

1 **CODE OF CRIMINAL PROCEDURE AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kim F. Coleman**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Code of Criminal Procedure regarding cohabitant abuse.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of "domestic violence" or "domestic violence offense."

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **77-36-1**, as last amended by Laws of Utah 2016, Chapter 422

20

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

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

23 **77-36-1. Definitions.**

24 As used in this chapter:

- 25 (1) "Cohabitant" means the same as that term is defined in Section **78B-7-102**.
- 26 (2) "Department" means the Department of Public Safety.
- 27 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter



28 3, Divorce.

29 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
30 involving violence or physical harm or threat of violence or physical harm, or any attempt,
31 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
32 when committed by one cohabitant against another. "Domestic violence" or "domestic
33 violence offense" also means commission or attempt to commit, any of the following offenses
34 by one cohabitant against another:

- 35 (a) aggravated assault, as described in Section 76-5-103;
- 36 (b) assault, as described in Section 76-5-102;
- 37 (c) criminal homicide, as described in Section 76-5-201;
- 38 (d) harassment, as described in Section 76-5-106;
- 39 (e) electronic communication harassment, as described in Section 76-9-201;
- 40 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
41 76-5-301, 76-5-301.1, and 76-5-302;
- 42 (g) mayhem, as described in Section 76-5-105;
- 43 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
44 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 45 (i) stalking, as described in Section 76-5-106.5;
- 46 (j) unlawful detention or unlawful detention of a minor, as described in Section
47 76-5-304;
- 48 (k) violation of a protective order or ex parte protective order, as described in Section
49 76-5-108;
- 50 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
51 Destruction, committed with the intent to harass or intimidate a cohabitant, or place a
52 cohabitant in fear of serious bodily injury;
- 53 (m) any offense against property described in Title 76, Chapter 6, Part 2, Burglary and
54 Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
- 55 ~~(m)~~ (n) possession of a deadly weapon with intent to assault, as described in Section
56 76-10-507;
- 57 ~~(m)~~ (o) discharge of a firearm from a vehicle, near a highway, or in the direction of
58 any person, building, or vehicle, as described in Section 76-10-508;

59 ~~(p)~~ (p) disorderly conduct, as defined in Section 76-9-102, if a conviction of
60 disorderly conduct is the result of a plea agreement in which the defendant was originally
61 charged with a domestic violence offense otherwise described in this Subsection (4).
62 Conviction of disorderly conduct as a domestic violence offense, in the manner described in
63 this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
64 U.S.C. Sec. 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec.
65 921 et seq.; ~~or~~

66 ~~(q)~~ (q) child abuse, as described in Section 76-5-109.1~~[-];~~
67 (r) threatening with or using a dangerous weapon, as described in Section 76-10-506;
68 (s) threat of violence, as described in Section 76-5-107;
69 (t) tampering with a witness, as described in Section 76-8-508; or
70 (u) retaliation against a witness or victim, as described in Section 76-8-508.3.

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

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

74 (b) specifying other conditions of release from jail as required in Subsection
75 77-36-2.5(2).

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

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

79 (b) specifying other conditions of release from jail as required in Subsection
80 77-36-2.5(2).

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

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

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

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

88 (a) specifying and limiting the contact ~~[a person]~~ an individual who has been charged
89 with a domestic violence offense may have with an alleged victim or other specified

90 individuals; and

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel