

HB0199S01 compared with HB0199

~~text~~ shows text that was in HB0199 but was deleted in HB0199S01.

text shows text that was not in HB0199 but was inserted into HB0199S01.

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Representative Paul A. Cutler proposes the following substitute bill:

VOLUNTARY FIREARM SAFEKEEPING AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul A. Cutler

Senate Sponsor: ~~_____~~ Todd D. Weiler

LONG TITLE

General Description:

This bill addresses the voluntary commitment of a firearm in cases of domestic violence.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a law enforcement agency that receives a firearm from the owner or the owner's cohabitant for safekeeping from returning the firearm to the owner if the owner:
 - is a restricted person; or
 - is alleged to have committed a domestic violence offense, has been booked into jail on the offense, and is subject to a jail release agreement or a jail release

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court order;

- ▶ directs the Department of Public Safety to create a pamphlet detailing a domestic violence victim's rights to commit the perpetrator's firearm to a law enforcement agency under certain circumstances; and
- ▶ makes technical changes. ~~††~~

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-5c-102, as last amended by Laws of Utah 2021, Chapter 166

53-5c-201, as last amended by Laws of Utah 2021, Chapter 137

77-36-2.1, as last amended by Laws of Utah 2020, Chapter 142

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

Section 1. Section **53-5c-102** is amended to read:

53-5c-102. Definitions.

As used in this ~~[part]~~ chapter:

- (1) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201.
- (2) "Cohabitant" means ~~[a person who is 21 years of age or older who resides in the same residence as the other party.]~~ an individual who:
 - (a) is 18 years old or older;
 - (b) resides in the same home with another individual; and
 - (c) (i) is living as if a spouse of the individual;
(ii) is related by blood or marriage to the individual;
(iii) has one or more children in common with the individual; or
(iv) has an interest in the safety and well-being of the individual.
- (3) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- ~~[(3)]~~ (4) "Firearm" means a pistol, revolver, shotgun, short barrel shotgun, rifle or short

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barrel rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

~~[(4)]~~ (5) "Illegal firearm" means a firearm the ownership or possession of which is prohibited under state or federal law.

(6) "Jail release agreement" means the same as that term is defined in Section 78B-7-801.

(7) "Jail release court order" means the same as that term is defined in Section 78B-7-801.

~~[(5)]~~ (8) "Law enforcement agency" means a municipal or county police agency or an officer of that agency.

~~[(6)]~~ (9) "Owner cohabitant" means a cohabitant who ~~[owns, in whole or in part, a firearm~~ (.)]:

(a) is 18 years old or older; and

(b) owns a firearm.

~~[(7)]~~ (10) "Public interest use" means:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation to a bona fide charity.

Section 2. Section **53-5c-201** is amended to read:

53-5c-201. Voluntary commitment of a firearm by cohabitant -- Law enforcement to hold firearm.

~~[(1) As used in this section:]~~

~~[(a) "Cohabitant" means any individual 18 years old or older residing in the home who:]~~

~~[(i) is living as if a spouse of the owner cohabitant;]~~

~~[(ii) is related by blood or marriage to the owner cohabitant;]~~

~~[(iii) has one or more children in common with the owner cohabitant; or]~~

~~[(iv) has an interest in the safety and well-being of the owner cohabitant.]~~

~~[(b) "Owner cohabitant" means an individual:]~~

~~[(i) in relation to a cohabitant as described in Subsection (1)(a); and]~~

~~[(ii) who owns a firearm.]~~

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~~(2)~~ (1) (a) A cohabitant or owner cohabitant may voluntarily commit a firearm to a law enforcement agency or request that a law enforcement officer receive a firearm for safekeeping if the owner cohabitant or cohabitant believes that the owner cohabitant or another cohabitant with access to the firearm is an immediate threat to:

- (i) ~~[himself or herself]~~ a cohabitant;
- (ii) the owner cohabitant; or
- (iii) ~~[any other person]~~ another individual.

(b) ~~[H]~~ Except as provided in Subsection (2), if the owner of a firearm requests return of the firearm in person at the law enforcement agency's office, the law enforcement agency:

- (i) may not hold the firearm under this section; and
- (ii) shall return the firearm to the owner.

(2) A law enforcement agency may not return a firearm to an owner under Subsection (1)(b) if the owner of the firearm:

- (a) is a restricted person under Section 76-10-503; or
- (b) (i) is alleged to have committed a domestic violence offense;
(ii) is booked into a county jail on the domestic violence offense; and
(~~iii~~iii) is subject to a jail release agreement or a jail release court order arising out of the alleged offense.

(3) Unless a firearm is an illegal firearm subject to Section 53-5c-202, a law enforcement agency that receives a firearm in accordance with this chapter shall:

- (a) record:
 - (i) the owner cohabitant's name, address, and phone number;
 - (ii) the firearm serial number and the make and model of each firearm committed; and
 - (iii) the date that the firearm was voluntarily committed;
- (b) require the cohabitant to sign a document attesting that the cohabitant resides in the

home;

- (c) hold the firearm in safe custody ~~[for]~~:
 - (i) for 60 days after the day on which the firearm is voluntarily committed; or
 - (ii) (A) for an owner described in Subsection (2), during the time the jail release

agreement or jail release court order is in effect; and

- (B) for 60 days after the day on which the jail release agreement or jail release court

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order expires; and

(d) upon proof of identification, return the firearm to:

(i) (A) the owner cohabitant after the expiration of the 60-day period; or

(B) if the owner cohabitant requests return of the firearm before the expiration of the 60-day period, at the time of the request; or

(ii) an owner other than the owner cohabitant in accordance with Section 53-5c-202.

(4) The law enforcement agency shall hold the firearm for an additional 60 days:

(a) if the initial 60-day period expires; and

(b) the cohabitant or owner cohabitant requests that the law enforcement agency hold the firearm for an additional 60 days.

(5) A law enforcement agency may not request or require that the owner cohabitant provide the name or other information of the cohabitant who poses an immediate threat or any other cohabitant.

(6) Notwithstanding an ordinance or policy to the contrary adopted in accordance with Section 63G-2-701, a law enforcement agency shall destroy a record created under Subsection (3), Subsection 53-5c-202(3)(b)(iii), or any other record created in the application of this chapter immediately, if practicable, but no later than five days after immediately upon the:

(a) return of a firearm in accordance with Subsection (3)(d); or

(b) disposal of the firearm in accordance with Section 53-5c-202.

(7) Unless otherwise provided, the provisions of Title 77, Chapter 24a, Lost or Mislaid Personal Property, do not apply to a firearm received by a law enforcement agency in accordance with this chapter.

(8) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held in accordance with this chapter.

(9) The department shall create a pamphlet to be distributed by a law enforcement officer under Section 77-36-2.1 that includes information about a cohabitant's or owner cohabitant's ability to have the owner cohabitant's firearm committed to a law enforcement agency for safekeeping in accordance with this section.

Section 3. Section **77-36-2.1** is amended to read:

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall

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use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; ~~and~~

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2)~~[-]~~; and

(g) providing the pamphlet created by the department under Section 53-5c-201 to the victim if the allegation of domestic violence:

(i) includes a threat of violence as described in Section 76-5-107;

(ii) results, or would result, in the owner cohabitant becoming a restricted person under Section 76-10-503; or

(iii) is accompanied by a completed lethality risk assessment that demonstrates the cohabitant is at high risk of being further victimized.

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall ~~also~~ include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with Subsections 78B-7-802(8) and ~~(9)~~ (9).

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(3) If a weapon is confiscated under this section, the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a domestic violence protective order is not issued or once the domestic violence protective order is terminated.