

HB0165S01 compared with HB0165

~~deleted text~~ shows text that was in HB0165 but was deleted in HB0165S01.

Inserted text shows text that was not in HB0165 but was inserted into HB0165S01.

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Representative Angela Romero proposes the following substitute bill:

PRETRIAL RELEASE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies pretrial release provisions.

Highlighted Provisions:

This bill:

- ▶ addresses right to bail involving qualifying offenses;
- ▶ modifies terms related to jail release agreements and jail release court orders;
- ▶ addresses conditions for release after arrest for domestic violence and other offenses;
- ▶ amends provisions related to dismissal of certain offenses;
- ▶ addresses contents of pretrial protective orders;
- ▶ repeals language regarding privileged communications; and
- ▶ makes technical and conforming amendments.

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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 2017, Chapters 289, 311, and 332

77-20-3.5, as renumbered and amended by Laws of Utah 2017, Chapter 289

77-36-1, as last amended by Laws of Utah 2017, Chapters 289 and 332

77-36-2.7, as last amended by Laws of Utah 2017, Chapter 289

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 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

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release while previously on bail[-]; or

(e) domestic violence offense when the court finds that:

(i) there is substantial evidence to support the charge; and

(ii) by clear and convincing evidence, the person would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

(3) Any person who may be admitted to bail may be released by written undertaking or an equal amount of cash bail, or on the person's own recognizance, 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 court order issued in accordance with Section 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 [~~77-20-3.5(9) or (11)~~] (2).

(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

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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 77-20-3.5 is amended to read:

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 is entered into by an arrested ~~person~~ individual:

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

(i) under which the arrested ~~person~~ individual agrees to not:

(A) have personal contact with the alleged victim;

(B) threaten or harass the alleged victim; and

(C) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim; and

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

(c) "Jail release court order" means a written court order [~~issued in accordance with~~

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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]~~

(i) orders an arrested ~~[person]~~ individual not to:

(A) have personal contact with the alleged victim;

(B) threaten or harass the alleged victim; and

(C) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the 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 a qualifying offense and before the ~~[person]~~ individual is released on bail, recognizance, or otherwise, the ~~[person]~~ individual may not personally contact the alleged victim.

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

(3) (a) After ~~[a person]~~ an individual is arrested for a qualifying offense, the ~~[person]~~ individual may not be released before:

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

(ii) the ~~[person]~~ individual signs a jail release agreement ~~[in accordance with Subsection (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 (6)(a).

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

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~~[grounds exist to hold]~~ the arrested ~~[person]~~ individual may be held without bail, in accordance with Section 77-20-1~~;~~.

(ii) ~~[if no grounds exist to hold]~~ If the magistrate determines that the arrested ~~[person]~~ individual ~~has the right to be admitted to bail, the magistrate shall determine:~~

(A) whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; ~~[or]~~ and

~~[(iii)]~~ (B) any bail that is required to guarantee the arrested ~~[person's]~~ individual's subsequent appearance in court.

(d) ~~[(i)]~~ The magistrate may not release ~~[a person]~~ an individual arrested for a qualifying offense ~~[before the person's 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 arrested person will not:]~~ unless the magistrate issues a jail release court order or the arrested ~~{person}~~ individual signs a jail release agreement.

~~[(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 (3)(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 (3)(d)(i) by video if the arrested person is not released.]~~

(4) (a) If ~~[a person]~~ an individual charged with a qualifying offense fails to either schedule an initial appearance or to appear at the time scheduled by the magistrate ~~[under Subsection (3)(d), the person]~~ not more than 96 hours after the time of arrest, the ~~{person}~~ individual shall comply with the release conditions ~~[described in Subsection (3)(d)(i)]~~ of a jail release agreement or jail release court order until the ~~[person]~~ individual makes an initial appearance.

(b) If the prosecutor has not filed charges against ~~[a person]~~ an individual who was arrested for a qualifying offense and who appears in court at the time scheduled by the

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magistrate under Subsection (3)~~(d)~~, or by the court under Subsection (4)(b)(ii), the court:

(i) may, upon the motion of the prosecutor and after allowing the [person] individual an opportunity to be heard on the motion, extend the release conditions described in ~~[Subsection (3)(d)(i)]~~ the jail release court order or the jail release agreement by no more than three court days; and

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

(c) (i) If the prosecutor determines that there is insufficient evidence to file charges before an initial appearance scheduled under Subsection (4)(a), the prosecutor shall transmit a notice of declination to either the magistrate who signed a jail release court order or to the statewide domestic violence network described in Section 78B-7-113 if a releasing agency obtains a jail release agreement from a released arrestee.

(ii) A prosecutor's notice of declination transmitted under this Subsection (4)(c) is considered a motion to dismiss a jail release court order and a notice of expiration of a jail release agreement.

(5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release agreement or jail release court order expires at midnight after the sooner of:

(a) the arrested [person's] individual's initial scheduled court appearance described in Subsection ~~[(3)(d)(i):]~~ (4)(a);

(b) the declination is submitted under Subsection (4)(c); or

(c) 30 days from the day on which the arrested {person} individual is arrested.

(6) (a) (i) After an arrest for a qualifying offense, an alleged victim who is not a minor may waive in writing the release conditions ~~[described in Subsection (3)(d)(i)(A) or (C):]~~ prohibiting:

(A) personal contact with the alleged victim; or

(B) knowingly entering on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim.

(ii) Upon waiver, [those] the release conditions described in Subsection (6)(a)(i) do not apply to the arrested [person] individual.

(b) A court or magistrate may modify [the release conditions described in Subsection

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~~(3)(d)(i),~~ a jail release agreement or a jail release court order in writing or on the record, and only for good cause shown.

(7) (a) When an arrested ~~[person]~~ individual is released 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;

(ii) make a reasonable effort to notify the alleged victim of the release; and

(iii) before releasing the arrested ~~[person]~~ individual, give the arrested ~~[person]~~ individual a copy of the jail release agreement or the jail release court order.

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

(c) This Subsection (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.

(8) (a) If a law enforcement officer has probable cause to believe that ~~[a person]~~ an individual has violated a jail release agreement or jail release court order, the officer shall, without a warrant, arrest the ~~[person]~~ individual.

(b) ~~[Any person]~~ An individual who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (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]~~ A city attorney may prosecute class A misdemeanor violations under this section.

(9) ~~[A person]~~ An individual who is arrested for a qualifying offense that is a felony

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and released in accordance with this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against the ~~[person]~~ individual.

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

(a) the release conditions described in ~~[Subsections (3) through (5)]~~ this section, 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]~~ jail release agreement to comply with the release conditions; or

(ii) the magistrate ~~[orders]~~ issues a jail release order that specifies the release conditions;

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

~~[(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)]~~ (c) the address of the appropriate court in the district or county in which the alleged victim resides;

~~[(e)]~~ (d) the availability and effect of any waiver of the release conditions; and

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

(11) At the time an arrest is made for 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 (3) through (5)]~~ this section 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]~~ jail release agreement to comply with the release conditions; or

(ii) the magistrate ~~[orders the release conditions]~~ issues a jail release court order;

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

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court order; 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.

~~[(13) In addition to the provisions of Subsections (3) through (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 constitute a substantial danger to an alleged victim of domestic violence if released on bail.]~~

~~[(14) The provisions of this section do]~~

(13) This section does not apply if the person individual arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.

Section 3. 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

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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
 - (p) child abuse as described in Section 76-5-109.1.
- (5) "Jail release agreement" means the same as that term is defined in Section

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77-20-3.5.

(6) "Jail release court order" means the same as that term is defined in Section 77-20-3.5.

(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).

(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]~~ Section 77-20-3.5~~(3)~~, Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

(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.

(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.

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

Section 4. Section **77-36-2.7** is amended to read:

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

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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; and

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

~~[(f)]~~ (e) 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 and the vulnerability of victims of other qualifying offenses as defined in Section 77-20-3.5, when any defendant is charged with a crime involving ~~[domestic violence]~~ a qualifying offense, 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;

(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.

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(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) If the court is unable to locate the victim, the court shall provide the victim's certified copy to the prosecutor.

~~[(ii)]~~ (iii) 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 jail release agreement or jail release court order.

(e) If the alleged victim and the defendant share custody of one or more minor children, the court may include in a pretrial protective order provisions for indirect or limited contact to temporarily facilitate parent visitation with a minor child.

(f) In a pretrial protective order the court shall determine whether to allow provisions for transfer of personal property to decrease the need for contact between the parties.

(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 any related order or agreement on 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)]~~ (5) The court may not approve diversion for a perpetrator of domestic violence.

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Legislative Review Note

Office of Legislative Research and General Counsel