

HB0208S01 compared with HB0208

~~text~~ shows text that was in HB0208 but was deleted in HB0208S01.

Inserted text shows text that was not in HB0208 but was inserted into HB0208S01.

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Representative Ken Ivory proposes the following substitute bill:

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

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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

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

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

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

RENUMBERS AND AMENDS:

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

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

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

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

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

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

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

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

(d) has been booked:

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

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

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- (e) is a minor under Subsection (3).
- (2) Offenses referred to in Subsection (1) are:
 - (a) any felony or class A misdemeanor under the Utah Code;
 - (b) any offense under Subsection (2)(a):
 - (i) for which the court enters a judgment for conviction to a lower degree of offense under Section 76-3-402; or
 - (ii) regarding which the court allows the defendant to enter a plea in abeyance as defined in Section 77-2a-1; or
 - (c) (i) any violent felony as defined in Section 53-10-403.5;
 - (ii) sale or use of body parts, Section 26-28-116;
 - (iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;
 - (iv) driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death, Subsection 58-37-8(2)(g);
 - (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;
 - (vi) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;
 - (vii) aggravated human trafficking and aggravated human smuggling, Section 76-5-310;
 - (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
 - (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
 - (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
 - (xi) sale of a child, Section 76-7-203;
 - (xii) aggravated escape, Subsection 76-8-309(2);
 - (xiii) a felony violation of assault on an elected official, Section 76-8-315;
 - (xiv) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, Section 76-8-316;
 - (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
 - (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
 - (xvii) a felony violation of sexual battery, Section 76-9-702.1;
 - (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;

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(xix) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;

(xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;

(xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;

(xxii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);

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

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

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

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

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

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

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

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

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

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

(1) As used in this chapter:

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

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

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

(2) 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:

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

(b) felony committed while 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;

(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.

(3) 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.

(4) (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]~~ in accordance with Section ~~[77-36-2.5]~~ 77-20-3.5:

(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(8)]~~ 77-20-3.5(9) or

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(12).

(5) 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.

(6) (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 (5) 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.

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

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

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

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

(1) As used in this section:

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

(b) "Jail release agreement" means a written agreement described in Subsection 77-20-3.5(3) that:

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

(ii) specifies other conditions of release from jail.

(c) "Jail release court order" means a written court order issued in accordance with Subsection 77-20-3.5(3) that:

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

(ii) specifies other conditions of release from jail.

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

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

(f) "Qualifying offense" means:

(i) domestic violence;

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

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

~~[(+)]~~ (2) (a) Upon arrest for ~~[domestic violence,]~~ a qualifying offense 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 ~~[(+)]~~ (2)(a) is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

(iii) any bail that is required to guarantee the ~~{}~~defendant's~~{}~~ arrested person's subsequent appearance in court.

(d) (i) The magistrate may not release a ~~{}~~person~~{}~~ ~~{}~~defendant~~{}~~ arrested for [~~domestic violence~~] a qualifying offense before the ~~{}~~defendant~~{}~~ person's initial court appearance[-] before the court with jurisdiction over the offense for which the ~~{}~~person~~{}~~ ~~{}~~defendant~~{}~~ was arrested, unless the ~~{}~~arrested person~~{}~~ ~~{}~~defendant~~{}~~ agrees in writing or the magistrate orders, as a release condition, that, until the ~~{}~~arrested person~~{}~~ ~~{}~~defendant~~{}~~ appears at the initial court appearance, the ~~{}~~arrested~~{}~~ ~~{}~~person~~{}~~ ~~{}~~defendant~~{}~~ 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)~~] (3)(d)(i) to take place no more than 96 hours after the time of the arrest.

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

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

(b) If the prosecutor has not filed charges against a person who was arrested for a [~~domestic violence~~] qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection [~~(2)~~] (3)(d), or by the court under Subsection [~~(3)~~] (4)(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)~~] (3)(d)(i) by no more than three court days; and

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

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

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

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

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

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

~~[(6)]~~ (7) (a) When ~~[a { } person]~~ {defendant}; an arrested person is released ~~[pursuant to Subsection (2)]~~ in accordance with Subsection (3), the releasing agency shall:

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

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

(iii) before releasing the {defendant}; arrested person, give the {defendant}; arrested person a copy of the jail release agreement or the jail release court order.

(b) (i) When a person arrested for domestic violence is released pursuant to Subsection ~~[(2)]~~ (3) 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 arrested for domestic violence is released pursuant to Subsections ~~[(2)]~~ (3) through ~~[(4)]~~ (5) based upon a jail release court order or if a written jail release agreement is modified pursuant to Subsection ~~[(5)]~~ (6)(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~~

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given to the person by the releasing agency before the person is released.]

(c) This Subsection [(6)] (7) 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)] (8) (a) If a law enforcement officer has probable cause to believe that a ~~{person}~~ ~~{defendant}~~ has violated a jail release agreement or jail release court order [~~or jail release agreement executed pursuant to Subsection (2)~~], the officer shall, without a warrant, arrest the [~~alleged violator~~] ~~{defendant}~~ person.

(b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection [(2)] (3) 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]

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

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

(a) the release conditions described in Subsections [(2)] (3) through [(4)] (5), and notice that 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;

(b) notification of the penalties for violation of any jail release agreement or 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;

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(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)]~~ (11) At the time an arrest is made for ~~[domestic violence]~~ a qualifying offense, the arresting officer 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 Subsections ~~[(2)]~~ (3) through ~~[(4)]~~ (5) and notice that 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;

(c) notification of the penalties for violation of any jail release agreement or 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.

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

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

~~[(11)]~~ (13) In addition to the provisions of Subsections ~~[(2)]~~ (3) through ~~[(10)]~~ (12), 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

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constitute a substantial danger to an alleged victim of domestic violence if released on bail.

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

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

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" 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 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 -- Offenses;
- (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;

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

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

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

~~[(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.~~] the same as that term is defined in Section 77-20-3.5.

~~[(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,

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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(2)~~] 77-20-3.5(3), 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.

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

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

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

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

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

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

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

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

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

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

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

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(b) The written notice shall also include:

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

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

(iii) the information required to be provided to both parties in accordance with ~~[Subsection 77-36-2.5(8)]~~ Subsections 77-20-3.5(10) and (11).

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

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

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

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

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

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

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

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

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

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

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

77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial

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protective order pending trial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.

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

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

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

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

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

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

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

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

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

77-36-6. Enforcement of orders.

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

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

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

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

(2) The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~