

**PRETRIAL RELEASE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill modifies pretrial release provisions.

**Highlighted Provisions:**

This bill:

- ▶ addresses 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 amendments.

**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 renumbered and amended by Laws of Utah 2017, Chapter 289



28 77-36-1, as last amended by Laws of Utah 2017, Chapters 289 and 332

29 77-36-2.7, as last amended by Laws of Utah 2017, Chapter 289



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 charged with or arrested for a criminal offense shall be admitted to bail as  
39 a matter of right, except if the person 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 would constitute a substantial danger to any  
47 other person or to the community, or is likely to flee the jurisdiction of the court, if released on  
48 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 violated a material condition of  
51 release while previously on bail[-]; or

52 (e) domestic violence offense when the court finds that:

53 (i) there is substantial evidence to support the charge; and

54 (ii) by clear and convincing evidence, the person would constitute a substantial danger  
55 to an alleged victim of domestic violence if released on bail.

56 (3) Any person who may be admitted to bail may be released by written undertaking or  
57 an equal amount of cash bail, or on the person's own recognizance, on condition that the person  
58 appear in court for future court proceedings in the case, and on any other conditions imposed in

59 the discretion of the magistrate or court that will reasonably:

60 (a) ensure the appearance of the accused;

61 (b) ensure the integrity of the court process;

62 (c) prevent direct or indirect contact with witnesses or victims by the accused, if

63 appropriate; and

64 (d) ensure the safety of the public.

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

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

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

71 (d) A person arrested for a violation of a jail release agreement or jail release court  
72 order issued in accordance with Section 77-20-3.5:

73 (i) may not be released before the accused's first judicial appearance; and

74 (ii) may be denied bail by the court under Subsection [~~77-20-3.5(9) or (11)~~] (2).

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

76 (a) the indictment or information;

77 (b) any sworn probable cause statement;

78 (c) information provided by any pretrial services agency; or

79 (d) any other reliable record or source.

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

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

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

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

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

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

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

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

98 **77-20-3.5. Conditions for release after arrest for domestic violence and other**  
99 **offenses -- Jail release agreements -- Jail release court orders.**

100 (1) As used in this section:

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

102 (b) "Jail release agreement" means a written agreement [~~described in Subsection~~  
103 ~~77-20-3.5(3)~~] that is entered into by an arrested person:

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

106 (i) under which the arrested person agrees to not:

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

108 (B) threaten or harass the alleged victim; and

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

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

112 (c) "Jail release court order" means a written court order [~~issued in accordance with~~  
113 ~~Subsection 77-20-3.5(3)~~] that:

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

116 (i) orders an arrested person not to:

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

118 (B) threaten or harass the alleged victim; and

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

- 121 (ii) specifies other conditions of release from jail.
- 122 (d) "Minor" means an unemancipated individual who is younger than 18 years of age.
- 123 (e) "Offense against a child or vulnerable adult" means the commission or attempted  
124 commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.
- 125 (f) "Qualifying offense" means:
- 126 (i) domestic violence;
- 127 (ii) an offense against a child or vulnerable adult; or
- 128 (iii) the commission or attempted commission of an offense described in Title 76,  
129 Chapter 5, Part 4, Sexual Offenses.
- 130 (2) (a) Upon arrest for a qualifying offense and before the person is released on bail,  
131 recognizance, or otherwise, the person may not personally contact the alleged victim.
- 132 (b) A person who violates Subsection (2)(a) is guilty of a class B misdemeanor.
- 133 (3) (a) After a person is arrested for a qualifying offense, the person may not be  
134 released before:
- 135 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
- 136 (ii) the person signs a jail release agreement [~~in accordance with Subsection (3)(d)(i)~~].
- 137 (b) The arresting officer shall ensure that the information presented to the magistrate  
138 includes whether the alleged victim has made a waiver described in Subsection (6)(a).
- 139 (c) (i) If the magistrate determines there is probable cause to support the charge or  
140 charges of one or more qualifying offenses, the magistrate shall determine[~~:(i)~~] whether  
141 [~~grounds exist to hold~~] the arrested person may be held without bail, in accordance with  
142 Section 77-20-1[~~;~~].
- 143 (ii) [~~if no grounds exist to hold~~] If the magistrate determines that the arrested person  
144 [~~without~~] has the right to be admitted to bail, the magistrate shall determine:
- 145 (A) whether any release conditions, including electronic monitoring, are necessary to  
146 protect the alleged victim; [~~or~~] and
- 147 [~~(iii)~~] (B) any bail that is required to guarantee the arrested person's subsequent  
148 appearance in court.
- 149 (d) [~~(i)~~] The magistrate may not release a person arrested for a qualifying offense  
150 [~~before the person's initial court appearance before the court with jurisdiction over the offense~~  
151 ~~for which the person was arrested, unless the arrested person agrees in writing or the magistrate~~

152 ~~orders, as a release condition, that, until the arrested person appears at the initial court~~  
153 ~~appearance, the arrested person will not:] unless the magistrate issues a jail release court order~~  
154 ~~or the arrested person signs a jail release agreement.~~

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

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

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

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

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

163 (4) (a) If a person charged with a qualifying offense fails to either schedule an initial  
164 appearance or to appear at the time scheduled by the magistrate [under Subsection (3)(d)] not  
165 more than 96 hours after the time of arrest, the person shall comply with the release conditions  
166 [described in Subsection (3)(d)(i)] of a jail release agreement or jail release court order until the  
167 person makes an initial appearance.

168 (b) If the prosecutor has not filed charges against a person who was arrested for a  
169 qualifying offense and who appears in court at the time scheduled by the magistrate under  
170 Subsection (3)~~(d)~~, or by the court under Subsection (4)(b)(ii), the court:

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

174 (ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the  
175 arrested person to appear at a time scheduled before the end of the granted extension.

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

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

183 release agreement.

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

186 (a) the arrested person's initial scheduled court appearance described in Subsection

187 ~~[(3)(d)(i)-]~~ (4)(a);

188 (b) the declination is submitted under Subsection (4)(c); or

189 (c) 30 days from the day on which the arrested person is arrested.

190 (6) (a) (i) After an arrest for a qualifying offense, an alleged victim who is not a minor

191 may waive in writing the release conditions [~~described in Subsection (3)(d)(i)(A) or (C).~~]

192 prohibiting:

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

194 (B) knowingly entering on the premises of the alleged victim's residence or on

195 premises temporarily occupied by the alleged victim.

196 (ii) Upon waiver, [~~those~~] the release conditions described in Subsection (6)(a)(i) do not

197 apply to the arrested person.

198 (b) A court or magistrate may modify [~~the release conditions described in Subsection~~

199 ~~(3)(d)(i);~~ a jail release agreement or a jail release court order in writing or on the record, and

200 only for good cause shown.

201 (7) (a) When an arrested person is released in accordance with Subsection (3), the

202 releasing agency shall:

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

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

206 (iii) before releasing the arrested person, give the arrested person a copy of the jail

207 release agreement or the jail release court order.

208 (b) (i) When a person arrested for domestic violence is released pursuant to

209 [~~Subsection (3)]~~ this section based on a [~~written~~] jail release agreement, the releasing agency

210 shall transmit that information to the statewide domestic violence network described in Section

211 [78B-7-113](#).

212 (ii) When a person arrested for domestic violence is released pursuant to [~~Subsections~~

213 ~~(3) through (5)]~~ this section based upon a jail release court order or if a [~~written~~] jail release

214 agreement is modified pursuant to Subsection (6)(b), the court shall transmit that order to the  
215 statewide domestic violence network described in Section 78B-7-113.

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

218 (8) (a) If a law enforcement officer has probable cause to believe that a person has  
219 violated a jail release agreement or jail release court order, the officer shall, without a warrant,  
220 arrest the person.

221 (b) Any person who knowingly violates a jail release court order or jail release  
222 agreement executed pursuant to Subsection (3) is guilty as follows:

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

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

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

229 (9) A person who is arrested for a qualifying offense that is a felony and released in  
230 accordance with this section may subsequently be held without bail if there is substantial  
231 evidence to support a new felony charge against the person.

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

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

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

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

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

243 ~~[(c) notification that the alleged perpetrator is to personally appear in court on the next  
244 day the court is open for business after the day of the arrest;]~~



245           ~~[(d)]~~ (c) the address of the appropriate court in the district or county in which the  
246 alleged victim resides;

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

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

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

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

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

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

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

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

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

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

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

269           ~~[(13) In addition to the provisions of Subsections (3) through (12), because of the  
270 unique and highly emotional nature of domestic violence crimes, the high recidivism rate of  
271 violent offenders, and the demonstrated increased risk of continued acts of violence subsequent  
272 to the release of an offender who has been arrested for domestic violence, it is the finding of  
273 the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for  
274 which bail may be denied if there is substantial evidence to support the charge, and if the court  
275 finds by clear and convincing evidence that the alleged perpetrator would constitute a~~

276 ~~substantial danger to an alleged victim of domestic violence if released on bail.]~~

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

278 (13) This section does not apply if the person arrested for the qualifying offense is a  
279 minor, unless the qualifying offense is domestic violence.

280 Section 3. Section **77-36-1** is amended to read:

281 **77-36-1. Definitions.**

282 As used in this chapter:

283 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

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

285 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
286 3, Divorce.

287 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
288 involving violence or physical harm or threat of violence or physical harm, or any attempt,  
289 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
290 when committed by one cohabitant against another. "Domestic violence" or "domestic  
291 violence offense" also means commission or attempt to commit, any of the following offenses  
292 by one cohabitant against another:

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

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

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

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

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

298 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
299 [76-5-301](#), [76-5-301.1](#), and [76-5-302](#);

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

301 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
302 Section [76-5b-201](#), Sexual exploitation of a minor -- Offenses;

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

304 (j) unlawful detention or unlawful detention of a minor, as described in Section  
305 [76-5-304](#);

306 (k) violation of a protective order or ex parte protective order, as described in Section

307 76-5-108;

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

311 (m) possession of a deadly weapon with intent to assault, as described in Section  
312 76-10-507;

313 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
314 person, building, or vehicle, as described in Section 76-10-508;

315 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
316 conduct is the result of a plea agreement in which the defendant was originally charged with a  
317 domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly  
318 conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does  
319 not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is  
320 exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or

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

322 (5) "Jail release agreement" means the same as that term is defined in Section  
323 77-20-3.5.

324 (6) "Jail release court order" means the same as that term is defined in Section  
325 77-20-3.5.

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

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

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

332 (10) "Protective order" includes an order issued under Subsection 77-36-5.1(6).

333 (11) "Pretrial protective order" means a written order:

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

336 (b) specifying other conditions of release pursuant to ~~[Subsection]~~ Section  
337 77-20-3.5~~(3)~~, Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal

338 case.

339 (12) "Sentencing protective order" means a written order of the court as part of  
340 sentencing in a domestic violence case that limits the contact a person who has been convicted  
341 of a domestic violence offense may have with a victim or other specified individuals pursuant  
342 to Sections 77-36-5 and 77-36-5.1.

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

345 (14) "Victim" means a cohabitant who has been subjected to domestic violence.

346 Section 4. Section 77-36-2.7 is amended to read:

347 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial**  
348 **protective order pending trial.**

349 (1) Because of the serious nature of domestic violence, the court, in domestic violence  
350 actions:

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

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

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

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

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

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

364 (2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the  
365 case against a perpetrator of domestic violence may be dismissed only if the perpetrator  
366 successfully completes all conditions imposed by the court. If the defendant fails to complete  
367 any condition imposed by the court under Subsection (1)(f), the court may accept the  
368 defendant's plea.

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

374 (i) enjoining the defendant from threatening to commit or committing acts of domestic  
375 violence or abuse against the victim and any designated family or household member;

376 (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise  
377 communicating with the victim, directly or indirectly;

378 (iii) removing and excluding the defendant from the victim's residence and the  
379 premises of the residence;

380 (iv) ordering the defendant to stay away from the residence, school, place of  
381 employment of the victim, and the premises of any of these, or any specified place frequented  
382 by the victim and any designated family member; and

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

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

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

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

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

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

394 ~~(ii)~~ (iii) The court shall ~~also~~ transmit the pretrial protective order to the statewide  
395 domestic violence network.

396 (d) Issuance of a pretrial or sentencing protective order supercedes a jail release  
397 agreement or jail release court order.

398 (e) If the alleged victim and the defendant share custody of one or more minor children,  
399 the court may include in a pretrial protective order provisions for indirect or limited contact to

400 temporarily facilitate parent visitation with a minor child.

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

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

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

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

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

414 [~~6) (5) The court may not approve diversion for a perpetrator of domestic violence.~~

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**