

## HB0137S01 compared with HB0137

~~text~~ shows text that was in HB0137 but was deleted in HB0137S01.

Inserted text shows text that was not in HB0137 but was inserted into HB0137S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

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#### 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:

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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

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

[Section 1. 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) [\(a\)](#) "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 by one cohabitant against another:

- [\(a\)](#) [\(i\)](#) aggravated assault, as described in Section 76-5-103;
- [\(b\)](#) [\(ii\)](#) assault, as described in Section 76-5-102;
- [\(c\)](#) [\(iii\)](#) criminal homicide, as described in Section 76-5-201;
- [\(d\)](#) [\(iv\)](#) harassment, as described in Section 76-5-106;
- [\(e\)](#) [\(v\)](#) electronic communication harassment, as described in Section 76-9-201;
- [\(f\)](#) [\(vi\)](#) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
- [\(g\)](#) [\(vii\)](#) mayhem, as described in Section 76-5-105;
- [\(h\)](#) [\(viii\)](#) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- [\(i\)](#) [\(ix\)](#) stalking, as described in Section 76-5-106.5;

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

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

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

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

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

~~[(n)]~~ (xv) 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)]~~ (xvi) 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), except that a conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4) ~~[(o)]~~ (a)(xvi), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;

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

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

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

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

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

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

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

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

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

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

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

(5) "Jail release agreement" means the same as that term is defined in Section 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 couple 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 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 couple 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 ~~11~~2. 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

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(b) 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 individual who is convicted of a domestic violence offense is:

(a) guilty of a class B misdemeanor if:

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

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

(b) guilty of a class A misdemeanor if:

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

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

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

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

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