

JAIL RELEASE ORDERS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to jail release agreements and jail release court orders.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the conditions under which an arresting law enforcement agency may release an individual arrested for certain offenses against a child or vulnerable adult or sexual assault; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-403, as last amended by Laws of Utah 2015, Chapter 386

77-20-1, as last amended by Laws of Utah 2016, Chapter 234

77-36-1, as last amended by Laws of Utah 2016, Chapter 422

77-36-2.1, as last amended by Laws of Utah 2011, Chapter 113



28 77-36-2.4, as last amended by Laws of Utah 2010, Chapter 384

29 77-36-2.7, as last amended by Laws of Utah 2010, Chapter 384

30 77-36-6, as last amended by Laws of Utah 2010, Chapter 384

31 RENUMBERS AND AMENDS:

32 77-20-3.5, (Renumbered from 77-36-2.5, as last amended by Laws of Utah 2016,
33 Chapter 422)



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

36 Section 1. Section 53-10-403 is amended to read:

37 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

38 (1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person
39 who:

40 (a) has pled guilty to or has been convicted of any of the offenses under Subsection
41 (2)(a) or (b) on or after July 1, 2002;

42 (b) has pled guilty to or has been convicted by any other state or by the United States
43 government of an offense which if committed in this state would be punishable as one or more
44 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

45 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any
46 offense under Subsection (2)(c);

47 (d) has been booked:

48 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,
49 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

50 (ii) on or after January 1, 2015, for any felony offense; or

51 (e) is a minor under Subsection (3).

52 (2) Offenses referred to in Subsection (1) are:

53 (a) any felony or class A misdemeanor under the Utah Code;

54 (b) any offense under Subsection (2)(a):

55 (i) for which the court enters a judgment for conviction to a lower degree of offense
56 under Section 76-3-402; or

57 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
58 defined in Section 77-2a-1; or

- 59 (c) (i) any violent felony as defined in Section 53-10-403.5;
- 60 (ii) sale or use of body parts, Section 26-28-116;
- 61 (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;
- 62 (iv) driving with any amount of a controlled substance in a person's body and causing
63 serious bodily injury or death, Subsection 58-37-8(2)(g);
- 64 (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;
- 65 (vi) a felony violation of propelling a substance or object at a correctional officer, a
66 peace officer, or an employee or a volunteer, including health care providers, Section
67 76-5-102.6;
- 68 (vii) aggravated human trafficking and aggravated human smuggling, Section
69 76-5-310;
- 70 (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
- 71 (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 72 (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
- 73 (xi) sale of a child, Section 76-7-203;
- 74 (xii) aggravated escape, Subsection 76-8-309(2);
- 75 (xiii) a felony violation of assault on an elected official, Section 76-8-315;
- 76 (xiv) influencing, impeding, or retaliating against a judge or member of the Board of
77 Pardons and Parole, Section 76-8-316;
- 78 (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 79 (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 80 (xvii) a felony violation of sexual battery, Section 76-9-702.1;
- 81 (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 82 (xix) a felony violation of abuse or desecration of a dead human body, Section
83 76-9-704;
- 84 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section
85 76-10-402;
- 86 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
87 Section 76-10-403;
- 88 (xxii) possession of a concealed firearm in the commission of a violent felony,
89 Subsection 76-10-504(4);

90 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,
91 Subsection 76-10-1504(3);

92 (xxiv) commercial obstruction, Subsection 76-10-2402(2);

93 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section
94 77-41-107;

95 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or

96 (xxvii) violation of condition for release after arrest [~~for domestic violence, Section~~
97 ~~77-36-2.5~~] under Section 77-20-3.5.

98 (3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah
99 court has adjudicated to be within the jurisdiction of the juvenile court due to the commission
100 of any offense described in Subsection (2), and who is:

101 (a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense
102 under Subsection (2); or

103 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
104 2002 for an offense under Subsection (2).

105 Section 2. Section 77-20-1 is amended to read:

106 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

107 (1) As used in this chapter:

108 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

109 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

110 (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

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

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

115 (b) felony committed while on probation or parole, or while free on bail awaiting trial
116 on a previous felony charge, when the court finds there is substantial evidence to support the
117 current felony charge;

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

121 bail; or

122 (d) felony when the court finds there is substantial evidence to support the charge and
123 it finds by clear and convincing evidence that the person violated a material condition of
124 release while previously on bail.

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

129 (a) ensure the appearance of the accused;

130 (b) ensure the integrity of the court process;

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

133 (d) ensure the safety of the public.

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

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

138 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
139 Sections [10-3-920](#) and [17-32-1](#).

140 (d) A person arrested for a violation of a jail release agreement or jail release order
141 issued ~~[pursuant to]~~ in accordance with Section ~~[[77-36-2.5](#)]~~ [77-20-3.5](#):

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

143 (ii) may be denied bail by the court under Subsection ~~[[77-36-2.5\(8\)](#)]~~ [77-20-3.5\(9\)](#) or
144 (12).

145 (5) The magistrate or court may rely upon information contained in:

146 (a) the indictment or information;

147 (b) any sworn probable cause statement;

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

149 (d) any other reliable record or source.

150 (6) (a) A motion to modify the initial order may be made by a party at any time upon
151 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and

152 to permit any victim to be notified and be present.

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

155 (c) The magistrate or court may rely on information as provided in Subsection (5) and
156 may base its ruling on evidence provided at the hearing so long as each party is provided an
157 opportunity to present additional evidence or information relevant to bail.

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

160 (8) An appeal may be taken from an order of any court denying bail to the Supreme
161 Court, which shall review the determination under Subsection (2).

162 (9) For purposes of this section, any arrest or charge for a violation of Section
163 [76-5-202](#), Aggravated murder, is a capital felony unless:

- 164 (a) the prosecutor files a notice of intent to not seek the death penalty; or
- 165 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
166 has not filed a notice to seek the death penalty.

167 Section 3. Section **77-20-3.5**, which is renumbered from Section 77-36-2.5 is
168 renumbered and amended to read:

169 ~~[77-36-2.5]~~. **77-20-3.5. Conditions for release after arrest for domestic violence**
170 **and other offenses -- Jail release agreements -- Jail release court orders.**

171 (1) As used in this section:

172 (a) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

173 (b) "Jail release agreement" means a written agreement described in Subsection
174 [77-20-3.5\(3\)](#) that:

175 (i) limits the contact an individual arrested for a qualifying offense may have with an
176 alleged victim; and

177 (ii) specifies other conditions of release from jail.

178 (c) "Jail release court order" means a written court order issued in accordance with
179 Subsection [77-20-3.5\(3\)](#) that:

180 (i) limits the contact an individual arrested for a qualifying offense may have with an
181 alleged victim; and

182 (ii) specifies other conditions of release from jail.

183 (d) "Minor" means an unemancipated individual who is younger than 18 years of age.

184 (e) "Offense against a child or vulnerable adult" means the commission or attempted
185 commission of an offense described in Section [76-5-109](#), [76-5-109.1](#), [76-5-110](#), or [76-5-111](#).

186 (f) "Qualifying offense" means:

187 (i) domestic violence;

188 (ii) an offense against a child or vulnerable adult; or

189 (iii) the commission or attempted commission of an offense described in Title 76,
190 Chapter 5, Part 4, Sexual Offenses.

191 ~~[(+)]~~ (2) (a) Upon arrest for ~~[domestic violence,]~~ a qualifying offense and before the
192 person is released on bail, recognizance, or otherwise, the person may not personally contact
193 the alleged victim ~~[of domestic violence]~~.

194 (b) A person who violates Subsection ~~[(+)]~~ (2)(a) is guilty of a class B misdemeanor.

195 ~~[(2)]~~ (3) (a) After ~~[an arrest for domestic violence, the offender]~~ a person is arrested for
196 a qualifying offense, the person may not be released before:

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

198 (ii) the ~~[offender]~~ person signs a jail release agreement in accordance with Subsection
199 ~~[(2)]~~ (3)(d)(i).

200 (b) The arresting officer shall ensure that the information presented to the magistrate
201 includes whether the alleged victim has made a waiver described in Subsection ~~[(5)]~~ (6)(a).

202 (c) If the magistrate determines there is probable cause to support the charge or charges
203 of ~~[domestic violence]~~ one or more qualifying offenses, the magistrate shall determine:

204 (i) whether grounds exist to hold the ~~[arrested person]~~ defendant without bail, in
205 accordance with Section [77-20-1](#);

206 (ii) if no grounds exist to hold the ~~[arrested person]~~ defendant without bail, whether
207 any release conditions, including electronic monitoring, are necessary to protect the alleged
208 victim; or

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

211 (d) (i) The magistrate may not release a ~~[person]~~ defendant arrested for ~~[domestic~~
212 ~~violence]~~ a qualifying offense before the defendant's initial court appearance~~[-]~~ before the court
213 with jurisdiction over the offense for which the ~~[person]~~ defendant was arrested, unless the

214 ~~[arrested person]~~ defendant agrees in writing or the magistrate orders, as a release condition,
215 that, until the ~~[arrested person]~~ defendant appears at the initial court appearance, the ~~[person]~~
216 defendant will not:

217 (A) have personal contact with the alleged victim;
218 (B) threaten or harass the alleged victim; or
219 (C) knowingly enter onto the premises of the alleged victim's residence or any premises
220 temporarily occupied by the alleged victim.

221 (ii) The magistrate shall schedule the appearance described in Subsection ~~[(2)]~~ (3)(d)(i)
222 to take place no more than 96 hours after the time of the arrest.

223 (iii) The ~~[arrested person]~~ defendant may make the appearance described in Subsection
224 ~~[(2)]~~ (3)(d)(i) by video if the ~~[arrested person]~~ defendant is not released.

225 ~~[(3)]~~ (4) (a) If a ~~[person]~~ defendant charged with ~~[domestic violence]~~ a qualifying
226 offense fails to appear at the time scheduled by the magistrate to appear~~[-as described in]~~ under
227 Subsection ~~[(2)]~~ (3)(d), the ~~[person]~~ defendant shall comply with the release conditions
228 described in Subsection ~~[(2)]~~ (3)(d)(i) until the ~~[arrested person]~~ defendant makes an initial
229 appearance.

230 (b) If the prosecutor has not filed charges against a person who was arrested for a
231 ~~[domestic violence]~~ qualifying offense and who appears in court at the time scheduled by the
232 magistrate under Subsection ~~[(2)]~~ (3)(d), or by the court under Subsection ~~[(3)]~~ (4)(b)(ii), the
233 court:

234 (i) may, upon the motion of the prosecutor and after allowing the ~~[arrested]~~ person an
235 opportunity to be heard on the motion, extend the release conditions described in Subsection
236 ~~[(2)]~~ (3)(d)(i) by no more than three court days; and

237 (ii) if the court grants the motion described in Subsection ~~[(3)]~~ (4)(b)(i), shall order the
238 arrested person to appear at a time scheduled before the end of the granted extension.

239 ~~[(4) Unless extended under]~~

240 (5) Except as provided in Subsection ~~[(3), the]~~ (4) or otherwise ordered by a court, a
241 jail release agreement or ~~[the magistrate order described in Subsection (2)(d)(i)] jail release~~
242 court order expires at midnight ~~[on the day on which the person arrested is scheduled to appear;~~
243 as] after the defendant's initial court appearance described in Subsection ~~[(2)]~~ (3)(d)(i).

244 ~~[(5)(a) Subsequent to]~~

245 (6) (a) After an arrest for ~~[domestic violence]~~ a qualifying offense, an alleged victim
246 who is not a minor may waive in writing the release conditions described in Subsection ~~[(2)]~~
247 ~~(3)(d)(i)(A) or (C)~~. Upon waiver, those release conditions do not apply to the ~~[alleged~~
248 ~~perpetrator]~~ defendant.

249 (b) A court or magistrate may modify the release conditions described in Subsection
250 ~~[(2)] (3)(d)(i)~~, in writing or on the record, and only for good cause shown.

251 ~~[(6)] (7)~~ (a) When a ~~[person]~~ defendant is released ~~[pursuant to Subsection (2)]~~ in
252 accordance with Subsection (3), the releasing agency shall:

253 (i) notify the arresting law enforcement agency of the release, conditions of release, and
254 any available information concerning the location of the alleged victim~~[-. The arresting law~~
255 ~~enforcement agency shall then]~~;

256 (ii) make a reasonable effort to notify the alleged victim of ~~[that]~~ the release~~[-]; and~~

257 (iii) before releasing the defendant, give the defendant a copy of the jail release
258 agreement or the jail release court order.

259 (b) (i) When a person arrested for domestic violence is released pursuant to Subsection
260 ~~[(2)] (3)~~ based on a written jail release agreement, the releasing agency shall transmit that
261 information to the statewide domestic violence network described in Section 78B-7-113.

262 (ii) When a person arrested for domestic violence is released pursuant to Subsections
263 ~~[(2)] (3)~~ through ~~[(4)] (5)~~ based upon a jail release court order or if a written jail release
264 agreement is modified pursuant to Subsection ~~[(5)] (6)~~(b), the court shall transmit that order to
265 the statewide domestic violence network described in Section 78B-7-113.

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

268 (c) This Subsection ~~[(6)] (7)~~ does not create or increase liability of a law enforcement
269 officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

270 ~~[(7)] (8)~~ (a) If a law enforcement officer has probable cause to believe that a ~~[person]~~
271 defendant has violated a jail release agreement or jail release court order ~~[or jail release~~
272 ~~agreement executed pursuant to Subsection (2)]~~, the officer shall, without a warrant, arrest the
273 ~~[alleged violator]~~ defendant.

274 (b) Any person who knowingly violates a jail release court order or jail release
275 agreement executed pursuant to Subsection ~~[(2)] (3)~~ is guilty as follows:

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

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

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

281 ~~[(8) An individual who was originally]~~

282 (9) A defendant who is arrested for a qualifying offense that is a felony [under this
283 chapter] and released [pursuant to] in accordance with this section may subsequently be held
284 without bail if there is substantial evidence to support a new felony charge against [him] the
285 defendant.

286 ~~[(9)]~~ (10) At the time an arrest is made for ~~[domestic violence]~~ a qualifying offense, the
287 arresting officer shall provide the alleged victim with written notice containing:

288 (a) the release conditions described in Subsections ~~[(2)]~~ (3) through ~~[(4)]~~ (5), and
289 notice that the alleged perpetrator will not be released, before appearing before the court with
290 jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

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

293 (ii) the magistrate orders the release conditions;

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

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

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

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

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

303 ~~[(10)]~~ (11) At the time an arrest is made for ~~[domestic violence]~~ a qualifying offense,
304 the arresting officer shall provide the alleged perpetrator with written notice containing:

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

307 (b) the release conditions described in Subsections [~~(2)~~] (3) through [~~(4)~~] (5) and notice
 308 that the alleged perpetrator will not be released, before appearing before the court with
 309 jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

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

312 (ii) the magistrate orders the release conditions;

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

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

317 (12) (a) A pretrial or sentencing protective order supercedes a jail release agreement or
 318 jail release court order.

319 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail
 320 release agreement or jail release court order, the court shall dismiss the jail release agreement
 321 or jail release court order.

322 [~~(11)~~] (13) In addition to the provisions of Subsections [~~(2)~~] (3) through [~~(10)~~] (12),
 323 because of the unique and highly emotional nature of domestic violence crimes, the high
 324 recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of
 325 violence subsequent to the release of an offender who has been arrested for domestic violence,
 326 it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1,
 327 are crimes for which bail may be denied if there is substantial evidence to support the charge,
 328 and if the court finds by clear and convincing evidence that the alleged perpetrator would
 329 constitute a substantial danger to an alleged victim of domestic violence if released on bail.

330 (14) The provisions of this section do not apply if the person arrested for the qualifying
 331 offense is a minor, unless the qualifying offense is domestic violence.

332 Section 4. Section 77-36-1 is amended to read:

333 **77-36-1. Definitions.**

334 As used in this chapter:

335 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

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

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

338 3, Divorce.

339 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
340 involving violence or physical harm or threat of violence or physical harm, or any attempt,
341 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
342 when committed by one cohabitant against another. "Domestic violence" or "domestic
343 violence offense" also means commission or attempt to commit, any of the following offenses
344 by one cohabitant against another:

- 345 (a) aggravated assault, as described in Section 76-5-103;
- 346 (b) assault, as described in Section 76-5-102;
- 347 (c) criminal homicide, as described in Section 76-5-201;
- 348 (d) harassment, as described in Section 76-5-106;
- 349 (e) electronic communication harassment, as described in Section 76-9-201;
- 350 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
351 76-5-301, 76-5-301.1, and 76-5-302;
- 352 (g) mayhem, as described in Section 76-5-105;
- 353 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
354 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 355 (i) stalking, as described in Section 76-5-106.5;
- 356 (j) unlawful detention or unlawful detention of a minor, as described in Section
357 76-5-304;
- 358 (k) violation of a protective order or ex parte protective order, as described in Section
359 76-5-108;
- 360 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
361 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
362 Part 3, Robbery;
- 363 (m) possession of a deadly weapon with intent to assault, as described in Section
364 76-10-507;
- 365 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
366 person, building, or vehicle, as described in Section 76-10-508;
- 367 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
368 conduct is the result of a plea agreement in which the defendant was originally charged with a

369 domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly
370 conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does
371 not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is
372 exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or

373 (p) child abuse as described in Section [76-5-109.1](#).

374 (5) "Jail release agreement" means [~~a written agreement;~~] the same as that term is
375 defined in Section [77-20-3.5](#).

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

378 [~~(b) specifying other conditions of release from jail as required in Subsection~~
379 ~~[77-36-2.5\(2\)](#).]~~

380 (6) "Jail release court order" means [~~a written court order;~~] the same as that term is
381 defined in Section [77-20-3.5](#).

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

384 [~~(b) specifying other conditions of release from jail as required in Subsection~~
385 ~~[77-36-2.5\(2\)](#).]~~

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

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

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

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

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

395 (b) specifying other conditions of release pursuant to Subsection [~~[77-36-2.5\(2\)](#)]~~
396 [77-20-3.5\(3\)](#), Subsection [77-36-2.6\(3\)](#), or Section [77-36-2.7](#), pending trial in the criminal case.

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

400 to Sections [77-36-5](#) and [77-36-5.1](#).

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

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

404 Section 5. Section **77-36-2.1** is amended to read:

405 **77-36-2.1. Duties of law enforcement officers -- Notice to victims.**

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

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

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

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

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

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

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

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

422 (b) The written notice shall also include:

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

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

428 (iii) the information required to be provided to both parties in accordance with

429 ~~Subsection [77-36-2.5\(8\)](#)~~ Subsections [77-20-3.5\(10\)](#) and (11).

430 Section 6. Section **77-36-2.4** is amended to read:

431 **77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.**

432 (1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator
433 whenever there is probable cause to believe that the alleged perpetrator has violated any of the
434 provisions of an ex parte protective order or protective order.

435 (2) (a) Intentional or knowing violation of any ex parte protective order or protective
436 order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater
437 penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section
438 77-36-1.

439 (b) Second or subsequent violations of ex parte protective orders or protective orders
440 carry increased penalties, in accordance with Section 77-36-1.1.

441 (3) As used in this section, "ex parte protective order" or "protective order" includes:

442 (a) any protective order or ex parte protective order issued under Title 78B, Chapter 7,
443 Part 1, Cohabitant Abuse Act;

444 (b) any [~~jail release agreement, jail release court order,~~] pretrial protective order[;] or
445 sentencing protective order issued under Title 77, Chapter 36, Cohabitant Abuse Procedures
446 Act;

447 (c) any child protective order or ex parte child protective order issued under Title 78B,
448 Chapter 7, Part 2, Child Protective Orders; or

449 (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform
450 Interstate Enforcement of Domestic Violence Protection Orders Act.

451 Section 7. Section 77-36-2.7 is amended to read:

452 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial**
453 **protective order pending trial.**

454 (1) Because of the serious nature of domestic violence, the court, in domestic violence
455 actions:

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

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

460 (c) shall waive any requirement that the victim's location be disclosed other than to the
461 defendant's attorney and order the defendant's attorney not to disclose the victim's location to

462 the client;

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

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

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

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

474 (3) (a) Because of the likelihood of repeated violence directed at those who have been
475 victims of domestic violence in the past, when any defendant is charged with a crime involving
476 domestic violence, the court may, during any court hearing where the defendant is present,
477 issue a pretrial protective order, pending trial:

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

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

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

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

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

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

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

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

493 this section is a class A misdemeanor.

494 (c) (i) The court shall provide the victim with a certified copy of any pretrial protective
495 order that has been issued if the victim can be located with reasonable effort.

496 (ii) The court shall also transmit the pretrial protective order to the statewide domestic
497 violence network.

498 (d) Issuance of a pretrial or sentencing protective order supercedes a [~~written~~] jail
499 release agreement or [~~a written~~] jail release court order [~~issued by the court at the time of~~
500 ~~arrest~~].

501 (4) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss
502 charges against a defendant accused of a domestic violence offense, the specific reasons for
503 dismissal shall be recorded in the court file and made a part of the statewide domestic violence
504 network described in Section 78B-7-113.

505 (b) The court shall transmit the dismissal to the statewide domestic violence network.

506 (c) Any pretrial protective orders, including jail release court orders and jail release
507 agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.

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

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

513 Section 8. Section 77-36-6 is amended to read:

514 **77-36-6. Enforcement of orders.**

515 (1) Each law enforcement agency in this state shall enforce all orders of the court
516 issued pursuant to the requirements and procedures described in this chapter, and shall enforce:

517 (a) all protective orders and ex parte protective orders issued pursuant to Title 78B,
518 Chapter 7, Part 1, Cohabitant Abuse Act;

519 (b) [~~jail release agreements, jail release court orders,~~] pretrial protective orders[;] and
520 sentencing protective orders; and

521 (c) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3,
522 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

523 (2) The requirements of this section apply statewide, regardless of the jurisdiction in

524 which the order was issued or the location of the victim or the perpetrator.

Legislative Review Note
Office of Legislative Research and General Counsel