

**Representative Angela Romero** proposes the following substitute bill:

**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:



26 77-20-1, as last amended by Laws of Utah 2017, Chapters 289, 311, and 332

27 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 individual:

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 individual 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 individual 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] individual is  
131 released on bail, recognizance, or otherwise, the [person] individual may not personally contact  
132 the alleged victim.

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

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

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

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

140 (b) The arresting officer shall ensure that the information presented to the magistrate  
141 includes whether the alleged victim has made a waiver described in Subsection (6)(a).

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

146 (ii) [~~if no grounds exist to hold~~] If the magistrate determines that the arrested [person  
147 without] individual has the right to be admitted to bail, the magistrate shall determine:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

194 (c) 30 days from the day on which the arrested individual is arrested.

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

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

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

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

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

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

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

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

211 (iii) before releasing the arrested [person] individual, give the arrested [person]

212 individual a copy of the jail release agreement or the jail release court order.

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

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

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

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

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

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

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

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

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

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

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

242 (i) the alleged perpetrator enters into a [~~written~~] jail release agreement to comply with



243 the release conditions; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

286 **77-36-1. Definitions.**

287 As used in this chapter:

- 288 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.  
289 (2) "Department" means the Department of Public Safety.  
290 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
291 3, Divorce.  
292 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
293 involving violence or physical harm or threat of violence or physical harm, or any attempt,  
294 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
295 when committed by one cohabitant against another. "Domestic violence" or "domestic  
296 violence offense" also means commission or attempt to commit, any of the following offenses  
297 by one cohabitant against another:
- 298 (a) aggravated assault, as described in Section 76-5-103;
  - 299 (b) assault, as described in Section 76-5-102;
  - 300 (c) criminal homicide, as described in Section 76-5-201;
  - 301 (d) harassment, as described in Section 76-5-106;
  - 302 (e) electronic communication harassment, as described in Section 76-9-201;
  - 303 (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
304 76-5-301, 76-5-301.1, and 76-5-302;

- 305 (g) mayhem, as described in Section 76-5-105;
- 306 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
307 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 308 (i) stalking, as described in Section 76-5-106.5;
- 309 (j) unlawful detention or unlawful detention of a minor, as described in Section  
310 76-5-304;
- 311 (k) violation of a protective order or ex parte protective order, as described in Section  
312 76-5-108;
- 313 (l) any offense against property described in Title 76, Chapter 6, Part 1, Property  
314 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,  
315 Part 3, Robbery;
- 316 (m) possession of a deadly weapon with intent to assault, as described in Section  
317 76-10-507;
- 318 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
319 person, building, or vehicle, as described in Section 76-10-508;
- 320 (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
321 conduct is the result of a plea agreement in which the defendant was originally charged with a  
322 domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly  
323 conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does  
324 not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is  
325 exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or
- 326 (p) child abuse as described in Section 76-5-109.1.
- 327 (5) "Jail release agreement" means the same as that term is defined in Section  
328 77-20-3.5.
- 329 (6) "Jail release court order" means the same as that term is defined in Section  
330 77-20-3.5.
- 331 (7) "Marital status" means married and living together, divorced, separated, or not  
332 married.
- 333 (8) "Married and living together" means a man and a woman whose marriage was  
334 solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- 335 (9) "Not married" means any living arrangement other than married and living together,

336 divorced, or separated.

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

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

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

341 (b) specifying other conditions of release pursuant to ~~[Subsection]~~ Section  
342 ~~77-20-3.5~~~~(3)~~, Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal  
343 case.

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

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

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

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

352 **77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial**  
353 **protective order pending trial.**

354 (1) Because of the serious nature of domestic violence, the court, in domestic violence  
355 actions:

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

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

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

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

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

366 ~~[(f)]~~ (e) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a,

367 Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of  
368 that status.

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

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

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

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

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

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

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

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

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

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

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

397 (ii) If the court is unable to locate the victim, the court shall provide the victim's

398 certified copy to the prosecutor.

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

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

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

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

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

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

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

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

419           ~~[(6)]~~ (5) The court may not approve diversion for a perpetrator of domestic violence.