

SB0206S01 compared with SB0206

~~{deleted text}~~ shows text that was in SB0206 but was deleted in SB0206S01.

inserted text shows text that was not in SB0206 but was inserted into SB0206S01.

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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: _____

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;

~~{ → adds exceptions to the right to bail;~~

- ‡ ▶ 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

SB0206S01 compared with SB0206

- 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{ 77-20-1, as last amended by Laws of Utah 2015, Chapter 99~~

~~‡ 77-36-1, as last amended by Laws of Utah 2015, Chapter 426~~

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

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

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

Section 1. Section ~~{77-20-1}~~77-36-1 is amended to read:

~~{ 77-20-1. Right to bail -- Denial of bail -- Hearing.~~

~~———— (1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:~~

~~———— (a) capital felony, when the court finds there is substantial evidence to support the charge;~~

~~———— (b) felony [committed while] for which the court finds there is substantial evidence to support the charge and that is:~~

~~———— (i) alleged to have occurred while the person is on probation or parole, or while free on bail awaiting trial on a previous felony charge [, when the court finds there is substantial evidence to support the current felony charge]; or~~

~~———— (ii) (A) a domestic violence offense, as defined in Section 77-36-1; and~~

SB0206S01 compared with SB0206

~~—— (B) filed against a person who has previously been arrested for, or charged with, a felony domestic violence offense, as defined in Section 77-36-1;~~

~~—— (c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; [or]~~

~~—— (d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail[-]; or~~

~~—— (e) a misdemeanor domestic violence offense, as defined in Section 77-36-1, if the court finds by clear and convincing evidence that the person would constitute a substantial danger to the victim if released on bail.~~

~~—— (2) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:~~

~~—— (a) ensure the appearance of the accused;~~

~~—— (b) ensure the integrity of the court process;~~

~~—— (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and~~

~~—— (d) ensure the safety of the public.~~

~~—— (3) (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.~~

~~—— (b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.~~

~~—— (c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.~~

~~—— (d) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:~~

~~—— (i) may not be released before the accused's first judicial appearance; and~~

~~—— (ii) may be denied bail by the court under Subsection 77-36-2.5(2) or (8) [or (12)].~~

SB0206S01 compared with SB0206

~~———— (4) The magistrate or court may rely upon information contained in:~~

~~———— (a) the indictment or information;~~

~~———— (b) any sworn probable cause statement;~~

~~———— (c) information provided by any pretrial services agency; or~~

~~———— (d) any other reliable record or source.~~

~~———— (5) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.~~

~~———— (b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.~~

~~———— (c) The magistrate or court may rely on information as provided in Subsection (4) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.~~

~~———— (6) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.~~

~~———— (7) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).~~

~~———— (8) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:~~

~~———— (a) the prosecutor files a notice of intent to not seek the death penalty; or~~

~~———— (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.~~

~~———— Section 2. Section 77-36-1 is amended to read:~~

‡ **77-36-1. Definitions.**

As used in this chapter:

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

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

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

(4) "Domestic violence" or "domestic violence offense" means any criminal offense

SB0206S01 compared with SB0206

involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

- (a) aggravated assault, as described in Section 76-5-103;
- (b) assault, as described in Section 76-5-102;
- (c) criminal homicide, as described in Section 76-5-201;
- (d) harassment, as described in Section 76-5-106;
- (e) electronic communication harassment, as described in Section 76-9-201;
- (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
- (g) mayhem, as described in Section 76-5-105;
- (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual Exploitation of a Minor;
- (i) stalking, as described in Section 76-5-106.5;
- (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
- (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
- (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
- (m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;
- (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;
- (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does

SB0206S01 compared with SB0206

not constitute a misdemeanor crime of domestic violence under 18 U.S.C. [Section] Sec. 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. [Section] Sec. 921 et seq.; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0206S01 compared with SB0206

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

Section ~~3~~2. Section 77-36-2.5 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) (i) The magistrate may not release a person arrested for domestic violence before the initial court appearance, before the court with jurisdiction over the offense for which the person was arrested, unless the arrested person agrees in writing or the magistrate orders, as a

SB0206S01 compared with SB0206

release condition, that, until the arrested person appears at the initial court appearance, the person will not:

(A) have personal contact with the alleged victim;

(B) threaten or harass the alleged victim; or

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

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

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

(3) (a) If a person charged with domestic violence fails to appear at the time scheduled by the magistrate to appear, as described in Subsection (2)(d), the person shall comply with the release conditions described in Subsection (2)(d)(i) until the arrested person makes an initial appearance.

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

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

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

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

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

~~[(ii) (A) The court may extend a jail release agreement or jail release court order under Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested~~

SB0206S01 compared with SB0206

person's first court appearance.]

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

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

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

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

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

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

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

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

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

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

(7) (a) If a law enforcement officer has probable cause to believe that a person has

SB0206S01 compared with SB0206

violated a jail release court order or jail release agreement executed pursuant to Subsection (2) the officer shall, without a warrant, arrest the alleged violator.

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

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

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

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

(8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

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

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

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

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

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

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

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

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

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

(10) At the time an arrest is made for domestic violence [~~is made~~], the arresting officer

SB0206S01 compared with SB0206

shall provide the alleged perpetrator with written notice containing:

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

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

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

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

(c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection (2); and

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

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

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

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

Section ~~{4}~~ 3. Section 77-36-5 is amended to read:

77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --

SB0206S01 compared with SB0206

Counseling -- Cost assessed against defendant -- Sentencing protective order.

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

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

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

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

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

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

(4) The court shall:

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

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

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

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SB0206S01 compared with SB0206

Legislative Review Note

Office of Legislative Research and General Counsel