

DOMESTIC VIOLENCE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions in the Cohabitant Abuse Procedures Act.

Highlighted Provisions:

This bill:

► amends provisions related to a plea of guilty or no contest to a domestic violence offense.

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 2012, Chapter 39

77-36-1.1, as last amended by Laws of Utah 2005, Chapter 55

ENACTS:

77-36-1.2, Utah Code Annotated 1953

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.



28 As used in this chapter:

29 (1) "Cohabitant" has the same meaning as in Section [78B-7-102](#).

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

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

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

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

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

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

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

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

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

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

47 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
48 Section [76-5b-201](#), Sexual Exploitation of a Minor;

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

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

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

54 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
55 Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;

56 (m) possession of a deadly weapon with intent to assault, as described in Section
57 [76-10-507](#);

58 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any

59 person, building, or vehicle, as described in Section 76-10-508;

60 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
61 conduct is the result of a plea agreement in which the defendant was originally charged with
62 ~~[any of the]~~ a domestic violence ~~[offenses]~~ offense otherwise described in this Subsection (4).
63 Conviction of disorderly conduct as a domestic violence offense, in the manner described in
64 this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
65 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C.
66 Section 921 et seq.; or

67 (p) child abuse as described in Section 76-5-109.1.

68 (5) "Jail release agreement" means a written agreement:

69 (a) specifying and limiting the contact a person arrested for a domestic violence offense
70 may have with an alleged victim or other specified individuals; and

71 (b) specifying other conditions of release from jail as required in Subsection
72 77-36-2.5(2).

73 (6) "Jail release court order" means a written court order:

74 (a) specifying and limiting the contact a person arrested for a domestic violence offense
75 may have with an alleged victim or other specified individuals; and

76 (b) specifying other conditions of release from jail as required in Subsection
77 77-36-2.5(2).

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

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

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

84 (10) "Pretrial protective order" means a written order:

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

87 (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(3)(c),
88 Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

89 (11) "Sentencing protective order" means a written order of the court as part of

90 sentencing in a domestic violence case that limits the contact a person who has been convicted
91 of a domestic violence offense may have with a victim or other specified individuals pursuant
92 to Sections 77-36-5 and 77-36-5.1.

93 (12) "Separated" means a man and a woman who have had their marriage solemnized
94 under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

95 (13) "Victim" means a cohabitant who has been subjected to domestic violence.

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

97 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**
98 **offenses.**

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

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

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

103 (2) A person who is convicted of a domestic violence offense is:

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

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

107 (ii) (A) the domestic violence offense described in this Subsection (2) is committed
108 within five years after the person is convicted of a qualifying domestic violence offense; or

109 (B) the person is convicted of the domestic violence offense described in this
110 Subsection (2) within five years after the person is convicted of a qualifying domestic violence
111 offense;

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

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

115 (ii) (A) the domestic violence offense described in this Subsection (2) is committed
116 within five years after the person is convicted of a qualifying domestic violence offense; or

117 (B) the person is convicted of the domestic violence offense described in this
118 Subsection (2) within five years after the person is convicted of a qualifying domestic violence
119 offense; or

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

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

123 (ii) (A) the domestic violence offense described in this Subsection (2) is committed
124 within five years after the person is convicted of a qualifying domestic violence offense; or

125 (B) the person is convicted of the domestic violence offense described in this
126 Subsection (2) within five years after the person is convicted of a qualifying domestic violence
127 offense.

128 ~~[(3) For purposes of this section, a plea of guilty or no contest to any qualifying
129 domestic violence offense in Utah which plea is held in abeyance under Title 77, Chapter 2a,
130 Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently
131 reduced or dismissed in accordance with the plea in abeyance agreement.]~~

132 Section 3. Section 77-36-1.2 is enacted to read:

133 **77-36-1.2. Acceptance of a plea of guilty or no contest to domestic violence --**
134 **Restrictions.**

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

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

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

139 (2) For purposes of this section, a plea of guilty or no contest to any domestic violence
140 offense in Utah, which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
141 is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed
142 in accordance with the plea in abeyance agreement.

143 (3) (a) Before agreeing to a plea of guilty or no contest or to filing an information, the
144 prosecutor shall examine the criminal history of the defendant.

145 (b) The court may not accept a plea of guilty or no contest to a domestic violence
146 offense, unless:

147 (i) the prosecutor agrees to the plea:

148 (A) in open court;

149 (B) in writing; or

150 (C) by another means of communication that the court finds adequate to record the
151 prosecutor's agreement; or

- 152 (ii) (A) the domestic violence offense is filed by information;
153 (B) the court receives a copy of the defendant's criminal history; and
154 (C) the criminal history contains no record of a conviction, arrest, or charge of a
155 qualifying domestic violence offense within five years before the date on which the plea is
156 entered.
- 157 (c) A plea of guilty or no contest is not made invalid by the failure of a court, a
158 prosecutor, or a law enforcement agency to comply with this section.

Legislative Review Note
as of 1-13-15 8:37 AM

Office of Legislative Research and General Counsel