

1 **DOMESTIC VIOLENCE AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jani Iwamoto**

5 House Sponsor: Paul Ray

6 Cosponsor:

7 Daniel W. Thatcher

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9 **LONG TITLE**

10 **General Description:**

11 This bill addresses penalty enhancements for a domestic violence offense.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ modifies the circumstances under which the penalty for certain domestic violence
- 16 offenses may be enhanced;
- 17 ▶ provides that an adjudication in juvenile court is not a conviction for purposes of a
- 18 penalty enhancement for a domestic violence offense; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53-10-403**, as last amended by Laws of Utah 2020, Chapters 142, 214, and 415

27 **77-36-1.1**, as last amended by Laws of Utah 2019, Chapter 367

28 **77-36-1.2**, as last amended by Laws of Utah 2020, Chapter 70

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

31 Section 1. Section **53-10-403** is amended to read:

32 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

33 (1) Sections **53-10-403.6**, **53-10-404**, **53-10-404.5**, **53-10-405**, and **53-10-406** apply to  
34 any person who:

35 (a) has pled guilty to or has been convicted of any of the offenses under Subsection  
36 (2)(a) or (b) on or after July 1, 2002;

37 (b) has pled guilty to or has been convicted by any other state or by the United States  
38 government of an offense which if committed in this state would be punishable as one or more  
39 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

40 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any  
41 offense under Subsection (2)(c);

42 (d) has been booked:

43 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,  
44 2014, through December 31, 2014, under Subsection **53-10-404(4)(b)** for any felony offense; or

45 (ii) on or after January 1, 2015, for any felony offense; or

46 (e) is a minor under Subsection (3).

47 (2) Offenses referred to in Subsection (1) are:

48 (a) any felony or class A misdemeanor under the Utah Code;

49 (b) any offense under Subsection (2)(a):

50 (i) for which the court enters a judgment for conviction to a lower degree of offense  
51 under Section **76-3-402**; or

52 (ii) regarding which the court allows the defendant to enter a plea in abeyance as  
53 defined in Section **77-2a-1**; or

54 (c) (i) any violent felony as defined in Section **53-10-403.5**;

55 (ii) sale or use of body parts, Section **26-28-116**;

56 (iii) failure to stop at an accident that resulted in death, Section **41-6a-401.5**;

- 57 (iv) driving with any amount of a controlled substance in a person's body and causing
- 58 serious bodily injury or death, Subsection 58-37-8(2)(g);
- 59 (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;
- 60 (vi) a felony violation of propelling a substance or object at a correctional officer, a
- 61 peace officer, or an employee or a volunteer, including health care providers, Section
- 62 76-5-102.6;
- 63 (vii) aggravated human trafficking and aggravated human smuggling, Section
- 64 76-5-310;
- 65 (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
- 66 (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 67 (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
- 68 (xi) sale of a child, Section 76-7-203;
- 69 (xii) aggravated escape, Subsection 76-8-309(2);
- 70 (xiii) a felony violation of assault on an elected official, Section 76-8-315;
- 71 (xiv) influencing, impeding, or retaliating against a judge or member of the Board of
- 72 Pardons and Parole, Section 76-8-316;
- 73 (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 74 (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 75 (xvii) a felony violation of sexual battery, Section 76-9-702.1;
- 76 (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 77 (xix) a felony violation of abuse or desecration of a dead human body, Section
- 78 76-9-704;
- 79 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section
- 80 76-10-402;
- 81 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
- 82 Section 76-10-403;
- 83 (xxii) possession of a concealed firearm in the commission of a violent felony,
- 84 Subsection 76-10-504(4);

85 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,  
86 Subsection 76-10-1504(3);

87 (xxiv) commercial obstruction, Subsection 76-10-2402(2);

88 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section  
89 77-41-107;

90 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1[(2)(c)](4); or

91 (xxvii) violation of condition for release after arrest under Section 78B-7-802.

92 (3) A minor under Subsection (1) is a minor 14 years old or older who is adjudicated  
93 by the juvenile court due to the commission of any offense described in Subsection (2), and  
94 who:

95 (a) committed an offense under Subsection (2) within the jurisdiction of the juvenile  
96 court on or after July 1, 2002; or

97 (b) is in the legal custody of the Division of Juvenile Justice Services on or after July 1,  
98 2002 for an offense under Subsection (2).

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

100 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**  
101 **offenses.**

102 (1) As used in this section:

103 (a) (i) "Convicted" means a conviction by plea or verdict of a crime or offense.

104 (ii) "Convicted" includes:

105 (A) a plea of guilty or guilty and mentally ill;

106 (B) a plea of no contest; and

107 (C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas  
108 in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in  
109 accordance with the plea in abeyance agreement.

110 (iii) "Convicted" does not include an adjudication in juvenile court.

111 [(a)] (b) "Criminal mischief offense" means commission or attempt to commit an  
112 offense under Section 76-6-106 by one cohabitant against another.

113 (c) "Offense against the person" means commission or attempt to commit an offense  
114 under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal Homicide,  
115 Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7, Genital  
116 Mutilation, by one cohabitant against another.

117 ~~[(b)]~~ (d) "Qualifying domestic violence offense" means:

118 (i) a domestic violence offense in Utah; or

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

121 (2) An individual who is convicted of a domestic violence offense is~~[-(a)]~~ guilty of a  
122 class B misdemeanor if:

123 ~~[(i)]~~ (a) the domestic violence offense described in this Subsection (2) is designated by  
124 law as a class C misdemeanor; and

125 ~~[(ii)-(A)]~~ (b) the individual commits or is convicted of the domestic violence offense  
126 described in this Subsection (2) ~~[is committed]:~~

127 (i) within 10 years after the day on which the individual is convicted of a qualifying  
128 domestic violence offense that is not a criminal mischief offense; or

129 ~~[(B) the individual is convicted of the domestic violence offense described in this~~  
130 ~~Subsection (2) within 10 years after the individual is convicted of a qualifying domestic~~  
131 ~~violence offense that is not a criminal mischief offense;]~~

132 (ii) within five years after the day on which the individual is convicted of a criminal  
133 mischief offense.

134 ~~[(b)]~~ (3) An individual who is convicted of a domestic violence offense is guilty of a  
135 class A misdemeanor if:

136 ~~[(i)]~~ (a) the domestic violence offense described in this Subsection ~~[(2)]~~ (3) is  
137 designated by law as a class B misdemeanor; and

138 ~~[(ii)-(A)]~~ (b) the individual commits or is convicted of the domestic violence offense  
139 described in this Subsection ~~[(2) is committed]~~ (3):

140 (i) within 10 years after the day on which the individual is convicted of a qualifying

141 domestic violence offense that is not a criminal mischief offense; or

142 ~~[(B) the individual is convicted of the domestic violence offense described in this~~  
143 ~~Subsection (2) within 10 years after the individual is convicted of a qualifying domestic~~  
144 ~~violence offense that is not a criminal mischief offense; or]~~

145 (ii) within five years after the day on which the individual is convicted of a criminal  
146 mischief offense.

147 ~~[(c)]~~ (4) An individual who is convicted of a domestic violence offense is guilty of a  
148 ~~[felony of the]~~ third degree felony if:

149 (a) the domestic violence offense described in this Subsection (4) is designated by law  
150 as a class B misdemeanor offense against the person and the individual:

151 (i) (A) commits or is convicted of the domestic violence offense described in this  
152 Subsection (4) within 10 years after the day on which the individual is convicted of a  
153 qualifying domestic violence offense that is not a criminal mischief offense; and

154 (B) is convicted of another qualifying domestic violence offense that is not a criminal  
155 mischief offense after the day on which the individual is convicted of the qualifying domestic  
156 violence offense described in Subsection (4)(a)(i)(A) and before the day on which the  
157 individual is convicted of the domestic violence offense described in this Subsection (4);

158 (ii) (A) commits or is convicted of the domestic violence offense described in this  
159 Subsection (4) within five years after the day on which the individual is convicted of a criminal  
160 mischief offense; and

161 (B) is convicted of another criminal mischief offense after the day on which the  
162 individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A)  
163 and before the day on which the individual is convicted of the domestic violence offense  
164 described in this Subsection (4); or

165 (iii) commits or is convicted of the domestic violence offense described in this  
166 Subsection (4) within 10 years after the day on which the individual is convicted of a  
167 qualifying domestic violence offense that is not a criminal mischief offense and within five  
168 years after the day on which the individual is convicted of a criminal mischief offense; and

169            ~~[(i)]~~ (b) (i) the domestic violence offense described in this Subsection ~~[(2)]~~ (4) is  
170 designated by law as a class A misdemeanor; and

171            ~~(ii) [(A)]~~ the individual commits or is convicted of the domestic violence offense  
172 described in this Subsection ~~[(2) is committed]~~ (4):

173            (A) within 10 years after the day on which the individual is convicted of a qualifying  
174 domestic violence offense that is not a criminal mischief offense; or

175            ~~[(B) the individual is convicted of the domestic violence offense described in this~~  
176 ~~Subsection (2) within 10 years after the individual is convicted of a qualifying domestic~~  
177 ~~violence offense that is not a criminal mischief offense.]~~

178            (B) within five years after the day on which the individual is convicted of a criminal  
179 mischief offense.

180            ~~[(3) An individual who is convicted of a domestic violence offense is:]~~

181            ~~[(a) guilty of a class B misdemeanor if:]~~

182            ~~[(i) the domestic violence offense described in this Subsection (3) is designated by law~~  
183 ~~as a class C misdemeanor; and]~~

184            ~~[(ii) (A) the domestic violence offense described in this Subsection (3) is committed~~  
185 ~~within five years after the individual is convicted of a criminal mischief offense; or]~~

186            ~~[(B) the individual is convicted of the domestic violence offense described in]~~

187            ~~[this Subsection (3) within five years after the individual is convicted of a criminal~~  
188 ~~mischief offense;]~~

189            ~~[(b) guilty of a class A misdemeanor if:]~~

190            ~~[(i) the domestic violence offense described in this Subsection (3) is designated by law~~  
191 ~~as a class B misdemeanor; and]~~

192            ~~[(ii) (A) the domestic violence offense described in this Subsection (3) is committed~~  
193 ~~within five years after the individual is convicted of a criminal mischief offense; or]~~

194            ~~[(B) the individual is convicted of the domestic violence offense described in]~~

195            ~~[this Subsection (3) within five years after the individual is convicted of a criminal~~  
196 ~~mischief offense; or]~~

197 ~~[(c) guilty of a third degree felony if:]~~  
 198 ~~[(i) the domestic violence offense described in this Subsection (3) is designated by law~~  
 199 ~~as a class A misdemeanor; and]~~  
 200 ~~[(ii) (A) the domestic violence offense described in this Subsection (3) is committed~~  
 201 ~~within five years after the individual is convicted of a criminal mischief offense; or]~~  
 202 ~~[(B) the individual is convicted of the domestic violence offense described in this~~  
 203 ~~Subsection (3) within five years after the individual is convicted of a criminal mischief~~  
 204 ~~offense.]~~

205 Section 3. Section 77-36-1.2 is amended to read:

206 **77-36-1.2. Acceptance of a plea of guilty or no contest to domestic violence --**  
 207 **Restrictions.**

208 ~~[(1) For purposes of this section, "qualifying domestic violence offense" means:]~~  
 209 ~~[(a) a domestic violence offense in Utah; or]~~  
 210 ~~[(b) an offense in any other state, or in any district, possession, or territory of the~~  
 211 ~~United States, that would be a domestic violence offense under Utah law.]~~

212 ~~[(2) For purposes of this section and Section 77-36-1.1, a plea of guilty or no contest to~~  
 213 ~~any domestic violence offense in Utah, which plea is held in abeyance under Title 77, Chapter~~  
 214 ~~2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been~~  
 215 ~~subsequently reduced or dismissed in accordance with the plea in abeyance agreement.]~~

216 ~~[(3)(a)]~~ (1) Before agreeing to a plea of guilty or no contest, the prosecutor shall  
 217 examine the criminal history of the defendant.

218 ~~[(b)]~~ (2) An entry of a plea of guilty or no contest to a domestic violence offense is  
 219 invalid unless the prosecutor agrees to the plea:

220 ~~[(i)]~~ (a) in open court;

221 ~~[(ii)]~~ (b) in writing; or

222 ~~[(iii)]~~ (c) by another means of communication that the court finds adequate to record  
 223 the prosecutor's agreement.