

DOMESTIC VIOLENCE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill prevents a person arrested for domestic violence from personally contacting the alleged victim while the person is detained in a jail.

Highlighted Provisions:

This bill:

▶ prevents a person arrested for domestic violence from contacting the alleged victim while the person is detained in a jail.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-36-1, as last amended by Laws of Utah 2010, Chapters 218 and 384

77-36-2.1, as last amended by Laws of Utah 2008, Chapter 3

77-36-2.5, as last amended by Laws of Utah 2010, Chapter 384

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

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

77-36-1. Definitions.



28 As used in this chapter:

29 (1) "Cohabitant" has the same meaning as in Section 78B-7-102.

30 (2) "Department" means the Department of Public Safety.

31 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
32 3, Divorce.

33 (4) "Domestic violence" means any criminal offense involving violence or physical
34 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
35 commit a criminal offense involving violence or physical harm, when committed by one
36 cohabitant against another. "Domestic violence" also means commission or attempt to commit,
37 any of the following offenses by one cohabitant against another:

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

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

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

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

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

43 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
44 76-5-301, 76-5-301.1, and 76-5-302;

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

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

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

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

50 (k) violation of a protective order or ex parte protective order, as described in Section
51 76-5-108;

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

54 (m) possession of a deadly weapon with intent to assault, as described in Section
55 76-10-507;

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

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

59 conduct is the result of a plea agreement in which the defendant was originally charged with
60 any of the domestic violence offenses otherwise described in this Subsection (4). Conviction
61 of disorderly conduct as a domestic violence offense, in the manner described in this
62 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
63 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.
64 Section 921 et seq.; or

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

66 (5) "Jail release agreement" means a written agreement:

67 (a) specifying and limiting the contact a person arrested for a domestic violence offense
68 may have with an alleged victim or other specified individuals; and

69 (b) specifying other conditions of release from jail as required in Subsection
70 77-36-2.5[~~(+)~~](2).

71 (6) "Jail release court order" means a written court order:

72 (a) specifying and limiting the contact a person arrested for a domestic violence offense
73 may have with an alleged victim or other specified individuals; and

74 (b) specifying other conditions of release from jail as required in Subsection
75 77-36-2.5[~~(+)~~](2).

76 (7) "Marital status" means married and living together, divorced, separated, or not
77 married.

78 (8) "Married and living together" means a man and a woman whose marriage was
79 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

80 (9) "Not married" means any living arrangement other than married and living together,
81 divorced, or separated.

82 (10) "Pretrial protective order" means a written order:

83 (a) specifying and limiting the contact a person who has been charged with a domestic
84 violence offense may have with an alleged victim or other specified individuals; and

85 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5[~~(2)~~](3)(c),
86 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

87 (11) "Sentencing protective order" means a written order of the court as part of
88 sentencing in a domestic violence case that limits the contact a person who has been convicted
89 of a domestic violence offense may have with a victim or other specified individuals pursuant

90 to Sections 77-36-5 and 77-36-5.1.

91 (12) "Separated" means a man and a woman who have had their marriage solemnized
92 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

93 (13) "Victim" means a cohabitant who has been subjected to domestic violence.

94 Section 2. Section **77-36-2.1** is amended to read:

95 **77-36-2.1. Duties of law enforcement officers -- Notice to victims.**

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

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

100 (b) confiscating the weapon or weapons involved in the alleged domestic violence;

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

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

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

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

109 (2) (a) A law enforcement officer shall give written notice to the victim in simple
110 language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7,
111 Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

112 (b) The written notice shall also include:

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

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

118 (iii) the information required to be provided to both parties in accordance with
119 Subsection 77-36-2.5[~~(7)~~](8).

120 Section 3. Section **77-36-2.5** is amended to read:

121 **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release**
122 **agreements -- Jail release court orders.**

123 (1) Upon arrest for domestic violence, and before the person is released on bail,
124 recognizance, or otherwise, the person may not personally contact the alleged victim of
125 domestic violence.

126 ~~(1)~~ (2) Upon arrest for domestic violence, a person may not be released on bail,
127 recognizance, or otherwise prior to the close of the next court day following the arrest, unless
128 as a condition of that release the person is ordered by the court or agrees in writing that until
129 further order of the court, the person will:

130 (a) have no personal contact with the alleged victim;

131 (b) not threaten or harass the alleged victim; and

132 (c) not knowingly enter onto the premises of the alleged victim's residence or any
133 premises temporarily occupied by the alleged victim.

134 ~~(2)~~ (3) (a) The jail release agreement or jail release court order expires at midnight on
135 the day on which the person arrested appears in person or by video for arraignment or an initial
136 appearance.

137 (b) (i) If criminal charges have not been filed against the arrested person, the court
138 may, for good cause and in writing, extend the jail release agreement or jail release court order
139 beyond the time period under Subsection ~~(2)~~ (3)(a) as provided in Subsection ~~(2)~~ (3)(b)(ii).

140 (ii) (A) The court may extend a jail release agreement or jail release court order under
141 Subsection ~~(2)~~ (3)(b)(i) to no longer than midnight of the third business day after the arrested
142 person's first court appearance.

143 (B) If criminal charges are filed against the arrested person within the three business
144 days under Subsection ~~(2)~~ (3)(b)(ii)(A), the jail release agreement or the jail release court
145 order continues in effect until the arrested person appears in person or by video at the arrested
146 person's next scheduled court appearance.

147 (c) If criminal charges have been filed against the arrested person the court may, upon
148 the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial
149 protective order.

150 ~~(3)~~ (4) As a condition of release, the court may order the defendant to participate in
151 an electronic or other monitoring program and to pay the costs associated with the program.

152 ~~[(4)]~~ (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may
153 waive in writing any or all of the release conditions described in Subsection ~~[(1)]~~ (2)(a) or (c).
154 Upon waiver, those release conditions do not apply to the alleged perpetrator.

155 (b) A court or magistrate may modify the release conditions described in Subsections
156 (1)(a) or (c), in writing or on the record, and only for good cause shown.

157 ~~[(5)]~~ (6) (a) When a person is released pursuant to Subsection ~~[(1)]~~ (2), the releasing
158 agency shall notify the arresting law enforcement agency of the release, conditions of release,
159 and any available information concerning the location of the victim. The arresting law
160 enforcement agency shall then make a reasonable effort to notify the victim of that release.

161 (b) (i) When a person is released pursuant to Subsection ~~[(1)]~~ (2) based on a written jail
162 release agreement, the releasing agency shall transmit that information to the statewide
163 domestic violence network described in Section 78B-7-113.

164 (ii) When a person is released pursuant to Subsection ~~[(1)]~~ (2) or ~~[(2)]~~ (3) based upon a
165 jail release court order or if a jail release agreement is modified pursuant to Subsection ~~[(4)]~~
166 (5)(b), the court shall transmit that order to the statewide domestic violence network described
167 in Section 78B-7-113.

168 (iii) A copy of the jail release court order or written jail release agreement shall be
169 given to the person by the releasing agency before the person is released.

170 (c) This Subsection ~~[(5)]~~ (6) does not create or increase liability of a law enforcement
171 officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

172 ~~[(6)]~~ (7) (a) If a law enforcement officer has probable cause to believe that a person has
173 violated a jail release court order or jail release agreement executed pursuant to Subsection
174 ~~[(1)]~~ (2) the officer shall, without a warrant, arrest the alleged violator.

175 (b) Any person who knowingly violates a jail release court order or jail release
176 agreement executed pursuant to Subsection ~~[(1)]~~ (2) is guilty as follows:

177 (i) if the original arrest was for a felony, an offense under this section is a third degree
178 felony; or

179 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class
180 A misdemeanor.

181 (c) City attorneys may prosecute class A misdemeanor violations under this section.

182 ~~[(7)]~~ (8) An individual who was originally arrested for a felony under this chapter and

183 released pursuant to this section may subsequently be held without bail if there is substantial
184 evidence to support a new felony charge against him.

185 ~~[(8)]~~ (9) At the time an arrest for domestic violence is made, the arresting officer shall
186 provide the alleged victim with written notice containing:

187 (a) the release conditions described in Subsection ~~[(1)]~~ (2), and notice that those
188 release conditions shall be ordered by a court or must be agreed to by the alleged perpetrator
189 prior to release;

190 (b) notification of the penalties for violation of any jail release court order or any jail
191 release agreement executed under Subsection ~~[(1)]~~ (2);

192 (c) notification that the alleged perpetrator is to personally appear in court on the next
193 day the court is open for business after the day of the arrest;

194 (d) the address of the appropriate court in the district or county in which the alleged
195 victim resides;

196 (e) the availability and effect of any waiver of the release conditions; and

197 (f) information regarding the availability of and procedures for obtaining civil and
198 criminal protective orders with or without the assistance of an attorney.

199 ~~[(9)]~~ (10) At the time an arrest for domestic violence is made, the arresting officer shall
200 provide the alleged perpetrator with written notice containing:

201 (a) the release conditions described in Subsection ~~[(1)]~~ (2) and notice that those release
202 conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to
203 release;

204 (b) notification of the penalties for violation of any jail release court order or any
205 written jail release agreement executed under Subsection ~~[(1)]~~ (2); and

206 (c) notification that the alleged perpetrator is to personally appear in court on the next
207 day the court is open for business after the day of the arrest[;].

208 ~~[(10)]~~ (11) (a) If the alleged perpetrator fails to personally appear in court as scheduled,
209 the jail release court order or jail release agreement does not expire and continues in effect until
210 the alleged perpetrator makes the personal appearance in court as required by Section
211 77-36-2.6.

212 (b) If, when the alleged perpetrator personally appears in court as required by Section
213 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow

214 the jail release court order or jail release agreement to expire at midnight on the day of the
215 court appearance or may extend it for good cause.

216 ~~[(11)]~~ (12) In addition to the provisions of Subsections ~~[(1)]~~ (2) through ~~[(7)]~~ (8),
217 because of the unique and highly emotional nature of domestic violence crimes, the high
218 recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of
219 violence subsequent to the release of an offender who has been arrested for domestic violence,
220 it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1,
221 are crimes for which bail may be denied if there is substantial evidence to support the charge,
222 and if the court finds by clear and convincing evidence that the alleged perpetrator would
223 constitute a substantial danger to an alleged victim of domestic violence if released on bail.

Legislative Review Note
as of 2-17-11 1:00 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 374

SHORT TITLE: **Domestic Violence Amendments**

SPONSOR: **Last, B.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.