

HB0333S01 compared with HB0333

~~{deleted text}~~ shows text that was in HB0333 but was deleted in HB0333S01.

Inserted text shows text that was not in HB0333 but was inserted into HB0333S01.

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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 that assault is a class A misdemeanor when committed against an individual's cohabitant or dating partner;~~
- ~~—————→ provides that violation of a dating violence protective order is a class A misdemeanor;~~
- ~~‡~~ ▶ provides a penalty enhancement for a ~~{third degree felony}~~ domestic violence offense committed within ~~{five}~~ 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;

HB0333S01 compared with HB0333

- ▶ 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:

53-10-403, as last amended by Laws of Utah 2017, Chapter 289

~~{ 76-5-102, as last amended by Laws of Utah 2015, Chapter 430~~

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

77-36-1.1, as last amended by Laws of Utah 2015, Chapter 426

77-36-2.6, as last amended by Laws of Utah 2017, Chapter 332

77-36-5, as last amended by Laws of Utah 2017, Chapter 332

~~{ 78B-7-406, as enacted by Laws of Utah 2013, Chapter 179~~

~~— 78B-7-407, as enacted by Laws of Utah 2013, Chapter 179~~

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

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

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

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

who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection

(2)(a) or (b) on or after July 1, 2002;

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

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

HB0333S01 compared with HB0333

(d) has been booked:

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

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

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

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

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

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

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

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

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

(ii) sale or use of body parts, Section 26-28-116;

(iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

(iv) driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death, Subsection 58-37-8(2)(g);

(v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

(vi) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;

(vii) aggravated human trafficking and aggravated human smuggling, Section 76-5-310;

(viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;

(ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

(x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;

(xi) sale of a child, Section 76-7-203;

(xii) aggravated escape, Subsection 76-8-309(2);

(xiii) a felony violation of assault on an elected official, Section 76-8-315;

(xiv) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, Section 76-8-316;

HB0333S01 compared with HB0333

- (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
- (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- (xvii) a felony violation of sexual battery, Section 76-9-702.1;
- (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;
- (xix) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;
- (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;
- (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;
- (xxii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);
- (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon, Subsection 76-10-1504(3);
- (xxiv) commercial obstruction, Subsection 76-10-2402(2);
- (xxv) a felony violation of failure to register as a sex or kidnap offender, Section 77-41-107;
- (xxvi) repeat violation of a protective order, Subsection 77-36-1.1~~[(2)(c)]~~[(4)] or ~~[(4)]~~[(5)]; or
- (xxvii) violation of condition for release after arrest under Section 77-20-3.5.

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

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

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

Section 2. Section ~~{76-5-102}~~77-20-3.5 is amended to read:

~~{~~ ~~76-5-102. Assault -- Penalties.~~

~~(1) Assault is:~~

~~(a) an attempt, with unlawful force or violence, to do bodily injury to another, or~~

HB0333S01 compared with HB0333

~~(b) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.~~

~~(2) Assault is a class B misdemeanor.~~

~~(3) Assault is a class A misdemeanor if:~~

~~(a) the [person] individual causes substantial bodily injury to another; [or]~~

~~(b) the victim is pregnant and the [person] individual has knowledge of the pregnancy[.]; or~~

~~(c) the individual causes bodily injury to the individual's:~~

~~(i) cohabitant as defined in Section 78B-7-102; or~~

~~(ii) dating partner as defined in Section 78B-7-402.~~

~~(4) It is not a defense against assault, that the accused caused serious bodily injury to another.~~

~~Section 3. 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:

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

(ii) specifies other conditions of release from jail.

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

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

(ii) specifies other conditions of release from jail.

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

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

(f) "Qualifying offense" means:

HB0333S01 compared with HB0333

- (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) 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 grounds exist to hold the arrested ~~[person]~~ individual without bail, in accordance with Section 77-20-1;

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

(iii) any bail that is required to guarantee the 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]~~ individual's initial court appearance before the court with jurisdiction over the offense for which the ~~[person]~~ individual was arrested, unless the arrested ~~[person]~~ individual agrees in writing or the magistrate orders, as a release condition, that, until the arrested ~~[person]~~ individual appears at the initial court appearance, the arrested ~~[person]~~ individual will not:

HB0333S01 compared with HB0333

(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~~] individual may make the appearance described in Subsection (3)(d)(i) by video if the arrested [~~person~~] individual is not released.

(4) (a) If [~~a person~~] an individual charged with a qualifying offense fails to appear at the time scheduled by the magistrate under Subsection (3)(d), the [~~person~~] individual shall comply with the release conditions described in Subsection (3)(d)(i) 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 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) 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.

(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 arrested [~~person's~~] individual's initial scheduled court appearance described in Subsection (3)(d)(i).

(6) (a) 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). Upon waiver, those release conditions do not apply to the arrested [~~person~~] individual.

(b) A court or magistrate may modify the release conditions described in Subsection (3)(d)(i), 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:

HB0333S01 compared with HB0333

(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]~~ under Subsection (3) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When ~~[a person]~~ an individual arrested for domestic violence is released ~~[pursuant to]~~ under Subsections (3) through (5) based upon a jail release court order or if a written jail release agreement is modified ~~[pursuant to]~~ under 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]~~ under 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) An individual who knowingly commits a second or subsequent violation of a jail release court order or jail release agreement executed under Subsection (3) is subject to increased penalties in accordance with Section 77-36-1.1.

~~[(c)]~~ (d) City attorneys 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 and released in accordance with this section may subsequently be held without bail if there is

HB0333S01 compared with HB0333

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), and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

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

(ii) the magistrate orders the release conditions;

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

(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.

(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) and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

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

(ii) the magistrate orders the release conditions;

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

(d) notification that the alleged perpetrator is to personally appear in court on the next

HB0333S01 compared with HB0333

day the court is open for business after the day of the arrest.

(12) (a) A pretrial or sentencing protective order [~~supercedes~~] supersedes 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 not apply if the [~~person~~] individual arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.

Section ~~{4}~~3. Section **77-36-1.1** is amended to read:

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

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

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

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

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

(2) [~~A person~~] ~~{An}~~ Except as provided in Subsection (3)(b), (4)(c), or (5)(d), an individual who is convicted of a domestic violence offense is ~~{t}~~

~~{a}~~ ~~{t}~~ guilty of a class B misdemeanor if:

~~{i}~~ (a) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and

~~{ii}~~ (A) (b) (i) the domestic violence offense described in this Subsection (2) is

HB0333S01 compared with HB0333

committed within five 10 years after the ~~{}~~person~~{}~~ day on which the individual is convicted of a qualifying domestic violence offense; or

~~[(B) the {} person] {}~~

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

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

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

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

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

~~{(c)b}~~ { guilty of a felony of the third degree if:

~~—————~~ {(i) the domestic violence offense described in this Subsection (2)3} is designated by law as a class {A}C misdemeanor; and

(ii) (A) the individual has been convicted twice of a qualifying domestic violence offense and commits the domestic violence offense described in this Subsection ~~{(2)3}~~ { is committed} within ~~{five}~~ 10 years after the ~~{[person]}~~ day on which the individual is convicted}; previous two convictions; or

(B) the individual has been convicted twice of a qualifying domestic violence offense~~;~~
or

~~—————~~ (B) the [person] individual} and is convicted of the domestic violence offense described in this Subsection ~~{(2)3}~~ within ~~{five}~~ 10 years after the ~~{[person]}~~ day on which the individual}; previous two convictions.

[(c)] (4) Except as provided in Subsections (5)(b) through (d), an individual who is convicted of a ~~{ qualifying}~~ domestic violence offense ~~{[.] or}~~ is

HB0333S01 compared with HB0333

~~(d)~~ guilty of a felony of the ~~{second}~~third degree if:

~~(a)~~ (i) the domestic violence offense described in this Subsection ~~[(2)]~~(4) is designated by law as a ~~{third degree felony}~~class A misdemeanor; and

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

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

~~Section 5~~[-]:

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

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

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

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

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

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

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

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

(ii) (A) the domestic violence offense described in this Subsection (5) is committed

HB0333S01 compared with HB0333

within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense; or

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

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

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

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

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

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

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

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

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

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

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

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

HB0333S01 compared with HB0333

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 participating in an electronic or other type of monitoring program in accordance with Subsection 77-36-5(2)(b);

(b) identify the individual designated by the victim to 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.

Section ~~67~~5. 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 -- Continuous 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~~] under Subsection (1) is a class A misdemeanor.

HB0333S01 compared with HB0333

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

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

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

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

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

(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 78B-7-406 is amended to read:~~

~~78B-7-406. Fees -- Service of process.~~

~~(1) Protective orders issued under this part shall be served by the sheriff's office, constable's office, or any law enforcement agency or peace officer, in accordance with Subsection 78B-7-404(8).~~

~~(2) Fees may not be imposed by a court clerk, sheriff, constable, or law enforcement agency for:~~

~~(a) filing a petition under this part;~~

~~(b) obtaining a protective order under this part; or~~

HB0333S01 compared with HB0333

- ~~—— (c) service of a protective order issued under this part.~~
- ~~—— (3) (a) The offices of the court clerk shall provide forms and nonlegal assistance to an individual seeking to proceed under this part.~~
- ~~—— (b) The Administrative Office of the Courts shall:~~
 - ~~—— (i) develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter; and~~
 - ~~—— (ii) provide the forms described in Subsection (3)(b)(i) to the clerk of each court authorized to issue protective orders.~~
 - ~~—— (c) The forms described in Subsection (3)(b)(i) shall include:~~
 - ~~—— (i) a statement notifying the petitioner for an ex parte dating violence 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) language stating [violating] violation of any criminal provision is a class [B] A misdemeanor; and~~
 - ~~—— (iii) a space for any information the petitioner is able to provide to facilitate identification of the respondent, including Social Security number, driver license number, date of birth, address, telephone number, and physical description.~~
- ~~—— (4) If the individual 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 (3);~~
 - ~~—— (b) all other forms required to petition for an order for protection, including forms for service;~~
 - ~~—— (c) except for as provided by Subsection (5), clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (3)(a);~~
 - ~~—— (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 part, with the phone 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 for the use of transportation order forms when necessary.~~
- ~~—— (5) A court clerk's office may designate any other entity, agency, or individual to~~

HB0333S01 compared with HB0333

~~provide the service described in Subsection (4)(c), but the court clerk's office is responsible to see that the service is provided:~~

~~—— (6) A petition for a dating violence protective order or ex parte dating violence protective order shall be in writing and verified:~~

~~—— (7) (a) All protective orders issued under this part shall be issued in the form adopted by the Administrative Office of the Courts under Subsection (3)(b):~~

~~—— (b) Each protective order issued under this part, 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."~~

~~—— Section 8. Section ~~78B-7-407~~ is amended to read:~~

~~—— ~~78B-7-407. Enforcement.~~~~

~~—— (1) A law enforcement officer shall, without a warrant, arrest [a person] an individual if the officer has probable cause to believe that [the person] the individual has intentionally or knowingly violated a protective order issued under this part, regardless of whether the violation occurred in the presence of the officer:~~

~~—— (2) A violation of a protective order issued under this part constitutes a class [B] A misdemeanor:~~

~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel}~~