

## SB0046S01 compared with SB0046

~~deleted text~~ shows text that was in SB0046 but was deleted in SB0046S01.

inserted text shows text that was not in SB0046 but was inserted into SB0046S01.

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Senator Jani Iwamoto proposes the following substitute bill:

### DOMESTIC VIOLENCE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jani Iwamoto**

House Sponsor: Paul Ray

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#### LONG TITLE

##### General Description:

This bill relates to the offense of commission of domestic violence in the presence of a child.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ increases the penalty for the offense of commission of domestic violence in the presence of a child;
- ▶ modifies the circumstances under which the offense of commission of domestic violence in the presence of a child is subject to a penalty enhancement; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**76-5-109.1**, as last amended by Laws of Utah 2009, Chapter 70

**77-36-1.1**, as last amended by Laws of Utah 2019, Chapter 367

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

Section 1. Section **76-5-109.1** is amended to read:

**76-5-109.1. Commission of domestic violence in the presence of a child.**

(1) As used in this section:

(a) "Cohabitant" has the same meaning as defined in Section 78B-7-102.

(b) "Domestic violence" has the same meaning as in Section 77-36-1.

(c) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) [~~A person~~] An individual commits domestic violence in the presence of a child if the [~~person~~] individual:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.

(3) (a) [~~A person~~] An individual who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

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

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(4) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. [~~Either or both charges may be filed by the prosecutor.~~]

(5) [~~A person~~] An individual who commits a violation of this section when more than one child is present is guilty of one offense of domestic violence in the presence of a child regarding each child present when the violation occurred.

Section 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) As used in this section:

(a) "Criminal mischief offense" means commission or an attempt to commit an offense under Section 76-6-106 by one cohabitant against another.

(b) "Domestic violence in the presence of a child offense" means commission or an attempt to commit an offense under Section 76-5-109.1.

~~(b)~~ (c) "Qualifying domestic violence offense" means:

(i) a domestic violence offense in Utah; or

(ii) 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) An individual who is convicted of a domestic violence offense that is not a domestic violence in the presence of a child 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 10 years after the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(B) the individual is convicted of the domestic violence offense described in this Subsection (2) within 10 years after the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense;

(b) guilty of a class A misdemeanor if:

(i) the domestic violence offense described in this Subsection (2) is designated by law

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as a class B misdemeanor; and

(ii) (A) the domestic violence offense described in this Subsection (2) is committed within 10 years after the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(B) the individual is convicted of the domestic violence offense described in this Subsection (2) within 10 years after the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief 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 10 years after the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(B) the individual is convicted of the domestic violence offense described in this Subsection (2) within 10 years after the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense.

(3) An individual who is convicted of a domestic violence offense that is not a domestic violence in the presence of a child offense is:

(a) guilty of a class B misdemeanor if:

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

(ii) (A) the domestic violence offense described in this Subsection (3) is committed within five years after the individual is convicted of a criminal mischief offense; or

(B) the individual is convicted of the domestic violence offense described in this Subsection (3) within five years after the individual is convicted of a criminal mischief offense;

(b) guilty of a class A misdemeanor if:

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

(ii) (A) the domestic violence offense described in this Subsection (3) is committed within five years after the individual is convicted of a criminal mischief offense; or

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(B) the individual is convicted of the domestic violence offense described in this Subsection (3) within five years after the individual is convicted of a criminal mischief offense; or

(c) guilty of a third degree felony if:

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

(ii) (A) the domestic violence offense described in this Subsection (3) is committed within five years after the individual is convicted of a criminal mischief offense; or

(B) the individual is convicted of the domestic violence offense described in this Subsection (3) within five years after the individual is convicted of a criminal mischief offense.