

PRETRIAL RELEASE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies pretrial release provisions.

Highlighted Provisions:

This bill:

- ▶ addresses the right to bail involving qualifying offenses;
- ▶ modifies terms related to jail release agreements and jail release court orders;
- ▶ addresses conditions for release after arrest for domestic violence and other offenses;
- ▶ amends provisions related to dismissal of certain offenses;
- ▶ addresses contents of pretrial protective orders;
- ▶ repeals language regarding privileged communications; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-20-1, as last amended by Laws of Utah 2017, Chapters 289, 311, and 332

77-20-3.5, as last amended by Laws of Utah 2018, Chapter 281

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

77-36-2.7, as last amended by Laws of Utah 2017, Chapter 289

30

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

32 Section 1. Section 77-20-1 is amended to read:

33 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

34 (1) As used in this chapter:

35 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

36 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

37 (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

38 (2) ~~[A person]~~ An individual charged with or arrested for a criminal offense shall be
39 admitted to bail as a matter of right, except if the ~~[person]~~ individual is charged with a:40 (a) capital felony, when the court finds there is substantial evidence to support the
41 charge;42 (b) felony committed while on probation or parole, or while free on bail awaiting trial
43 on a previous felony charge, when the court finds there is substantial evidence to support the
44 current felony charge;45 (c) felony when there is substantial evidence to support the charge and the court finds
46 by clear and convincing evidence that the ~~[person]~~ individual would constitute a substantial
47 danger to any other ~~[person]~~ individual or to the community, or is likely to flee the jurisdiction
48 of the court, if released on bail; ~~[or]~~49 (d) felony when the court finds there is substantial evidence to support the charge and
50 it finds by clear and convincing evidence that the ~~[person]~~ individual violated a material
51 condition of release while previously on bail~~[-]; or~~52 (e) domestic violence offense if the court finds:53 (i) that there is substantial evidence to support the charge; and54 (ii) by clear and convincing evidence, that the individual would constitute a substantial
55 danger to an alleged victim of domestic violence if released on bail.56 (3) Any ~~[person]~~ individual who may be admitted to bail may be released by written
57 undertaking or an equal amount of cash bail, or on the ~~[person's]~~ individual's own

58 recognizance, on condition that the ~~[person]~~ individual appear in court for future court
59 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate
60 or court that will reasonably:

- 61 (a) ensure the appearance of the accused;
- 62 (b) ensure the integrity of the court process;
- 63 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
64 appropriate; and
- 65 (d) ensure the safety of the public.

66 (4) (a) Except as otherwise provided, the initial order denying or fixing the amount of
67 bail shall be issued by the magistrate or court issuing the warrant of arrest.

68 (b) A magistrate may set bail upon determining that there was probable cause for a
69 warrantless arrest.

70 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
71 Sections [10-3-920](#) and [17-32-1](#).

72 (d) ~~[A person]~~ An individual arrested for a violation of a jail release agreement or jail
73 release court order issued in accordance with Section [77-20-3.5](#):

- 74 (i) may not be released before the accused's first judicial appearance; and
- 75 (ii) may be denied bail by the court under Subsection ~~[[77-20-3.5\(9\)](#) or [\(11\)](#)]~~ [\(2\)](#).

76 (5) The magistrate or court may rely upon information contained in:

- 77 (a) the indictment or information;
- 78 (b) any sworn probable cause statement;
- 79 (c) information provided by any pretrial services agency; or
- 80 (d) any other reliable record or source.

81 (6) (a) A motion to modify the initial order may be made by a party at any time upon
82 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and
83 to permit any victim to be notified and be present.

84 (b) Hearing on a motion to modify may be held in conjunction with a preliminary
85 hearing or any other pretrial hearing.

86 (c) The magistrate or court may rely on information as provided in Subsection (5) and
87 may base its ruling on evidence provided at the hearing so long as each party is provided an
88 opportunity to present additional evidence or information relevant to bail.

89 (7) Subsequent motions to modify bail orders may be made only upon a showing that
90 there has been a material change in circumstances.

91 (8) An appeal may be taken from an order of any court denying bail to the Supreme
92 Court, which shall review the determination under Subsection (2).

93 (9) For purposes of this section, any arrest or charge for a violation of Section
94 76-5-202, Aggravated murder, is a capital felony unless:

- 95 (a) the prosecutor files a notice of intent to not seek the death penalty; or
- 96 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
97 has not filed a notice to seek the death penalty.

98 Section 2. Section 77-20-3.5 is amended to read:

99 **77-20-3.5. Conditions for release after arrest for domestic violence and other**
100 **offenses -- Jail release agreements -- Jail release court orders.**

101 (1) As used in this section:

102 (a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

103 (b) "Jail release agreement" means a written agreement [~~described in Subsection (3)~~]
104 that is entered into by an arrested individual:

105 [~~(i) limits the contact an individual arrested for a qualifying offense may have with an~~
106 ~~alleged victim; and]~~

107 (i) under which the arrested individual agrees to not engage in any of the following:

108 (A) have personal contact with the alleged victim;

109 (B) threaten or harass the alleged victim; or

110 (C) knowingly enter on the premises of the alleged victim's residence or on premises
111 temporarily occupied by the alleged victim; and

112 (ii) that specifies other conditions of release from jail.

113 (c) "Jail release court order" means a written court order [~~issued in accordance with~~

114 Subsection (3)] that:

115 ~~[(i) limits the contact an individual arrested for a qualifying offense may have with an~~
116 ~~alleged victim; and]~~

117 (i) orders an arrested individual not to engage in any of the following:

118 (A) have personal contact with the alleged victim;

119 (B) threaten or harass the alleged victim; or

120 (C) knowingly enter on the premises of the alleged victim's residence or on premises
121 temporarily occupied by the alleged victim; and

122 (ii) specifies other conditions of release from jail.

123 (d) "Minor" means an unemancipated individual who is younger than 18 years of age.

124 (e) "Offense against a child or vulnerable adult" means the commission or attempted
125 commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.

126 (f) "Qualifying offense" means:

127 (i) domestic violence;

128 (ii) an offense against a child or vulnerable adult; or

129 (iii) the commission or attempted commission of an offense described in Title 76,
130 Chapter 5, Part 4, Sexual Offenses.

131 (2) (a) Upon arrest for a qualifying offense and before the [person] individual is
132 released on bail, recognizance, or otherwise, the [person] individual may not personally contact
133 the alleged victim.

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

136 (3) (a) After ~~[a person]~~ an individual is arrested for a qualifying offense, the [person]
137 individual may not be released before:

138 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

139 (ii) the [person] individual signs a jail release agreement ~~[in accordance with~~
140 ~~Subsection (3)(d)(i)].~~

141 (b) The arresting officer shall ensure that the information presented to the magistrate

142 includes whether the alleged victim has made a waiver described in Subsection (6)(a).

143 (c) (i) If the magistrate determines there is probable cause to support the charge or
144 charges of one or more qualifying offenses, the magistrate shall determine~~[(i) whether~~
145 ~~grounds exist to hold the arrested person]~~ whether the arrested individual may be held without
146 bail, in accordance with Section 77-20-1[;].

147 ~~[(ii) if no grounds exist to hold the arrested person without bail,]~~

148 (ii) If the magistrate determines that the arrested individual has the right to be admitted
149 to bail, the magistrate shall determine:

150 (A) whether any release conditions, including electronic monitoring, are necessary to
151 protect the alleged victim; ~~[or]~~ and

152 ~~[(iii)]~~ (B) any bail that is required to guarantee the arrested person's subsequent
153 appearance in court.

154 ~~[(d) (i) The magistrate may not release a person arrested for a qualifying offense before~~
155 ~~the person's initial court appearance before the court with jurisdiction over the offense for~~
156 ~~which the person was arrested, unless the arrested person agrees in writing or the magistrate~~
157 ~~orders, as a release condition, that, until the arrested person appears at the initial court~~
158 ~~appearance, the arrested person will not:]~~

159 ~~[(A) have personal contact with the alleged victim;]~~

160 ~~[(B) threaten or harass the alleged victim; or]~~

161 ~~[(C) knowingly enter onto the premises of the alleged victim's residence or any~~
162 ~~premises temporarily occupied by the alleged victim.]~~

163 ~~[(ii) The magistrate shall schedule the appearance described in Subsection (3)(d)(i) to~~
164 ~~take place no more than 96 hours after the time of the arrest.]~~

165 ~~[(iii) The arrested person may make the appearance described in Subsection (3)(d)(i) by~~
166 ~~video if the arrested person is not released.]~~

167 (d) The magistrate may not release an individual arrested for a qualifying offense
168 unless the magistrate issues a jail release court order or the arrested individual signs a jail
169 release agreement.

170 (4) (a) If ~~[a person]~~ an individual charged with a qualifying offense fails to either
171 schedule an initial appearance or to appear at the time scheduled by the magistrate [under
172 Subsection (3)(d), the person] within 96 hours after the time of arrest, the individual shall
173 comply with the release conditions [described in Subsection (3)(d)(i) until the person] of a jail
174 release agreement or jail release court order until the individual makes an initial appearance.

175 (b) If the prosecutor has not filed charges against ~~[a person]~~ an individual who was
176 arrested for a qualifying offense and who appears in court at the time scheduled by the
177 magistrate under Subsection (3)~~[(d)]~~, or by the court under Subsection (4)(b)(ii), the court:

178 (i) may, upon the motion of the prosecutor and after allowing the ~~[person]~~ individual
179 an opportunity to be heard on the motion, extend the release conditions described in
180 ~~[Subsection (3)(d)(i)]~~ the jail release court order or the jail release agreement by no more than
181 three court days; and

182 (ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the
183 arrested ~~[person]~~ individual to appear at a time scheduled before the end of the granted
184 extension.

185 (c) (i) If the prosecutor determines that there is insufficient evidence to file charges
186 before an initial appearance scheduled under Subsection (4)(a), the prosecutor shall transmit a
187 notice of declination to either the magistrate who signed the jail release court order or, if the
188 releasing agency obtains a jail release agreement from the released arrestee, to the statewide
189 domestic violence network described in Section [78B-7-113](#).

190 (ii) A prosecutor's notice of declination transmitted under this Subsection (4)(c) is
191 considered a motion to dismiss a jail release court order and a notice of expiration of a jail
192 release agreement.

193 (5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release
194 agreement or jail release court order expires at midnight after the earlier of:

195 (a) the arrested ~~[person's]~~ individual's initial scheduled court appearance described in
196 Subsection ~~[(3)(d)(i)]~~ (4)(a);

197 (b) the day on which the prosecutor transmits the notice of the declination under

198 Subsection (4)(c); or

199 (c) 30 days after the day on which the arrested individual is arrested.

200 (6) (a) (i) After an arrest for a qualifying offense, an alleged victim who is not a minor
201 may waive in writing the release conditions [~~described in Subsection (3)(d)(i)(A) or (C).~~]
202 prohibiting:

203 (A) personal contact with the alleged victim; or

204 (B) knowingly entering on the premises of the alleged victim's residence or on
205 premises temporarily occupied by the alleged victim.

206 (ii) Upon waiver, [~~those~~] the release conditions described in Subsection (6)(a)(i) do not
207 apply to the arrested [~~person~~] individual.

208 (b) A court or magistrate may modify [~~the release conditions described in Subsection~~
209 ~~(3)(d)(i);~~] a jail release agreement or a jail release court order in writing or on the record, and
210 only for good cause shown.

211 (7) (a) When an arrested [~~person~~] individual is released in accordance with Subsection
212 (3), the releasing agency shall:

213 (i) notify the arresting law enforcement agency of the release, conditions of release, and
214 any available information concerning the location of the alleged victim;

215 (ii) make a reasonable effort to notify the alleged victim of the release; and

216 (iii) before releasing the arrested [~~person~~] individual, give the arrested [~~person~~]
217 individual a copy of the jail release agreement or the jail release court order.

218 (b) (i) When [~~a person~~] an individual arrested for domestic violence is released
219 pursuant to [~~Subsection (3)]~~ this section based on a [~~written~~] jail release agreement, the
220 releasing agency shall transmit that information to the statewide domestic violence network
221 described in Section 78B-7-113.

222 (ii) When [~~a person~~] an individual arrested for domestic violence is released pursuant
223 to [~~Subsections (3) through (5)]~~ this section based upon a jail release court order or if a
224 [~~written~~] jail release agreement is modified pursuant to Subsection (6)(b), the court shall
225 transmit that order to the statewide domestic violence network described in Section 78B-7-113.

226 (c) This Subsection (7) does not create or increase liability of a law enforcement officer
227 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

228 (8) (a) If a law enforcement officer has probable cause to believe that ~~[a person]~~ an
229 individual has violated a jail release agreement or jail release court order, the officer shall,
230 without a warrant, arrest the ~~[person]~~ individual.

231 (b) ~~[Any person]~~ An individual who knowingly violates a jail release court order or jail
232 release agreement executed pursuant to Subsection (3) is guilty as follows:

233 (i) if the original arrest was for a felony, an offense under this section is a third degree
234 felony; or

235 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class
236 A misdemeanor.

237 (c) ~~[City attorneys]~~ A city attorney may prosecute class A misdemeanor violations
238 under this section.

239 (9) ~~[A person]~~ An individual who is arrested for a qualifying offense that is a felony
240 and released in accordance with this section may subsequently be held without bail if there is
241 substantial evidence to support a new felony charge against the ~~[person]~~ individual.

242 (10) At the time an arrest is made for a qualifying offense, the arresting officer shall
243 provide the alleged victim with written notice containing:

244 (a) the release conditions described in ~~[Subsections (3) through (5)]~~ this section, and
245 notice that the alleged perpetrator will not be released, before appearing before the court with
246 jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

247 (i) the alleged perpetrator enters into a ~~[written]~~ jail release agreement to comply with
248 the release conditions; or

249 (ii) the magistrate ~~[orders]~~ issues a jail release order that specifies the release
250 conditions;

251 (b) notification of the penalties for violation of any jail release agreement or jail release
252 court order;

253 ~~[(c) notification that the alleged perpetrator is to personally appear in court on the next~~

254 ~~day the court is open for business after the day of the arrest,]~~

255 ~~[(e)]~~ (c) the address of the appropriate court in the district or county in which the
256 alleged victim resides;

257 ~~[(e)]~~ (d) the availability and effect of any waiver of the release conditions; and

258 ~~[(f)]~~ (e) information regarding the availability of and procedures for obtaining civil and
259 criminal protective orders with or without the assistance of an attorney.

260 (11) At the time an arrest is made for a qualifying offense, the arresting officer shall
261 provide the alleged perpetrator with written notice containing:

262 (a) notification that the alleged perpetrator may not contact the alleged victim before
263 being released;

264 (b) the release conditions described in ~~[Subsections (3) through (5)]~~ this section and
265 notice that the alleged perpetrator will not be released, before appearing before the court with
266 jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

267 (i) the alleged perpetrator enters into a ~~[written]~~ jail release agreement to comply with
268 the release conditions; or

269 (ii) the magistrate ~~[orders the release conditions]~~ issues a jail release court order;

270 (c) notification of the penalties for violation of any jail release agreement or jail release
271 court order; and

272 (d) notification that the alleged perpetrator is to personally appear in court on the next
273 day the court is open for business after the day of the arrest.

274 (12) (a) A pretrial or sentencing protective order supercedes a jail release agreement or
275 jail release court order.

276 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail
277 release agreement or jail release court order, the court shall dismiss the jail release agreement
278 or jail release court order.

279 ~~[(13) In addition to the provisions of Subsections (3) through (12), because of the~~
280 ~~unique and highly emotional nature of domestic violence crimes, the high recidivism rate of~~
281 ~~violent offenders, and the demonstrated increased risk of continued acts of violence subsequent~~

282 to the release of an offender who has been arrested for domestic violence, it is the finding of
283 the Legislature that domestic violence crimes, as defined in Section ~~77-36-1~~, are crimes for
284 which bail may be denied if there is substantial evidence to support the charge, and if the court
285 finds by clear and convincing evidence that the alleged perpetrator would constitute a
286 substantial danger to an alleged victim of domestic violence if released on bail.]

287 [~~(14) The provisions of this section do]~~

288 (13) This section does not apply if the [person] individual arrested for the qualifying
289 offense is a minor, unless the qualifying offense is domestic violence.

290 Section 3. Section ~~77-36-1~~ is amended to read:

291 **77-36-1. Definitions.**

292 As used in this chapter:

- 293 (1) "Cohabitant" means the same as that term is defined in Section ~~78B-7-102~~.
- 294 (2) "Department" means the Department of Public Safety.
- 295 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
296 3, Divorce.
- 297 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
298 involving violence or physical harm or threat of violence or physical harm, or any attempt,
299 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
300 when committed by one cohabitant against another. "Domestic violence" or "domestic
301 violence offense" [~~also means~~] includes commission or attempt to commit, any of the
302 following offenses by one cohabitant against another:
- 303 (a) aggravated assault, as described in Section ~~76-5-103~~;
- 304 (b) assault, as described in Section ~~76-5-102~~;
- 305 (c) criminal homicide, as described in Section ~~76-5-201~~;
- 306 (d) harassment, as described in Section ~~76-5-106~~;
- 307 (e) electronic communication harassment, as described in Section ~~76-9-201~~;
- 308 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
309 ~~76-5-301, 76-5-301.1, and 76-5-302~~;

- 310 (g) mayhem, as described in Section 76-5-105;
- 311 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
312 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 313 (i) stalking, as described in Section 76-5-106.5;
- 314 (j) unlawful detention or unlawful detention of a minor, as described in Section
315 76-5-304;
- 316 (k) violation of a protective order or ex parte protective order, as described in Section
317 76-5-108;
- 318 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property
319 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
320 Part 3, Robbery;
- 321 (m) possession of a deadly weapon with criminal intent, as described in Section
322 76-10-507;
- 323 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
324 person, building, or vehicle, as described in Section 76-10-508;
- 325 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
326 conduct is the result of a plea agreement in which the defendant was originally charged with a
327 domestic violence offense otherwise described in this Subsection (4), except that a conviction
328 of disorderly conduct as a domestic violence offense, in the manner described in this
329 Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18
330 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
- 331 (p) child abuse, as described in Section 76-5-109.1;
- 332 (q) threatening use of a dangerous weapon, as described in Section 76-10-506;
- 333 (r) threatening violence, as described in Section 76-5-107;
- 334 (s) tampering with a witness, as described in Section 76-8-508;
- 335 (t) retaliation against a witness or victim, as described in Section 76-8-508.3;
- 336 (u) unlawful distribution of an intimate image, as described in Section 76-5b-203;
- 337 (v) sexual battery, as described in Section 76-9-702.1;

- 338 (w) voyeurism, as described in Section [76-9-702.7](#);
- 339 (x) damage to or interruption of a communication device, as described in Section
- 340 [76-6-108](#); or
- 341 (y) an offense described in Section [77-20-3.5](#).
- 342 (5) "Jail release agreement" means the same as that term is defined in Section
- 343 [77-20-3.5](#).
- 344 (6) "Jail release court order" means the same as that term is defined in Section
- 345 [77-20-3.5](#).
- 346 (7) "Marital status" means married and living together, divorced, separated, or not
- 347 married.
- 348 (8) "Married and living together" means a couple whose marriage was solemnized
- 349 under Section [30-1-4](#) or [30-1-6](#) and who are living in the same residence.
- 350 (9) "Not married" means any living arrangement other than married and living together,
- 351 divorced, or separated.
- 352 (10) "Protective order" includes an order issued under Subsection [77-36-5.1\(6\)](#).
- 353 (11) "Pretrial protective order" means a written order:
- 354 (a) specifying and limiting the contact a person who has been charged with a domestic
- 355 violence offense may have with an alleged victim or other specified individuals; and
- 356 (b) specifying other conditions of release pursuant to [~~Subsection [77-20-3.5\(3\)](#)~~] Section
- 357 [77-20-3.5](#), Subsection [77-36-2.6\(3\)](#), or Section [77-36-2.7](#), pending trial in the criminal case.
- 358 (12) "Sentencing protective order" means a written order of the court as part of
- 359 sentencing in a domestic violence case that limits the contact a person who has been convicted
- 360 of a domestic violence offense may have with a victim or other specified individuals pursuant
- 361 to Sections [77-36-5](#) and [77-36-5.1](#).
- 362 (13) "Separated" means a couple who have had their marriage solemnized under
- 363 Section [30-1-4](#) or [30-1-6](#) and who are not living in the same residence.
- 364 (14) "Victim" means a cohabitant who has been subjected to domestic violence.
- 365 Section 4. Section [77-36-2.7](#) is amended to read:

366 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial**
367 **protective order pending trial.**

368 (1) Because of the serious nature of domestic violence, the court, in domestic violence
369 actions:

370 (a) may not dismiss any charge or delay disposition because of concurrent divorce or
371 other civil proceedings;

372 (b) may not require proof that either party is seeking a dissolution of marriage before
373 instigation of criminal proceedings;

374 (c) shall waive any requirement that the victim's location be disclosed other than to the
375 defendant's attorney and order the defendant's attorney not to disclose the victim's location to
376 the client;

377 (d) shall identify, on the docket sheets, the criminal actions arising from acts of
378 domestic violence; and

379 ~~[(e) may dismiss a charge on stipulation of the prosecutor and the victim; and]~~

380 ~~[(f)]~~ (e) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a,
381 Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of
382 that status.

383 (2) When the court holds a plea in abeyance in accordance with Subsection (1)~~[(f)]~~(e),
384 the case against a perpetrator of domestic violence may be dismissed only if the perpetrator
385 successfully completes all conditions imposed by the court. If the defendant fails to complete
386 any condition imposed by the court under Subsection (1)~~[(f)]~~(e), the court may accept the
387 defendant's plea.

388 (3) (a) Because of the likelihood of repeated violence directed at those who have been
389 victims of domestic violence in the past and the vulnerability of victims of other qualifying
390 offenses, as defined in Section 77-20-3.5, when any defendant is charged with a crime
391 involving ~~[domestic violence]~~ a qualifying offense, the court may, during any court hearing
392 where the defendant is present, issue a pretrial protective order, pending trial:

393 (i) enjoining the defendant from threatening to commit or committing acts of domestic

394 violence or abuse against the victim and any designated family or household member;
395 (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
396 communicating with the victim, directly or indirectly;
397 (iii) removing and excluding the defendant from the victim's residence and the
398 premises of the residence;
399 (iv) ordering the defendant to stay away from the residence, school, place of
400 employment of the victim, and the premises of any of these, or any specified place frequented
401 by the victim and any designated family member; and

402 (v) ordering any other relief that the court considers necessary to protect and provide
403 for the safety of the victim and any designated family or household member.

404 (b) Violation of an order issued pursuant to this section is punishable as follows:

405 (i) if the original arrest or subsequent charge filed is a felony, an offense under this
406 section is a third degree felony; and

407 (ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under
408 this section is a class A misdemeanor.

409 (c) (i) The court shall provide the victim with a certified copy of any pretrial protective
410 order that has been issued if the victim can be located with reasonable effort.

411 (ii) If the court is unable to locate the victim, the court shall provide the victim's
412 certified copy to the prosecutor.

413 ~~[(ii)]~~ (iii) The court shall ~~[also]~~ transmit the pretrial protective order to the statewide
414 domestic violence network.

415 (d) Issuance of a pretrial or sentencing protective order ~~[supercedes]~~ supersedes a jail
416 release agreement or jail release court order.

417 (e) If the alleged victim and the defendant share custody of one or more minor children,
418 the court may include in a pretrial protective order provisions for indirect or limited contact to
419 temporarily facilitate parent visitation with a minor child.

420 (f) In a pretrial protective order the court shall determine whether to allow provisions
421 for transfer of personal property to decrease the need for contact between the parties.

422 (4) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss
423 charges against a defendant accused of a domestic violence offense, the specific reasons for
424 dismissal shall be recorded in the court file and made a part of any related order or agreement
425 on the statewide domestic violence network described in Section [78B-7-113](#).

426 (b) The court shall transmit the dismissal to the statewide domestic violence network.

427 (c) Any pretrial protective orders, including jail release court orders and jail release
428 agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.

429 ~~[(5) When the privilege of confidential communication between spouses, or the~~
430 ~~testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the~~
431 ~~victim of an alleged domestic violence offense, the victim shall be considered to be an~~
432 ~~unavailable witness under the Utah Rules of Evidence.]~~

433 ~~[(6)]~~ (5) The court may not approve diversion for a perpetrator of domestic violence.