

Senator Lyle W. Hillyard proposes the following substitute bill:

COHABITANT ABUSE PROCEDURES ACT REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Jack R. Draxler

LONG TITLE

General Description:

This bill amends the Cohabitant Abuse Procedures Act in relation to sentencing and conditional release from jail.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prevents the release of a person arrested for a domestic violence offense before appearing before a magistrate or signing a jail release agreement;
- ▶ requires the arresting officer to:
 - provide certain notices to the alleged victim and the person arrested for domestic violence; and
 - inform the magistrate if the alleged victim waives certain release conditions;
- ▶ creates certain procedures for the release of a person arrested for domestic violence between the person's appearance before a magistrate and the person's appearance before a court;
- ▶ amends a sentencing requirement regarding treatment or therapy in a domestic violence treatment program; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **77-36-1**, as last amended by Laws of Utah 2015, Chapter 426

33 **77-36-2.5**, as last amended by Laws of Utah 2013, Chapters 245 and 278

34 **77-36-5**, as last amended by Laws of Utah 2010, Chapter 384



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

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

38 **77-36-1. Definitions.**

39 As used in this chapter:

40 (1) "Cohabitant" [~~has the same meaning as~~] means the same as that term is defined in
41 Section **78B-7-102**.

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

43 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
44 3, Divorce.

45 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
46 involving violence or physical harm or threat of violence or physical harm, or any attempt,
47 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
48 when committed by one cohabitant against another. "Domestic violence" or "domestic
49 violence offense" also means commission or attempt to commit, any of the following offenses
50 by one cohabitant against another:

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

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

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

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

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

56 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections

57 76-5-301, 76-5-301.1, and 76-5-302;

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

59 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
60 Section 76-5b-201, Sexual Exploitation of a Minor;

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

62 (j) unlawful detention or unlawful detention of a minor, as described in Section
63 76-5-304;

64 (k) violation of a protective order or ex parte protective order, as described in Section
65 76-5-108;

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

69 (m) possession of a deadly weapon with intent to assault, as described in Section
70 76-10-507;

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

73 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
74 conduct is the result of a plea agreement in which the defendant was originally charged with a
75 domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly
76 conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does
77 not constitute a misdemeanor crime of domestic violence under 18 U.S.C. [~~Section~~] Sec. 921,
78 and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. [~~Section~~] Sec. 921 et
79 seq.; or

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

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

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

84 (b) specifying other conditions of release from jail as required in Subsection
85 77-36-2.5(2).

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

87 (a) specifying and limiting the contact a person arrested for a domestic violence offense

88 may have with an alleged victim or other specified individuals; and

89 (b) specifying other conditions of release from jail as required in Subsection
90 77-36-2.5(2).

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

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

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

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

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

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

102 (11) "Sentencing protective order" means a written order of the court as part of
103 sentencing in a domestic violence case that limits the contact a person who has been convicted
104 of a domestic violence offense may have with a victim or other specified individuals pursuant
105 to Sections 77-36-5 and 77-36-5.1.

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

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

109 Section 2. Section 77-36-2.5 is amended to read:

110 **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release**
111 **agreements -- Jail release court orders.**

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

115 (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

116 (2) (a) Upon After an arrest for domestic violence, [a person] the offender may not be
117 released ~~[on bail, recognizance, or otherwise prior to the close of the next court day following~~
118 ~~the arrest, unless as a condition of that release the person is ordered by the court or agrees in~~

119 ~~writing that until further order of the court, the person will:] before:~~

120 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

121 (ii) the offender signs a jail release agreement in accordance with Subsection (2)(d)(i).

122 ~~[(a) have no personal contact with the alleged victim;]~~

123 ~~[(b) not threaten or harass the alleged victim; and]~~

124 ~~[(c) not knowingly enter onto the premises of the alleged victim's residence or any~~
125 ~~premises temporarily occupied by the alleged victim.]~~

126 (b) The arresting officer shall ensure that the information presented to the magistrate
127 includes whether the victim has made a waiver described in Subsection (5)(a).

128 (c) If the magistrate determines there is probable cause to support the charge or charges
129 of domestic violence, the magistrate shall determine:

130 (i) whether grounds exist to hold the arrested person without bail, in accordance with
131 Section 77-20-1;

132 (ii) if no grounds exist to hold the arrested person without bail, whether any release
133 conditions, including electronic monitoring, are necessary to protect the victim; or

134 (iii) any bail that is required to guarantee the defendant's subsequent appearance in
135 court.

136 (d) (i) The magistrate may not release a person arrested for domestic violence before
137 the initial court appearance, before the court with jurisdiction over the offense for which the
138 person was arrested, unless the arrested person agrees in writing or the magistrate orders, as a
139 release condition, that, until the arrested person appears at the initial court appearance, the
140 person will not:

141 (A) have personal contact with the alleged victim;

142 (B) threaten or harass the alleged victim; or

143 (C) knowingly enter onto the premises of the alleged victim's residence or any premises
144 temporarily occupied by the alleged victim.

145 (ii) The magistrate shall schedule the appearance described in Subsection (2)(d)(i) to
146 take place no more than 96 hours after the time of the arrest.

147 (iii) The arrested person may make the appearance described in Subsection (2)(d)(i) by
148 video if the arrested person is not released.

149 (3) (a) If a person charged with domestic violence fails to appear at the time scheduled

150 by the magistrate to appear, as described in Subsection (2)(d), the person shall comply with the
151 release conditions described in Subsection (2)(d)(i) until the arrested person makes an initial
152 appearance.

153 (b) If the prosecutor has not filed charges against a person who was arrested for a
154 domestic violence offense and who appears in court at the time scheduled by the magistrate
155 under Subsection (2)(d), or by the court under Subsection (3)(b)(ii), the court:

156 (i) may, upon the motion of the prosecutor and after allowing the arrested person an
157 opportunity to be heard on the motion, extend the release conditions described in Subsection
158 (2)(d)(i) by no more than three court days; and

159 (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the
160 arrested person to appear at a time scheduled before the end of the granted extension.

161 ~~[(3)(a) The]~~ (4) Unless extended under Subsection (3), the jail release agreement or
162 [jail release court order] the magistrate order described in Subsection (2)(d)(i) expires at
163 midnight on the day on which the person arrested [appears in person or by video for
164 arraignment or an initial appearance.] is scheduled to appear, as described in Subsection (2)(d).

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

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

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

175 ~~[(c) If criminal charges have been filed against the arrested person the court may, upon~~
176 ~~the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial~~
177 ~~protective order.]~~

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

180 (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in

181 writing [~~any or all of~~] the release conditions described in Subsection (2)[~~(a) or (c)~~](d)(i)(A) or
182 (C). Upon waiver, those release conditions do not apply to the alleged perpetrator.

183 (b) A court or magistrate may modify the release conditions described in Subsection
184 (2)[~~(a) or (c)~~](d)(i), in writing or on the record, and only for good cause shown.

185 (6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall
186 notify the arresting law enforcement agency of the release, conditions of release, and any
187 available information concerning the location of the victim. The arresting law enforcement
188 agency shall then make a reasonable effort to notify the victim of that release.

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

192 (ii) When a person is released pursuant to [~~Subsection (2) or (3)~~] Subsections (2)
193 through (4) based upon a jail release court order or if a written jail release agreement is
194 modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide
195 domestic violence network described in Section 78B-7-113.

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

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

200 (7) (a) If a law enforcement officer has probable cause to believe that a person has
201 violated a jail release court order or jail release agreement executed pursuant to Subsection (2)
202 the officer shall, without a warrant, arrest the alleged violator.

203 (b) Any person who knowingly violates a jail release court order or jail release
204 agreement executed pursuant to Subsection (2) is guilty as follows:

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

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

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

210 (8) An individual who was originally arrested for a felony under this chapter and
211 released pursuant to this section may subsequently be held without bail if there is substantial

212 evidence to support a new felony charge against him.

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

215 (a) the release conditions described in [~~Subsection (2)~~] Subsections (2) through (4), and
216 notice that [~~those~~] the alleged perpetrator will not be released, before appearing before the
217 court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

218 (i) the alleged perpetrator enters into a written agreement to comply with the release
219 conditions; or

220 (ii) the magistrate orders the release conditions [~~shall be ordered by a court or must be~~
221 ~~agreed to by the alleged perpetrator prior to release~~];

222 (b) notification of the penalties for violation of any jail release court order or any jail
223 release agreement executed under Subsection (2);

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

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

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

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

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

233 (a) notification that the alleged perpetrator may not contact the alleged victim before
234 being released;

235 (b) the release conditions described in [~~Subsection (2)~~] Subsections (2) through (4) and
236 notice that [~~those~~] the alleged perpetrator will not be released, before appearing before the
237 court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

238 (i) the alleged perpetrator enters into a written agreement to comply with the release
239 conditions; or

240 (ii) the magistrate orders the release conditions [~~shall be ordered by a court or shall be~~
241 ~~agreed to by the alleged perpetrator prior to release~~];

242 (c) notification of the penalties for violation of any jail release court order or any

243 written jail release agreement executed under Subsection (2); and

244 (d) notification that the alleged perpetrator is to personally appear in court on the next
245 day the court is open for business after the day of the arrest.

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

249 ~~[(b) If, when the alleged perpetrator personally appears in court as required by Section
250 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow
251 the jail release court order or jail release agreement to expire at midnight on the day of the
252 court appearance or may extend it for good cause.]~~

253 ~~[(12)]~~ (11) In addition to the provisions of Subsections (2) through ~~[(8)]~~ (10), because
254 of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate
255 of violent offenders, and the demonstrated increased risk of continued acts of violence
256 subsequent to the release of an offender who has been arrested for domestic violence, it is the
257 finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are
258 crimes for which bail may be denied if there is substantial evidence to support the charge, and
259 if the court finds by clear and convincing evidence that the alleged perpetrator would constitute
260 a substantial danger to an alleged victim of domestic violence if released on bail.

261 Section 3. Section 77-36-5 is amended to read:

262 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**
263 **Counseling -- Cost assessed against defendant -- Sentencing protective order.**

264 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a
265 condition of the sentence restricts the defendant's contact with the victim, a sentencing
266 protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's
267 probation.

268 (b) (i) The sentencing protective order shall be in writing, and the prosecutor shall
269 provide a certified copy of that order to the victim.

270 (ii) The court shall transmit the sentencing protective order to the statewide domestic
271 violence network.

272 (c) Violation of a sentencing protective order issued pursuant to this Subsection (1) is a
273 class A misdemeanor.

274 (2) In determining its sentence the court, in addition to penalties otherwise provided by
275 law, may require the defendant to participate in an electronic or other type of monitoring
276 program.

277 (3) The court may also require the defendant to pay all or part of the costs of
278 counseling incurred by the victim and any children affected by or exposed to the domestic
279 violence offense, as well as the costs for the defendant's own counseling.

280 (4) The court shall:

281 (a) assess against the defendant, as restitution, any costs for services or treatment
282 provided to the victim and affected children of the victim or the defendant by the Division of
283 Child and Family Services under Section [62A-4a-106](#); and

284 (b) order those costs to be paid directly to the division or its contracted provider.

285 (5) The court ~~[shall]~~ may order the defendant to obtain and satisfactorily complete
286 treatment or therapy in a domestic violence treatment program, as defined in Section
287 [62A-2-101](#), that is licensed by the Department of Human Services~~[, unless the court finds that~~
288 ~~there is no licensed program reasonably available or that the treatment or therapy is not~~
289 ~~necessary]~~.