the premises of any of these, or any specified place frequented

62 by the victim and any designated family member; and

63 (v) ordering any other relief that the court considers necessary to protect and provide

64 for the safety of the victim and any designated family or household member.

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

66 (i) if the original arrest or subsequent charge filed is a felony, an offense under this

67 section is a third degree felony; and

68 (ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under

69 this section is a class A misdemeanor.

70 (c) The court shall provide the victim with a certified copy of any order issued pursuant

71 to this section if the victim can be located with reasonable effort.

72 (4) When a court dismisses criminal charges or a prosecutor moves to dismiss charges

73 against a defendant accused of a domestic violence offense, the specific reasons for dismissal

74 shall be recorded in the court file and made a part of the statewide domestic violence network

75 described in Section 78B-7-113.

76 (5) When the privilege of confidential communication between spouses, or the

77 testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the

78 victim of an alleged domestic violence offense, the victim shall be considered to be an

79 unavailable witness under the Utah Rules of Evidence.

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

Legislative Review Note
as of 2-10-09 11:10 AM

Office of Legislative Research and General Counsel

S.B. 220 - Cohabitant Abuse Procedures Act Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
