

Representative Robert M. Spendlove proposes the following substitute bill:

DOMESTIC VIOLENCE RESPONSE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions of the Utah Code relating to domestic violence.

Highlighted Provisions:

This bill:

- ▶ provides a penalty enhancement for a domestic violence offense committed within 10 years after a previous domestic violence offense;
- ▶ provides that a second or subsequent violation of a jail release agreement or jail release court order is subject to penalty enhancements;
- ▶ provides that a court may require a defendant ordered to participate in electronic monitoring for a domestic violence offense to pay the cost of the monitoring if the defendant is able; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 [53-10-403](#), as last amended by Laws of Utah 2017, Chapter 289
- 27 [77-20-3.5](#), as renumbered and amended by Laws of Utah 2017, Chapter 289
- 28 [77-36-1.1](#), as last amended by Laws of Utah 2015, Chapter 426
- 29 [77-36-2.6](#), as last amended by Laws of Utah 2017, Chapter 332
- 30 [77-36-5](#), as last amended by Laws of Utah 2017, Chapter 332

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

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

33 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

34 (1) Sections [53-10-404](#), [53-10-404.5](#), [53-10-405](#), and [53-10-406](#) apply to any person
35 who:

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

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

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

43 (d) has been booked:

44 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,
45 2014, through December 31, 2014, under Subsection [53-10-404\(4\)\(b\)](#) for any felony offense; or

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

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

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

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

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

51 (i) for which the court enters a judgment for conviction to a lower degree of offense
52 under Section [76-3-402](#); or

53 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
54 defined in Section [77-2a-1](#); or

55 (c) (i) any violent felony as defined in Section [53-10-403.5](#);

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

88 Subsection 76-10-1504(3);
89 (xxiv) commercial obstruction, Subsection 76-10-2402(2);
90 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section
91 77-41-107;
92 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1[(2)(c)](4) or (5); or
93 (xxvii) violation of condition for release after arrest under Section 77-20-3.5.

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

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

99 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
100 2002 for an offense under Subsection (2).

101 Section 2. Section 77-20-3.5 is amended to read:

102 **77-20-3.5. Conditions for release after arrest for domestic violence and other**
103 **offenses -- Jail release agreements -- Jail release court orders.**

104 (1) As used in this section:

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

106 (b) "Jail release agreement" means a written agreement described in Subsection
107 77-20-3.5(3) that:

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

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

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

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

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

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

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

- 119 (f) "Qualifying offense" means:
- 120 (i) domestic violence;
- 121 (ii) an offense against a child or vulnerable adult; or
- 122 (iii) the commission or attempted commission of an offense described in Title 76,
- 123 Chapter 5, Part 4, Sexual Offenses.
- 124 (2) (a) Upon arrest for a qualifying offense and before the ~~[person]~~ individual is
- 125 released on bail, recognizance, or otherwise, the ~~[person]~~ individual may not personally contact
- 126 the alleged victim.
- 127 (b) ~~[A person]~~ An individual who violates Subsection (2)(a) is guilty of a class B
- 128 misdemeanor.
- 129 (3) (a) After ~~[a person]~~ an individual is arrested for a qualifying offense, the ~~[person]~~
- 130 individual may not be released before:
- 131 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
- 132 (ii) the ~~[person]~~ individual signs a jail release agreement in accordance with Subsection
- 133 (3)(d)(i).
- 134 (b) The arresting officer shall ensure that the information presented to the magistrate
- 135 includes whether the alleged victim has made a waiver described in Subsection (6)(a).
- 136 (c) If the magistrate determines there is probable cause to support the charge or charges
- 137 of one or more qualifying offenses, the magistrate shall determine:
- 138 (i) whether grounds exist to hold the arrested ~~[person]~~ individual without bail, in
- 139 accordance with Section 77-20-1;
- 140 (ii) if no grounds exist to hold the arrested ~~[person]~~ individual without bail, whether
- 141 any release conditions, including electronic monitoring, are necessary to protect the alleged
- 142 victim; or
- 143 (iii) any bail that is required to guarantee the arrested ~~[person's]~~ individual's subsequent
- 144 appearance in court.
- 145 (d) (i) The magistrate may not release ~~[a person]~~ an individual arrested for a qualifying
- 146 offense before the ~~[person's]~~ individual's initial court appearance before the court with
- 147 jurisdiction over the offense for which the ~~[person]~~ individual was arrested, unless the arrested
- 148 ~~[person]~~ individual agrees in writing or the magistrate orders, as a release condition, that, until
- 149 the arrested ~~[person]~~ individual appears at the initial court appearance, the arrested ~~[person]~~

150 individual will not:

151 (A) have personal contact with the alleged victim;

152 (B) threaten or harass the alleged victim; or

153 (C) knowingly enter onto the premises of the alleged victim's residence or any premises

154 temporarily occupied by the alleged victim.

155 (ii) The magistrate shall schedule the appearance described in Subsection (3)(d)(i) to

156 take place no more than 96 hours after the time of the arrest.

157 (iii) The arrested [~~person~~] individual may make the appearance described in Subsection

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

159 (4) (a) If [~~a person~~] an individual charged with a qualifying offense fails to appear at

160 the time scheduled by the magistrate under Subsection (3)(d), the [~~person~~] individual shall

161 comply with the release conditions described in Subsection (3)(d)(i) until the [~~person~~]

162 individual makes an initial appearance.

163 (b) If the prosecutor has not filed charges against [~~a person~~] an individual who was

164 arrested for a qualifying offense and who appears in court at the time scheduled by the

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

166 (i) may, upon the motion of the prosecutor and after allowing the [~~person~~] individual

167 an opportunity to be heard on the motion, extend the release conditions described in Subsection

168 (3)(d)(i) by no more than three court days; and

169 (ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the

170 arrested [~~person~~] individual to appear at a time scheduled before the end of the granted

171 extension.

172 (5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release

173 agreement or jail release court order expires at midnight after the arrested [~~person's~~]

174 individual's initial scheduled court appearance described in Subsection (3)(d)(i).

175 (6) (a) After an arrest for a qualifying offense, an alleged victim who is not a minor

176 may waive in writing the release conditions described in Subsection (3)(d)(i)(A) or (C). Upon

177 waiver, those release conditions do not apply to the arrested [~~person~~] individual.

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

179 (3)(d)(i), in writing or on the record, and only for good cause shown.

180 (7) (a) When an arrested [~~person~~] individual is released in accordance with Subsection

181 (3), the releasing agency shall:

182 (i) notify the arresting law enforcement agency of the release, conditions of release, and
183 any available information concerning the location of the alleged victim;

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

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

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

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

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

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

200 (b) [~~Any person~~] An individual who knowingly violates a jail release court order or jail
201 release agreement executed [~~pursuant to~~] under Subsection (3) is guilty as follows:

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

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

206 (c) An individual who knowingly commits a second or subsequent violation of a jail
207 release court order or jail release agreement executed under Subsection (3) is subject to
208 increased penalties in accordance with Section 77-36-1.1.

209 [~~(c)~~] (d) City attorneys may prosecute class A misdemeanor violations under this
210 section.

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

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

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

216 (a) the release conditions described in Subsections (3) through (5), and notice that the
217 alleged perpetrator will not be released, before appearing before the court with jurisdiction over
218 the offense for which the alleged perpetrator was arrested, unless:

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

221 (ii) the magistrate orders the release conditions;

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

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

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

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

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

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

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

235 (b) the release conditions described in Subsections (3) through (5) and notice that the
236 alleged perpetrator will not be released, before appearing before the court with jurisdiction over
237 the offense for which the alleged perpetrator was arrested, unless:

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

240 (ii) the magistrate orders the release conditions;

241 (c) notification of the penalties for violation of any jail release agreement or jail release
242 court order; and

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

245 (12) (a) A pretrial or sentencing protective order [~~supercedes~~] supersedes a jail release
246 agreement or jail release court order.

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

250 (13) In addition to the provisions of Subsections (3) through (12), because of the
251 unique and highly emotional nature of domestic violence crimes, the high recidivism rate of
252 violent offenders, and the demonstrated increased risk of continued acts of violence subsequent
253 to the release of an offender who has been arrested for domestic violence, it is the finding of
254 the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for
255 which bail may be denied if there is substantial evidence to support the charge, and if the court
256 finds by clear and convincing evidence that the alleged perpetrator would constitute a
257 substantial danger to an alleged victim of domestic violence if released on bail.

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

260 Section 3. Section 77-36-1.1 is amended to read:

261 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**
262 **offenses.**

263 (1) For purposes of this section, "qualifying domestic violence offense" means:

264 (a) a domestic violence offense in Utah; [~~or~~]

265 (b) a violation of a jail release court order or jail release agreement executed under
266 Subsection 77-20-3.5(3); or

267 [~~(b)~~] (c) an offense in any other state, or in any district, possession, or territory of the
268 United States, that would be a domestic violence offense under Utah law.

269 (2) [~~A person~~] Except as provided in Subsection (3)(b), (4)(c), or (5)(d), an individual
270 who is convicted of a domestic violence offense is [~~is~~] guilty of a class B misdemeanor if:

271 [(i)] (a) the domestic violence offense described in this Subsection (2) is designated by
272 law as a class C misdemeanor; and

273 [(ii)-(A)] (b) (i) the domestic violence offense described in this Subsection (2) is

274 committed within [~~five~~] 10 years after the person is convicted of a qualifying domestic violence
275 offense; or

276 [~~(B) the person~~]

277 (ii) the individual is convicted of the domestic violence offense described in this
278 Subsection (2) within [~~five~~] 10 years after the [~~person~~] day on which the individual is convicted
279 of a qualifying domestic violence offense[;].

280 [~~(b)~~] (3) Except as provided in Subsection (4)(b), (4)(c), (5)(c), or (5)(d), an individual
281 who is convicted of a domestic violence offense is guilty of a class A misdemeanor if:

282 (a) (i) the domestic violence offense described in this Subsection [~~(2)~~] (3) is designated
283 by law as a class B misdemeanor; and

284 (ii) (A) the domestic violence offense described in this Subsection [~~(2)~~] (3) is
285 committed within [~~five~~] 10 years after the [~~person~~] day on which the individual is convicted of
286 a qualifying domestic violence offense; or

287 (B) the [~~person~~] individual is convicted of the domestic violence offense described in
288 this Subsection [~~(2) within five years after the person~~] (3) within 10 years after the day on
289 which the individual is convicted of a qualifying domestic violence offense; or

290 (b) (i) the domestic violence offense described in this Subsection (3) is designated by
291 law as a class C misdemeanor; and

292 (ii) (A) the individual has been convicted twice of a qualifying domestic violence
293 offense and commits the domestic violence offense described in this Subsection (3) within 10
294 years after the previous two convictions; or

295 (B) the individual has been convicted twice of a qualifying domestic violence offense
296 and is convicted of the domestic violence offense described in this Subsection (3) within 10
297 years after the previous two convictions.

298 [~~(c)~~] (4) Except as provided in Subsections (5)(b) through (d), an individual who is
299 convicted of a domestic violence offense is guilty of a felony of the third degree if:

300 (a) (i) the domestic violence offense described in this Subsection [~~(2)~~] (4) is designated
301 by law as a class A misdemeanor; and

302 (ii) (A) the domestic violence offense described in this Subsection [~~(2)~~] (4) is
303 committed within [~~five~~] 10 years after the [~~person~~] day on which the individual is convicted of
304 a qualifying domestic violence offense; or

305 (B) the [person] individual is convicted of the domestic violence offense described in
306 this Subsection [~~(2) within five years after the person~~] (4) within 10 years after the day on
307 which the individual is convicted of a qualifying domestic violence offense[-];

308 (b) (i) the domestic violence offense described in this Subsection (4) is designated by
309 law as a class B misdemeanor; and

310 (ii) (A) the individual has been convicted twice of a qualifying domestic violence
311 offense and commits the domestic violence offense described in this Subsection (4) within 10
312 years after the previous two convictions; or

313 (B) the individual has been convicted twice of a qualifying domestic violence offense
314 and is convicted of the domestic violence offense described in this Subsection (4) within 10
315 years after the previous two convictions; or

316 (c) (i) the domestic violence offense described in this Subsection (4) is designated by
317 law as a class C misdemeanor; and

318 (ii) (A) the individual has been convicted three times of a qualifying domestic violence
319 offense and commits the domestic violence offense described in this Subsection (4) within 10
320 years after the previous three convictions; or

321 (B) the individual has been convicted three times of a qualifying domestic violence
322 offense and is convicted of the domestic violence offense described in this Subsection (4)
323 within 10 years after the previous three convictions.

324 (5) An individual who is convicted of a domestic violence offense is guilty of a felony
325 of the second degree if:

326 (a) (i) the domestic violence offense described in this Subsection (5) is designated by
327 law as a third degree felony; and

328 (ii) (A) the domestic violence offense described in this Subsection (5) is committed
329 within 10 years after the day on which the individual is convicted of a qualifying domestic
330 violence offense; or

331 (B) the individual is convicted of the domestic violence offense described in this
332 Subsection (5) within 10 years after the day on which the individual is convicted of a
333 qualifying domestic violence offense; or

334 (b) (i) the domestic violence offense described in this Subsection (5) is designated by
335 law as a class A misdemeanor; and

336 (ii) (A) the individual has been convicted twice of a qualifying domestic violence
337 offense and commits the domestic violence offense described in this Subsection (5) within 10
338 years after the previous two convictions; or

339 (B) the individual has been convicted twice of a qualifying domestic violence offense
340 and is convicted of the domestic violence offense described in this Subsection (5) within 10
341 years after the previous two convictions;

342 (c) (i) the domestic violence offense described in this Subsection (5) is designated by
343 law as a class B misdemeanor; and

344 (ii) (A) the individual has been convicted three times of a qualifying domestic violence
345 offense and commits the domestic violence offense described in this Subsection (5) within 10
346 years after the previous three convictions; or

347 (B) the individual has been convicted three times of a qualifying domestic violence
348 offense and is convicted of the domestic violence offense described in this Subsection (5)
349 within 10 years after the previous three convictions; or

350 (d) (i) the domestic violence offense described in this Subsection (5) is designated by
351 law as a class C misdemeanor; and

352 (ii) (A) the individual has been convicted four times of a qualifying domestic violence
353 offense and commits the domestic violence offense described in this Subsection (5) within 10
354 years after the previous four convictions; or

355 (B) the individual has been convicted four times of a qualifying domestic violence
356 offense and is convicted of the domestic violence offense described in this Subsection (5)
357 within 10 years after the previous four convictions.

358 Section 4. Section 77-36-2.6 is amended to read:

359 **77-36-2.6. Appearance of defendant required -- Determinations by court --**

360 **Pretrial protective order.**

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

364 (2) A defendant who has been charged by citation, indictment, or information with an
365 offense involving domestic violence but has not been arrested, shall appear before the court in
366 person for arraignment or initial appearance as soon as practicable, but no later than 14 days

367 after the next day on which court is in session following the issuance of the citation or the
 368 filing of the indictment or information.

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

370 (a) determine the necessity of imposing a pretrial protective order or other condition of
 371 pretrial release, including participating in an electronic or other type of monitoring program in
 372 accordance with Subsection 77-36-5(2)(b);

373 (b) identify the individual designated by the victim to communicate between the
 374 defendant and the victim if and to the extent necessary for family related matters; and

375 (c) state its findings and determination in writing.

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

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

378 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**
 379 **Counseling -- Cost assessed against defendant -- Sentencing protective order --**
 380 **Continuous protective order.**

381 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a
 382 condition of the sentence restricts the defendant's contact with the victim, a sentencing
 383 protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's
 384 probation or a continuous protective order may be issued under Subsection 77-36-5.1(6).

385 (b) (i) The sentencing protective order or continuous protective order shall be in
 386 writing, and the prosecutor shall provide a certified copy of that order to the victim.

387 (ii) The court shall transmit the sentencing protective order or continuous protective
 388 order to the statewide domestic violence network.

389 (c) Violation of a sentencing protective order or continuous protective order issued
 390 [~~pursuant to this~~] under Subsection (1) is a class A misdemeanor.

391 (2) (a) In determining its sentence, the court, in addition to penalties otherwise
 392 provided by law, [~~may require~~] shall determine whether requiring the defendant to participate
 393 in an electronic or other type of monitoring program is necessary to protect the victim.

394 (b) In determining whether an electronic or another type of monitoring program is
 395 necessary under Subsection (2)(a), the court shall consider all relevant factors, including:

396 (i) the defendant's risk to the victim based on a lethality assessment provided to the
 397 court; and

398 (ii) whether the defendant was previously arrested for, or convicted of, a domestic
399 violence offense.

400 (c) The court shall order the defendant to pay the costs of the electronic or other type of
401 monitoring program according to the defendant's ability to pay.

402 (3) The court may also require the defendant to pay all or part of the costs of
403 counseling incurred by the victim and any children affected by or exposed to the domestic
404 violence offense, as well as the costs for the defendant's own counseling.

405 (4) The court shall:

406 (a) assess against the defendant, as restitution, any costs for services or treatment
407 provided to the victim and affected children of the victim or the defendant by the Division of
408 Child and Family Services under Section [62A-4a-106](#); and

409 (b) order those costs to be paid directly to the division or its contracted provider.

410 (5) The court may order the defendant to obtain and satisfactorily complete treatment
411 or therapy in a domestic violence treatment program, as defined in Section [62A-2-101](#), that is
412 licensed by the Department of Human Services.