

Representative Kim F. Coleman proposes the following substitute bill:

DOMESTIC VIOLENCE ENHANCEMENT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding the definition of "domestic violence" and the penalty enhancement for a domestic violence offense.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "domestic violence" or "domestic violence offense";
- ▶ extends the duration between domestic violence offenses for purposes of applying a penalty enhancement; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-36-1, as last amended by Laws of Utah 2018, Chapter 255

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



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

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

28 **77-36-1. Definitions.**

29 As used in this chapter:

30 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

31 (2) "Department" means the Department of Public Safety.

32 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
33 3, Divorce.

34 (4) (a) "Domestic violence" or "domestic violence offense" means any criminal offense
35 involving violence or physical harm or threat of violence or physical harm, or any attempt,
36 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
37 when committed by one cohabitant against another. "Domestic violence" or "domestic
38 violence offense" also means commission or attempt to commit, any of the following offenses
39 by one cohabitant against another:

40 [~~(a)~~] (i) aggravated assault, as described in Section [76-5-103](#);

41 [~~(b)~~] (ii) assault, as described in Section [76-5-102](#);

42 [~~(c)~~] (iii) criminal homicide, as described in Section [76-5-201](#);

43 [~~(d)~~] (iv) harassment, as described in Section [76-5-106](#);

44 [~~(e)~~] (v) electronic communication harassment, as described in Section [76-9-201](#);

45 [~~(f)~~] (vi) kidnapping, child kidnapping, or aggravated kidnapping, as described in
46 Sections [76-5-301](#), [76-5-301.1](#), and [76-5-302](#);

47 [~~(g)~~] (vii) mayhem, as described in Section [76-5-105](#);

48 [~~(h)~~] (viii) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses,
49 and Section [76-5b-201](#), Sexual exploitation of a minor -- Offenses;

50 [~~(i)~~] (ix) stalking, as described in Section [76-5-106.5](#);

51 [~~(j)~~] (x) unlawful detention or unlawful detention of a minor, as described in Section
52 [76-5-304](#);

53 [~~(k)~~] (xi) violation of a protective order or ex parte protective order, as described in
54 Section [76-5-108](#);

55 [~~(l)~~] (xii) except as provided in Subsection (4)(b), any offense against property
56 described in Title 76, Chapter 6, Part 1, Property Destruction, committed with the intent to

57 harass or threaten the other cohabitant;

58 (xiii) any offense against property described in Title 76, Chapter 6, Part 2, Burglary and
59 Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;

60 ~~[(m)]~~ (xiv) possession of a deadly weapon with criminal intent, as described in Section
61 76-10-507;

62 ~~[(n)]~~ (xv) discharge of a firearm from a vehicle, near a highway, or in the direction of
63 any person, building, or vehicle, as described in Section 76-10-508;

64 ~~[(o)]~~ (xvi) disorderly conduct, as defined in Section 76-9-102, if a conviction of
65 disorderly conduct is the result of a plea agreement in which the defendant was originally
66 charged with a domestic violence offense otherwise described in this Subsection (4), except
67 that a conviction of disorderly conduct as a domestic violence offense, in the manner described
68 in this Subsection (4)~~[(o)](a)~~(xvi), does not constitute a misdemeanor crime of domestic
69 violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C.
70 Sec. 921 et seq.;

71 ~~[(p)]~~ (xvii) child abuse, as described in Section 76-5-109.1;

72 ~~[(q)]~~ (xviii) threatening use of a dangerous weapon, as described in Section 76-10-506;

73 ~~[(r)]~~ (xix) threatening violence, as described in Section 76-5-107;

74 ~~[(s)]~~ (xx) tampering with a witness, as described in Section 76-8-508;

75 ~~[(t)]~~ (xxi) retaliation against a witness or victim, as described in Section 76-8-508.3;

76 ~~[(u)]~~ (xxii) unlawful distribution of an intimate image, as described in Section
77 76-5b-203;

78 ~~[(v)]~~ (xxiii) sexual battery, as described in Section 76-9-702.1;

79 ~~[(w)]~~ (xxiv) voyeurism, as described in Section 76-9-702.7;

80 ~~[(x)]~~ (xxv) damage to or interruption of a communication device, as described in
81 Section 76-6-108; or

82 ~~[(y)]~~ (xxvi) an offense described in Section 77-20-3.5.

83 (b) "Domestic violence" or "domestic violence offense" does not include an offense
84 described in Section 76-6-108.

85 (5) "Jail release agreement" means the same as that term is defined in Section
86 77-20-3.5.

87 (6) "Jail release court order" means the same as that term is defined in Section

88 77-20-3.5.

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

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

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

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

96 (11) "Pretrial protective order" means a written order:

97 (a) specifying and limiting the contact a person who has been charged with a domestic
98 violence offense may have with an alleged victim or other specified individuals; and

99 (b) specifying other conditions of release pursuant to Subsection 77-20-3.5(3),
100 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

101 (12) "Sentencing protective order" means a written order of the court as part of
102 sentencing in a domestic violence case that limits the contact a person who has been convicted
103 of a domestic violence offense may have with a victim or other specified individuals pursuant
104 to Sections 77-36-5 and 77-36-5.1.

105 (13) "Separated" means a couple who have had their marriage solemnized under
106 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

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

108 Section 2. Section 77-36-1.1 is amended to read:

109 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**
110 **offenses.**

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

112 (a) a domestic violence offense in Utah; or

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

115 (2) ~~[A person]~~ An individual who is convicted of a domestic violence offense is:

116 (a) guilty of a class B misdemeanor if:

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

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

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

125 (b) guilty of a class A misdemeanor if:

126 (i) the domestic violence offense described in this Subsection (2) is designated by law
127 as a class B misdemeanor; and

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

131 (B) the [~~person~~] individual is convicted of the domestic violence offense described in
132 this Subsection (2) within [~~five~~] 10 years after the [~~person~~] individual is convicted of a
133 qualifying domestic violence offense; or

134 (c) guilty of a felony of the third degree if:

135 (i) the domestic violence offense described in this Subsection (2) is designated by law
136 as a class A misdemeanor; and

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

140 (B) the [~~person~~] individual is convicted of the domestic violence offense described in
141 this Subsection (2) within [~~five~~] 10 years after the [~~person~~] individual is convicted of a
142 qualifying domestic violence offense.