

DOMESTIC VIOLENCE RESPONSE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to the pretrial and postconviction monitoring of a domestic violence defendant.

Highlighted Provisions:

This bill:

▶ clarifies the circumstances under which a court may require a defendant who is arrested for or charged with a domestic violence offense to participate in an electronic or another type of monitoring program;

▶ requires a court to consider certain factors when determining whether a defendant who is arrested for, charged with, or convicted of a domestic violence offense should be required to participate in an electronic or another type of monitoring program;

▶ provides that a court may require a defendant who is convicted of a domestic violence offense to pay the cost of the defendant's electronic or other type of monitoring if the defendant is able;

▶ changes the term "domestic violence treatment program" to "domestic violence program";

▶ requires the Administrative Office of the Courts to report certain information to the Law Enforcement and Criminal Justice Interim Committee relating to electronic or other type of monitoring of a domestic violence defendant; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **62A-2-101**, as last amended by Laws of Utah 2018, Chapters 252 and 316

36 **77-20-3.5**, as last amended by Laws of Utah 2018, Chapter 281

37 **77-36-2.6**, as last amended by Laws of Utah 2017, Chapter 332

38 **77-36-5**, as last amended by Laws of Utah 2017, Chapter 332



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

41 Section 1. Section **62A-2-101** is amended to read:

42 **62A-2-101. Definitions.**

43 As used in this chapter:

44 (1) "Adult day care" means nonresidential care and supervision:

45 (a) for three or more adults for at least four but less than 24 hours a day; and

46 (b) that meets the needs of functionally impaired adults through a comprehensive
47 program that provides a variety of health, social, recreational, and related support services in a
48 protective setting.

49 (2) "Applicant" means a person who applies for an initial license or a license renewal
50 under this chapter.

51 (3) (a) "Associated with the licensee" means that an individual is:

52 (i) affiliated with a licensee as an owner, director, member of the governing body,
53 employee, agent, provider of care, department contractor, or volunteer; or

54 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
55 (3)(a)(i).

56 (b) "Associated with the licensee" does not include:

57 (i) service on the following bodies, unless that service includes direct access to a child
58 or a vulnerable adult:

- 59 (A) a local mental health authority described in Section 17-43-301;
- 60 (B) a local substance abuse authority described in Section 17-43-201; or
- 61 (C) a board of an organization operating under a contract to provide mental health or
- 62 substance abuse programs, or services for the local mental health authority or substance abuse
- 63 authority; or
- 64 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
- 65 at all times.
- 66 (4) (a) "Boarding school" means a private school that:
- 67 (i) uses a regionally accredited education program;
- 68 (ii) provides a residence to the school's students:
- 69 (A) for the purpose of enabling the school's students to attend classes at the school; and
- 70 (B) as an ancillary service to educating the students at the school;
- 71 (iii) has the primary purpose of providing the school's students with an education, as
- 72 defined in Subsection (4)(b)(i); and
- 73 (iv) (A) does not provide the treatment or services described in Subsection (33)(a); or
- 74 (B) provides the treatment or services described in Subsection (33)(a) on a limited
- 75 basis, as described in Subsection (4)(b)(ii).
- 76 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
- 77 one or more of grades kindergarten through 12th grade.
- 78 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
- 79 services described in Subsection (33)(a) on a limited basis if:
- 80 (A) the treatment or services described in Subsection (33)(a) are provided only as an
- 81 incidental service to a student; and
- 82 (B) the school does not:
- 83 (I) specifically solicit a student for the purpose of providing the treatment or services
- 84 described in Subsection (33)(a); or
- 85 (II) have a primary purpose of providing the treatment or services described in
- 86 Subsection (33)(a).
- 87 (c) "Boarding school" does not include a therapeutic school.
- 88 (5) "Child" means ~~[a person]~~ an individual under 18 years of age.
- 89 (6) "Child placing" means receiving, accepting, or providing custody or care for any

90 child, temporarily or permanently, for the purpose of:

91 (a) finding [~~a person~~] an individual to adopt the child;

92 (b) placing the child in a home for adoption; or

93 (c) foster home placement.

94 (7) "Child-placing agency" means a person that engages in child placing.

95 (8) "Client" means an individual who receives or has received services from a licensee.

96 (9) "Day treatment" means specialized treatment that is provided to:

97 (a) a client less than 24 hours a day; and

98 (b) four or more [~~persons~~] individuals who:

99 (i) are unrelated to the owner or provider; and

100 (ii) have emotional, psychological, developmental, physical, or behavioral
101 dysfunctions, impairments, or chemical dependencies.

102 (10) "Department" means the Department of Human Services.

103 (11) "Department contractor" means an individual who:

104 (a) provides services under a contract with the department; and

105 (b) due to the contract with the department, has or will likely have direct access to a
106 child or vulnerable adult.

107 (12) "Direct access" means that an individual has, or likely will have:

108 (a) contact with or access to a child or vulnerable adult that provides the individual
109 with an opportunity for personal communication or touch; or

110 (b) an opportunity to view medical, financial, or other confidential personal identifying
111 information of the child, the child's parents or legal guardians, or the vulnerable adult.

112 (13) "Directly supervised" means that an individual is being supervised under the
113 uninterrupted visual and auditory surveillance of another individual who has a current
114 background screening approval issued by the office.

115 (14) "Director" means the director of the Office of Licensing.

116 (15) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

117 (16) "Domestic violence [~~treatment~~] program" means a nonresidential program
118 designed to provide psychological treatment and educational services to perpetrators and
119 victims of domestic violence.

120 (17) "Elder adult" means [~~a person~~] an individual 65 years of age or older.

- 121 (18) "Executive director" means the executive director of the department.
- 122 (19) "Foster home" means a residence that is licensed or certified by the Office of
- 123 Licensing for the full-time substitute care of a child.
- 124 (20) "Health benefit plan" means the same as that term is defined in Section
- 125 [31A-22-619.6](#).
- 126 (21) "Health care provider" means the same as that term is defined in Section
- 127 [78B-3-403](#).
- 128 (22) "Health insurer" means the same as that term is defined in Section [31A-22-615.5](#).
- 129 (23) (a) "Human services program" means a:
- 130 (i) foster home;
- 131 (ii) therapeutic school;
- 132 (iii) youth program;
- 133 (iv) resource family home;
- 134 (v) recovery residence; or
- 135 (vi) facility or program that provides:
- 136 (A) secure treatment;
- 137 (B) inpatient treatment;
- 138 (C) residential treatment;
- 139 (D) residential support;
- 140 (E) adult day care;
- 141 (F) day treatment;
- 142 (G) outpatient treatment;
- 143 (H) domestic violence treatment;
- 144 (I) child-placing services;
- 145 (J) social detoxification; or
- 146 (K) any other human services that are required by contract with the department to be
- 147 licensed with the department.
- 148 (b) "Human services program" does not include:
- 149 (i) a boarding school; or
- 150 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).
- 151 (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

152 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.

153 (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

154 (27) "Licensee" means an individual or a human services program licensed by the
155 office.

156 (28) "Local government" means a city, town, metro township, or county.

157 (29) "Minor" has the same meaning as "child."

158 (30) "Office" means the Office of Licensing within the Department of Human Services.

159 (31) "Outpatient treatment" means individual, family, or group therapy or counseling
160 designed to improve and enhance social or psychological functioning for those whose physical
161 and emotional status allows them to continue functioning in their usual living environment.

162 (32) "Practice group" or "group practice" means two or more health care providers
163 legally organized as a partnership, professional corporation, or similar association, for which:

164 (a) substantially all of the services of the health care providers who are members of the
165 group are provided through the group and are billed in the name of the group and amounts
166 received are treated as receipts of the group; and

167 (b) the overhead expenses of and the income from the practice are distributed in
168 accordance with methods previously determined by members of the group.

169 (33) (a) "Recovery residence" means a home, residence, or facility that meets at least
170 two of the following requirements:

171 (i) provides a supervised living environment for individuals recovering from a
172 substance use disorder;

173 (ii) provides a living environment in which more than half of the individuals in the
174 residence are recovering from a substance use disorder;

175 (iii) provides or arranges for residents to receive services related to their recovery from
176 a substance use disorder, either on or off site;

177 (iv) is held out as a living environment in which individuals recovering from substance
178 abuse disorders live together to encourage continued sobriety; or

179 (v) (A) receives public funding; or

180 (B) is run as a business venture, either for-profit or not-for-profit.

181 (b) "Recovery residence" does not mean:

182 (i) a residential treatment program;

183 (ii) residential support; or
184 (iii) a home, residence, or facility, in which:
185 (A) residents, by their majority vote, establish, implement, and enforce policies
186 governing the living environment, including the manner in which applications for residence are
187 approved and the manner in which residents are expelled;
188 (B) residents equitably share rent and housing-related expenses; and
189 (C) a landlord, owner, or operator does not receive compensation, other than fair
190 market rental income, for establishing, implementing, or enforcing policies governing the
191 living environment.
192 (34) "Regular business hours" means:
193 (a) the hours during which services of any kind are provided to a client; or
194 (b) the hours during which a client is present at the facility of a licensee.
195 (35) (a) "Residential support" means arranging for or providing the necessities of life
196 as a protective service to individuals or families who have a disability or who are experiencing
197 a dislocation or emergency that prevents them from providing these services for themselves or
198 their families.
199 (b) "Residential support" includes providing a supervised living environment for
200 ~~persons~~ individuals with dysfunctions or impairments that are:
201 (i) emotional;
202 (ii) psychological;
203 (iii) developmental; or
204 (iv) behavioral.
205 (c) Treatment is not a necessary component of residential support.
206 (d) "Residential support" does not include:
207 (i) a recovery residence; or
208 (ii) residential services that are performed:
209 (A) exclusively under contract with the Division of Services for People with
210 Disabilities; or
211 (B) in a facility that serves fewer than four individuals.
212 (36) (a) "Residential treatment" means a 24-hour group living environment for four or
213 more individuals unrelated to the owner or provider that offers room or board and specialized

214 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
215 services for ~~[persons]~~ individuals with emotional, psychological, developmental, or behavioral
216 dysfunctions, impairments, or chemical dependencies.

217 (b) "Residential treatment" does not include a:

218 (i) boarding school;

219 (ii) foster home; or

220 (iii) recovery residence.

221 (37) "Residential treatment program" means a human services program that provides:

222 (a) residential treatment; or

223 (b) secure treatment.

224 (38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for
225 ~~[persons]~~ individuals whose current functioning is such that they cannot live independently or
226 in a less restrictive environment.

227 (b) "Secure treatment" differs from residential treatment to the extent that it requires
228 intensive supervision, locked doors, and other security measures that are imposed on residents
229 with neither their consent nor control.

230 (39) "Social detoxification" means short-term residential services for ~~[persons]~~
231 individuals who are experiencing or have recently experienced drug or alcohol intoxication,
232 that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health
233 Care Facility Licensing and Inspection Act, and that include:

234 (a) room and board for ~~[persons]~~ individuals who are unrelated to the owner or
235 manager of the facility;

236 (b) specialized rehabilitation to acquire sobriety; and

237 (c) aftercare services.

238 (40) "Substance abuse disorder" or "substance use disorder" mean the same as
239 "substance use disorder" is defined in Section [62A-15-1202](#).

240 (41) "Substance abuse treatment program" or "substance use disorder treatment
241 program" means a program:

242 (a) designed to provide:

243 (i) specialized drug or alcohol treatment;

244 (ii) rehabilitation; or

245 (iii) habilitation services; and
246 (b) that provides the treatment or services described in Subsection [(40)] (41)(a) to
247 persons individuals with:

- 248 (i) a diagnosed substance use disorder; or
- 249 (ii) chemical dependency disorder.

250 (42) "Therapeutic school" means a residential group living facility:

251 (a) for four or more individuals that are not related to:

- 252 (i) the owner of the facility; or
- 253 (ii) the primary service provider of the facility;

254 (b) that serves students who have a history of failing to function:

- 255 (i) at home;
- 256 (ii) in a public school; or
- 257 (iii) in a nonresidential private school; and

258 (c) that offers:

- 259 (i) room and board; and
- 260 (ii) an academic education integrated with:
 - 261 (A) specialized structure and supervision; or
 - 262 (B) services or treatment related to:
 - 263 (I) a disability;
 - 264 (II) emotional development;
 - 265 (III) behavioral development;
 - 266 (IV) familial development; or
 - 267 (V) social development.

268 (43) "Unrelated persons" means persons individuals other than parents, legal
269 guardians, grandparents, brothers, sisters, uncles, or aunts.

270 (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or
271 permanent mental or physical impairment that substantially affects the person's adult's ability
272 to:

- 273 (a) provide personal protection;
- 274 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 275 (c) obtain services necessary for health, safety, or welfare;

- 276 (d) carry out the activities of daily living;
- 277 (e) manage the adult's own resources; or
- 278 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 279 neglect, or exploitation.

280 (45) (a) "Youth program" means a nonresidential program designed to provide
281 behavioral, substance abuse, or mental health services to minors that:

- 282 (i) serves adjudicated or nonadjudicated youth;
- 283 (ii) charges a fee for its services;
- 284 (iii) may or may not provide host homes or other arrangements for overnight
285 accommodation of the youth;
- 286 (iv) may or may not provide all or part of its services in the outdoors;
- 287 (v) may or may not limit or censor access to parents or guardians; and
- 288 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
289 minor's own free will.

290 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
291 Scouts, 4-H, and other such organizations.

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

293 **77-20-3.5. Conditions for release after arrest for domestic violence and other**
294 **offenses -- Jail release agreements -- Jail release court orders.**

295 (1) As used in this section:

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

297 (b) "Jail release agreement" means a written agreement described in Subsection (3)
298 that:

299 (i) limits the contact an individual arrested for a qualifying offense may have with an
300 alleged victim; and

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

302 (c) "Jail release court order" means a written court order issued in accordance with
303 Subsection (3) that:

304 (i) limits the contact an individual arrested for a qualifying offense may have with an
305 alleged victim; and

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

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

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

310 (f) "Qualifying offense" means:

311 (i) domestic violence;

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

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

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

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

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

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

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

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

327 (c) (i) If the magistrate determines there is probable cause to support the charge or
328 charges of one or more qualifying offenses, the magistrate shall determine:

329 ~~[(i)]~~ (A) whether grounds exist to hold the arrested person without bail, in accordance
330 with Section 77-20-1;

331 ~~[(ii)]~~ (B) if no grounds exist to hold the arrested person without bail, whether any
332 release conditions, including electronic monitoring, are necessary to protect the alleged victim;
333 or

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

336 (ii) In determining whether electronic monitoring is necessary to protect the alleged
337 victim, the magistrate shall, in addition to any other factors the magistrate finds relevant,

338 consider the factors described in Subsection 77-36-5(2)(b)(ii).

339 (d) (i) The magistrate may not release [~~a person~~] an individual arrested for a qualifying
340 offense before the [~~person's~~] individual's initial court appearance before the court with
341 jurisdiction over the offense for which the [~~person~~] individual was arrested, unless the arrested
342 [~~person~~] individual agrees in writing or the magistrate orders, as a release condition, that, until
343 the arrested [~~person~~] individual appears at the initial court appearance, the arrested [~~person~~]
344 individual will not:

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

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

347 (C) knowingly enter onto the premises of the alleged victim's residence or any premises
348 temporarily occupied by the alleged victim.

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

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

353 (4) (a) If [~~a person~~] an individual charged with a qualifying offense fails to appear at
354 the time scheduled by the magistrate under Subsection (3)(d), the [~~person~~] individual shall
355 comply with the release conditions described in Subsection (3)(d)(i) until the [~~person~~]
356 individual makes an initial appearance.

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

360 (i) may, upon the motion of the prosecutor and after allowing the [~~person~~] individual
361 an opportunity to be heard on the motion, extend the release conditions described in Subsection
362 (3)(d)(i) by no more than three court days; and

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

366 (5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release
367 agreement or jail release court order expires at midnight after the arrested [~~person's~~]
368 individual's initial scheduled court appearance described in Subsection (3)(d)(i).

369 (6) (a) After an arrest for a qualifying offense, an alleged victim who is not a minor
370 may waive in writing the release conditions described in Subsection (3)(d)(i)(A) or (C). Upon
371 waiver, those release conditions do not apply to the arrested [person] individual.

372 (b) A court or magistrate may modify the release conditions described in Subsection
373 (3)(d)(i), in writing or on the record, and only for good cause shown.

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

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

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

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

381 (b) (i) When ~~[a person]~~ an individual arrested for domestic violence is released
382 pursuant to Subsection (3) based on a written jail release agreement, the releasing agency shall
383 transmit that information to the statewide domestic violence network described in Section
384 [78B-7-113](#).

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

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

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

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

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

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

400 (c) City attorneys may prosecute class A misdemeanor violations under this section.

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

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

406 (a) the release conditions described in Subsections (3) through (5), and notice that the
407 alleged perpetrator will not be released, before appearing before the court with jurisdiction over
408 the offense for which the alleged perpetrator was arrested, unless:

409 (i) the alleged perpetrator enters into a written agreement to comply with the release
410 conditions; or

411 (ii) the magistrate orders the release conditions;

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

414 (c) notification that the alleged perpetrator is to personally appear in court on the next
415 day the court is open for business after the day of the arrest;

416 (d) the address of the appropriate court in the district or county in which the alleged
417 victim resides;

418 (e) the availability and effect of any waiver of the release conditions; and

419 (f) information regarding the availability of and procedures for obtaining civil and
420 criminal protective orders with or without the assistance of an attorney.

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

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

425 (b) the release conditions described in Subsections (3) through (5) and notice that the
426 alleged perpetrator will not be released, before appearing before the court with jurisdiction over
427 the offense for which the alleged perpetrator was arrested, unless:

428 (i) the alleged perpetrator enters into a written agreement to comply with the release
429 conditions; or

430 (ii) the magistrate orders the release conditions;

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

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

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

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

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

448 (14) The provisions of this section do not apply if the [person] individual arrested for
449 the qualifying offense is a minor, unless the qualifying offense is domestic violence.

450 Section 3. Section 77-36-2.6 is amended to read:

451 **77-36-2.6. Appearance of defendant required -- Determinations by court --**
452 **Pretrial protective order.**

453 (1) A defendant who [~~has been~~] is arrested for an offense involving domestic violence
454 shall appear in person or by video before the court or a magistrate within one judicial day after
455 the arrest.

456 (2) A defendant who [~~has been~~] is charged by citation, indictment, or information with
457 an offense involving domestic violence but [~~has not been~~] is not arrested, shall appear before
458 the court in person for arraignment or initial appearance as soon as practicable, but no later
459 than 14 days after the next day on which court is in session following the issuance of the
460 citation or the filing of the indictment or information.

461 (3) At the time of an appearance under Subsection (1) or (2), the court shall:

462 (a) determine the necessity of imposing a pretrial protective order or other condition of
463 pretrial release, including [~~participating~~], in accordance with Subsection 77-36-5(2),
464 participation in an electronic or other type of monitoring program to protect the alleged victim;

465 (b) identify the individual designated by the victim to communicate between the
466 defendant and the victim if and to the extent necessary for family related matters; and

467 (c) state [~~its~~] the court's findings and determination in writing.

468 (4) [~~Appearances~~] An appearance required by this section [~~are~~] is mandatory and may
469 not be waived.

470 Section 4. Section **77-36-5** is amended to read:

471 **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring --**
472 **Counseling -- Cost assessed against defendant -- Sentencing protective order --**
473 **Continuous protective order.**

474 (1) (a) When a defendant is found guilty of a crime involving domestic violence and a
475 condition of the sentence restricts the defendant's contact with the victim, a sentencing
476 protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's
477 probation or a continuous protective order may be issued under Subsection 77-36-5.1(6).

478 (b) (i) The sentencing protective order or continuous protective order shall be in
479 writing, and the prosecutor shall provide a certified copy of that order to the victim.

480 (ii) The court shall transmit the sentencing protective order or continuous protective
481 order to the statewide domestic violence network.

482 (c) Violation of a sentencing protective order or continuous protective order issued
483 [~~pursuant to~~] under this Subsection (1) is a class A misdemeanor.

484 (2) (a) In determining [~~its~~] the court's sentence₂, the court, in addition to penalties
485 otherwise provided by law, may require the defendant to participate in an electronic or other
486 type of monitoring program.

487 (b) (i) The court shall require the defendant to participate in an electronic or another
488 type of monitoring program if the court determines the monitoring is necessary to protect the
489 victim.

490 (ii) In determining whether an electronic or another type of monitoring program is
491 necessary to protect the victim, the court shall, in addition to any other factors the court finds
492 relevant, consider:

493 (A) any lethality assessment provided to the court; and

494 (B) whether the defendant was previously arrested for, or convicted of, a domestic
 495 violence offense.

496 (c) (i) The court may require the defendant to pay all or part of the costs of an
 497 electronic or another type of monitoring program required under this section according to the
 498 defendant's ability to pay.

499 (ii) In determining the defendant's ability to pay the court shall consider:

500 (A) the financial resources of the defendant; and

501 (B) the nature of the burden that the payment will impose on the defendant.

502 (3) The court may [~~also~~] require the defendant to pay all or part of the costs of
 503 counseling incurred by the victim and any children affected by or exposed to the domestic
 504 violence offense, [~~as well as~~] and the costs for the defendant's own counseling.

505 (4) The court shall:

506 (a) assess against the defendant, as restitution, any costs for services [~~or treatment~~]
 507 provided to the victim and affected children of the victim or the defendant by the Division of
 508 Child and Family Services under Section [62A-4a-106](#); and

509 (b) order [~~those~~] the costs to be paid directly to the division or [~~its~~] the division's
 510 contracted provider.

511 (5) The court may order the defendant to obtain and satisfactorily complete [~~treatment~~
 512 ~~or therapy in~~] a domestic violence [~~treatment~~] program, as defined in Section [62A-2-101](#), that
 513 is licensed by the Department of Human Services.

514 (6) The Administrative Office of the Courts shall provide a report to the Law
 515 Enforcement and Criminal Justice Interim Committee before November 30, 2020, that
 516 includes:

517 (a) the number of cases opened in the state during the preceding fiscal year that involve
 518 a domestic violence offense;

518a **H→ (b) for each case described in Subsection (6)(a), the section under which the offender was**
 518b **charged or convicted;**

519 **[~~(b)~~] (c) ←H the number of court orders in cases described in Subsection (6)(a) that require**
 519a **the**

520 **defendant to participate in an electronic or another type of monitoring program; and**

521 **H→ [~~(c)~~] (d) ←H for each order described in Subsection (6) H→ [~~(b)~~] (c) ←H , whether the**
 521a **order was made under**

522 **Section [77-20-3.5](#), [77-36-2.6](#), or [77-36-5](#), or another provision of state law.**