

HB0248S01 compared with HB0248

~~{deleted text}~~ shows text that was in HB0248 but was deleted in HB0248S01.

Inserted text shows text that was not in HB0248 but was inserted into HB0248S01.

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Representative LaVar Christensen proposes the following substitute bill:

DOMESTIC VIOLENCE RELATED AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to domestic violence.

Highlighted Provisions:

This bill:

- ▶ amends definition provisions;
- ▶ ~~{modifies conditions for release after arrest for domestic violence}~~addresses the designation of a person that communicates between a defendant and victim;
- ▶ addresses enforcement of restitution requirements;
- ▶ provides the process for the issuance of continuous protective orders;
- ▶ addresses form for protective orders;
- ▶ modifies conditions for dismissals of protective orders;~~†~~

~~→ enacts language related to enforcement of domestic violence related provisions;}~~

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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 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

77-36-2.5, as last amended by Laws of Utah ~~2016~~2010, Chapter ~~422~~384

77-36-5, as last amended by Laws of Utah 2016, Chapter 422

77-36-5.1, as last amended by Laws of Utah 2010, Chapter 384

78B-7-102, as last amended by Laws of Utah 2013, Chapter 348

78B-7-105, as last amended by Laws of Utah 2009, Chapter 232

78B-7-115, as last amended by Laws of Utah 2016, Chapter 196

~~ENACTS:~~

~~77-36-11, Utah Code Annotated 1953~~

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

Section 1. 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:

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

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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 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(8) or [~~(12)~~] (11).

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

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- (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 2. 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,

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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;
- (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

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(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) "Protective order" includes an order issued under Subsection 77-36-5.1(6).

~~(10)~~ (11) "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), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

~~(11)~~ (12) "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)~~ (13) "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)~~ (14) "Victim" means a cohabitant who has been subjected to domestic violence.

Section 3. Section **77-36-2.1** is amended to read:

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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.

(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 77-36-2.5(9) and (10).

Section 4. 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

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

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

(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 5. Section ~~77-36-2.5~~6 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) After an arrest for domestic violence, the offender may not be released 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).~~

~~———— (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;~~

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~~—— (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[.]; or~~

~~—— (iv) whether to designate a person that may communicate between the arrested person and the alleged victim if and to the extent necessary for family related matters.~~

~~—— (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 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.~~

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~~—— (4) Unless extended under Subsection (3), the jail release agreement or the magistrate order described in Subsection (2)(d)(i) expires at midnight on the day on which the person arrested is scheduled to appear, as described in Subsection (2)(d).~~

~~—— (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing the release conditions described in Subsection (2)(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)(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 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 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] A 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~~

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~~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] the individual.~~

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

~~—— (a) the release conditions described in Subsections (2) through (4), 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 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, 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) through (4) 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~~

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- ~~—— (ii) the magistrate orders the release conditions;~~
- ~~—— (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) In addition to [the provisions of] Subsections (2) through (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] offenses, 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.~~

‡ **77-36-2.6. Appearance of defendant required -- Determinations by court -- Pretrial protective order.**

(1) A defendant who has been arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the arrest.

(2) A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

(3) At the time of an appearance under Subsection (1) or (2), the court shall:

(a) determine the necessity of imposing a pretrial protective order or other condition of pretrial release, including, but not limited to, participating in an electronic or other type of monitoring program, and shall:

(b) determine whether to designate a person that may communicate between the defendant and the victim if and to the extent necessary for family related matters; and

(c) state its findings and determination in writing.

(4) Appearances required by this section are mandatory and may not be waived.

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Section 6. Section 77-36-5 is amended to read:

77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- 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 or a continuous protective order may be issued under Subsection 77-36-5.1(6).

(b) (i) The sentencing protective order or continuous 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 or continuous protective order to the statewide domestic violence network.

(c) Violation of a sentencing protective order or continuous 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 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.

Section 7. Section 77-36-5.1 is amended to read:

77-36-5.1. Conditions of probation for person convicted of domestic violence offense -- Continuous protective orders.

(1) Before any perpetrator who has been convicted of a domestic violence offense may

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be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court, which may include a sentencing protective order:

(a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

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

(c) requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

(d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

(e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;

(f) directing the perpetrator to surrender any weapons the perpetrator owns or possesses;

(g) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;

(h) directing the perpetrator to pay restitution to the victim, enforcement of which shall be in accordance with Chapter 38a, Crime Victims Restitution Act; and

(i) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) The perpetrator is responsible for the costs of any condition of probation, according to the perpetrator's ability to pay.

(4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any offense involving domestic violence committed by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any violation of any sentencing criminal protective order issued by the court.

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(b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

(5) The court shall transmit all dismissals, terminations, and expirations of pretrial and sentencing criminal protective orders issued by the court to the statewide domestic violence network.

(6) (a) Because of the serious, unique, and highly ~~emotional~~ traumatic 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 a perpetrator who is convicted of domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the issuance of continuous protective orders under this Subsection (6) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Chapter 37, Victims' Rights, and Chapter 38, Rights of Crime Victims Act.

(b) If a perpetrator is convicted ~~for~~ of a domestic violence ~~resulting in incarceration~~ offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim unless the court determines by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse.

(c) (i) The court shall notify the perpetrator of the right to request a hearing.

(ii) If the perpetrator requests a hearing under this Subsection (6)(c), the court shall hold the hearing at the time ~~of the conviction or sentencing unless the court determines otherwise for good cause~~ determined by the court. The continuous protective order shall be in effect while the hearing is being scheduled and while the hearing is pending.

(d) A continuous protective order is permanent in accordance with this Subsection (6)(d) and may grant the following relief:

(i) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

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

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(iii) ~~{requiring}~~ prohibiting the perpetrator ~~{to not go}~~ from going to the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or other household member;

(iv) directing the perpetrator to pay restitution to the victim as may apply, and shall be enforced in accordance with Chapter 38a, Crime Victims Restitution Act; and

(v) any other order the court considers necessary to fully protect the victim and members of the victim's ~~{immediate}~~ family or other household member.

(e) (i) A continuous protective order may be modified or dismissed only;

~~— (i) }~~ after the continuous protective order has been in effect for at least two years and only if the court determines by clear and convincing evidence that all requirements of this Subsection (6) have been met and the victim does not have a reasonable fear of future harm or abuse ~~;~~ or

~~— (ii) if~~;

(ii) The two-year period described in Subsection (6)(e)(i) is tolled for any period of time that the perpetrator ~~{and victim stipulate in writing to a modification or dismissal and files the stipulation with the court in support of a petition for modification or dismissal}~~ is incarcerated.

(f) Notice of a continuous protective order issued pursuant to this section shall be sent by the court to the statewide domestic violence network.

(g) Violation of a continuous protective order issued pursuant to this Subsection (6) is a class A misdemeanor, is a domestic violence offense under Section 77-36-1, and is subject to increased penalties in accordance with Section 77-36-1.1.

(h) In addition to the process of issuing a continuous protective order described in Subsection (6)(a), a district court may issue a continuous protective order at any time if the victim files a petition with the district court, and after notice and hearing the district court finds that a continuous protective order is necessary to protect the victim.

(7) (a) Before release of a person who is subject to a continuous protective order issued under Subsection (6), the victim shall receive reasonable advance notice of the imminent release by the law enforcement agency that is releasing the person who is subject to the continuous protective order:

(i) if the victim has provided the law enforcement agency contact information;

(ii) in accordance with Section 64-13-14.7, if applicable; and

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(iii) including a statement that the person being released is notified of the penalties for violating the continuous protective order.

(b) Before release, the law enforcement agency shall notify in writing the person being released that a violation of the continuous protective order issued at the time of conviction or sentencing continues to apply, and that a violation of the continuous protective order is a class A misdemeanor, is a separate domestic violence offense under Section 77-36-1, and is subject to increased penalties in accordance with Section 77-36-1.1.

Section 8. Section ~~{77-36-11}~~ 78B-7-102 is ~~{enacted}~~ amended to read:

~~{~~ ~~77-36-11. Enforcement.~~

~~— This chapter shall be enforced fully and consistently with Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.~~

~~— Section 9. Section 78B-7-102 is amended to read:~~

~~‡~~ **78B-7-102. Definitions.**

As used in this chapter:

(1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

- (a) is or was a spouse of the other party;
- (b) is or was living as if a spouse of the other party;
- (c) is related by blood or marriage to the other party;
- (d) has or had one or more children in common with the other party;
- (e) is the biological parent of the other party's unborn child; or
- (f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

- (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
- (b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

(4) "Court clerk" means a district court clerk.

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

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(6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

(7) "Foreign protection order" [~~is as~~] means the same as that term is defined in Section 78B-7-302.

(8) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(10) "Protective order" means:

(a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter[-];
or

(b) an order issued under Subsection 77-36-5.1(6).

Section ~~78B-7-105~~9. Section **78B-7-105** is amended to read:

78B-7-105. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 78B-7-106(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

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(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (1);

(b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

(c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a)~~[-A]~~, except that a court clerk's office may designate any other entity, agency, or person to provide that service, but the court clerk's office is responsible to see that the service is provided;

(d) information regarding the means available for the service of process;

(e) a list of legal service organizations that may represent the petitioner in an action brought under this chapter, together with the telephone numbers of those organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation of the use of transportation order forms when necessary.

(3) No charges may be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

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(b) obtaining an ex parte protective order;

(c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or

(d) fees for service of a petition, ex parte protective order, or protective order.

(4) A petition for an order of protection shall be in writing and verified.

(5) (a) [~~All orders~~] An order for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).

(b) [~~Each~~] A protective order issued, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

(c) [~~Each~~] A protective order issued in accordance with this part, including protective orders issued ex parte and except for a continuous protective order issued under Subsection 77-36-5.1(6), shall include the following language:

"NOTICE TO PETITIONER: The court may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent."

Section ~~{11}~~10. Section **78B-7-115** is amended to read:

78B-7-115. Dismissal of protective order.

(1) Except as provided in [~~Subsection (6),~~] Subsections (6) and (8), a protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future harm or abuse. In determining whether the petitioner no longer has a reasonable fear of future harm or abuse, the court shall consider the following factors:

(a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;

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(b) whether the protective order was violated during the time it was in force;

(c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;

(d) counseling or therapy undertaken by either party;

(e) impact on the well-being of any minor children of the parties, if relevant; and

(f) any other factors the court considers relevant to the case before it.

(2) Except as provided in [~~Subsection (6),~~] Subsections (6) and (8), the court may amend or dismiss a protective order issued in accordance with this part that has been in effect for at least one year if it finds that:

(a) the basis for the issuance of the protective order no longer exists;

(b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;

(c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable fear of the respondent; and

(d) the respondent has not been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order, and there are no unresolved charges involving violent conduct still on file with the court.

(3) The court shall enter sanctions against either party if the court determines that either party acted:

(a) in bad faith; or

(b) with intent to harass or intimidate either party.

(4) Notice of a motion to dismiss a protective order shall be made by personal service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil Procedure.

(5) [~~Hf~~] Except as provided in Subsection (8), if a divorce proceeding is pending between parties to a protective order action, the protective order shall be dismissed when the court issues a decree of divorce for the parties if:

(a) the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing; and

(b) the court specifically finds that the order need not continue, and, as provided in Subsection (1), the petitioner no longer has a reasonable fear of future harm or abuse.

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(6) (a) Notwithstanding Subsection (1) or (2), a protective order that has been entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to Subsections (6)(b) and (c), 10 years from the day on which one of the following occurs:

- (i) the decree of divorce between the petitioner and respondent became absolute; or
- (ii) the protective order was entered.

(b) The protective order shall automatically expire, as described in Subsection (6)(a), unless:

(i) the petitioner demonstrates that the petitioner has a reasonable fear of future harm or abuse, as described in Subsection (1); or

(ii) the respondent has been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order.

(c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the respondent is incarcerated.

(7) When the court dismisses a protective order, the court shall immediately:

- (a) issue an order of dismissal to be filed in the protective order action; and
- (b) transmit a copy of the order of dismissal to the statewide domestic violence

network as described in Section 78B-7-113.

(8) Notwithstanding the other provisions of this section, a continuous protective order may not be modified or dismissed except as provided in Subsection 77-36-5.1(6).

†

Legislative Review Note

Office of Legislative Research and General Counsel†